

**TUESDAY, AUGUST 15, 1978
PART II**



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

Office of the Secretary

**Regulations Implementing the
Authority of the Secretary of
the Department of Housing and
Urban Development over the
Conduct of the Secondary
Market Operations of the
Federal National Mortgage
Association (FNMA)**

Federal Register

[4210-01]

**Title 24—Housing and Urban
Development**

**SUBTITLE A—OFFICE OF THE SECRETARY,
DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT**

(Docket No. R-78-509)

**PART 81—REGULATIONS IMPLEMENTING
THE AUTHORITY OF THE SECRETARY OF THE
DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT OVER THE CONDUCT OF
THE SECONDARY MARKET OPERATIONS
OF THE FEDERAL NATIONAL MORTGAGE
ASSOCIATION (FNMA)**

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rulemaking.

SUMMARY: The Secretary has determined that the proper discharge of the responsibilities placed on her by the Federal National Mortgage Association Charter Act (1) requires her to develop a regulatory framework for the conduct of FNMA's secondary market operations. This final rulemaking therefore revises existing Part 81 (2) to: (1) Codify the statutory approval functions concerning the operations of FNMA which the Charter Act has vested in the Secretary; (2) establish standards and goals with respect to the conduct of FNMA's secondary market operations; (3) assure that FNMA is complying with nondiscrimination standards; (4) require from FNMA, on a regular basis, reports which are necessary to enable the Secretary to discharge the oversight responsibilities placed on her by the Charter Act; (5) provide for annual audits of FNMA's books and financial transactions; and (6) make minor technical changes to the existing provisions of Part 81. (3)

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On February 23, 1978, as a result of a Departmental review of FNMA's secondary market operations and Congressional hearings related thereto, the Secretary published for comment regulations implementing the authori-

ty vested in her by the FNMA Charter Act.

In view of the public interest in these regulations and the numerous comments submitted on the proposed regulations, the Department has prepared a comprehensive preamble to the final rule. It describes the public purposes Congress intended to be achieved by FNMA's conduct of its secondary market operations, the statutory authority conferred upon the Secretary to regulate FNMA, a summary of the comments submitted on the proposed regulations, and a detailed explanation of the changes adopted in this final rule.

I. THE HISTORY OF FNMA

FNMA came into being as a "Government-sponsored private corporation" as a result of the enactment of title VIII of the Housing and Urban Development Act of 1938. Previously, it was a Government corporation within the Department of Housing and Urban Development, a cabinet-level Department comprised of the numerous constituent entities that had been established to carry out the Nation's housing goals. The statutory language of FNMA's Charter, the legislative history, and the historical antecedent of the corporation make clear that the change in FNMA's status from a Government corporation to a Government-sponsored private corporation did not alter the public purposes to be accomplished by FNMA. Rather, the change in FNMA's status reflected the conclusion of the Congress, acting at the request of the Johnson administration and with the general concurrence of the housing industry, that those purposes could be most effectively realized by placing FNMA's secondary market operations in a Government-sponsored private corporation not subject to Federal budgetary constraints.

A. ORIGINS

The seminal concept of FNMA arose in the Great Depression, when it became imperative to develop a financing method that would overcome the weaknesses in the Nation's then-existing mortgage financing system. In the early 1930's, the typical instrument for financing home purchases was the 3- to 5-year unamortized mortgage. This instrument was inadequate because of the recurring need to refinance the mortgage under conditions unanticipated at the time the mortgage was created. The inadequacy of the basic mortgage instrument and the wide variations in availability, terms, and cost of mortgage financing—between the relatively capital rich northeastern and northcentral regions of the United States and the relatively capital poor regions elsewhere in the coun-

try—impeded the recovery of the national homebuilding industry from the Great Depression.

In response to this situation, President Roosevelt on November 17, 1933, established the National Emergency Council. (4) The Council identified three basic problems:

1. The short-term (3-to-5-year) unamortized mortgage which, in the view of the Council, resulted from the need for liquidity among mortgage lenders;
2. High interest rates, particularly in developing areas of the country, where the supply of capital was inadequate to meet expanding needs; and
3. The lack of investor confidence that resulted from the collapse of existing credit systems during the Depression.

The Council recommended the establishment of a long-term, federally insured mortgage. Federal insurance of the mortgage alone, however, was considered to be insufficient to induce lenders to tie up their funds in long-term mortgages. The Council therefore proposed the Federal chartering of a few large, privately organized and privately financed National Mortgage Associations designed to provide liquidity for the new mortgage instrument and "to . . . transfer . . . funds from capital rich to capital poor areas." (5) These National Mortgage Associations were expected to purchase, service, and sell only federally insured mortgages and to borrow the operating funds necessary to conduct their business through sales of debt obligations to the public under close Government supervision. Investor confidence in these Associations was to be enhanced by these characteristics, together with the imposition of minimum capital requirements of \$5,000,000. (6)

The Council's proposals were incorporated in the first National Housing Act (1934), (7) which authorized the FHA-insured mortgage and the Federal chartering of the National Mortgage Associations. Although that act provided ample legislative authority, no private National Mortgage Associations were formed because, in the 1934-1935 period, private investment capital was not drawn to the financing of such institutions. (8)

The establishment of the Reconstruction Finance Corporation Mortgage Co. in 1935 (9) partially satisfied the need for a secondary market facility for the new FHA-insured home mortgages. However, its capacity to meet the demand for funds for FHA-insured home mortgages was inadequate. Thus, in anticipation of even higher demands for funds expected to arise as a result of the new FHA-insured moderate income rental program (section 207 of the National Housing Act), (10) President Roosevelt

urged enactment of legislation to broaden the provisions of title III of the National Housing Act (1934) under which the chartering of National Mortgage Associations was authorized, "to give these associations explicit authority to make loans on large scale properties that are subject to special regulation by the Federal Housing Administrator" (11)

Upon enactment of the legislation which authorized FHA insurance of mortgages on rental properties, the first National Mortgage Association was chartered on February 10, 1938. It was a subsidiary of the Reconstruction Finance Corp., designed to provide liquidity for the new FHA-insured rental mortgages. The Association was originally named the "National Mortgage Association of Washington," but the name was changed to the Federal National Mortgage Association in April 1938.

The original FNMA was a Government corporation which utilized appropriated Federal funds to provide its initial capital. (12) With funds obtained through the issuance of its debentures, FNMA provided liquidity to mortgage lenders by purchasing the new, relatively long-term, FHA-insured mortgages. FNMA's activities drew a more stable flow of capital for FHA-insured and—after 1948—VA-guaranteed residential mortgages, attracted non-traditional sources of capital to investment in these mortgages, and facilitated the transfer of funds "from capital rich to capital poor areas," exactly as the National Emergency Council in 1933 had expected the National Mortgage Associations to do.

FNMA's operations expanded at an accelerated rate after 1945 (13) because of its extensive purchase of the 4-percent VA mortgages authorized by the Servicemen's Readjustment Act of 1944. The increasing dollar volume of mortgage purchases by FNMA led to fears that the creation of numerous National Mortgage Associations, as authorized by the National Housing Act (1934), could lead to an overexpansion of mortgage credit. (14) As early as 1939, Congress had given the Federal Housing Administrator discretion to refuse to charter new National Mortgage Association. (15) Congress completely eliminated this chartering authority in 1948, replacing it with a "statutory charter" which gave FNMA its unique status as the sole national secondary mortgage market facility. (16) On September 7, 1950, FNMA was transferred from RFC to the Housing and Home Finance Agency (later to become the Department of Housing and Urban Development) in order to insure better coordination of the secondary mortgage functions of the As-

sociation with related housing matters. (17)

B. FNMA CHARTER ACT OF 1954

As the volume of FNMA's operations increased, traditional mortgage lenders complained that FNMA's participation in the mortgage-lending field depressed mortgage interest rates to unreasonably low levels and competed unfairly with private enterprise. In the early 1950's various organizations of traditional mortgage lenders advocated winding up FNMA or replacing it with a secondary market facility which would ultimately become privately financed and operated. (18) These traditional mortgage lenders pointed out that they could not afford to deal in the low-interest-rate, long-term mortgages purchased by FNMA. These lenders stated that FNMA was able to purchase such mortgages only because "it raised its investible funds under the protection of the Treasury at rates below the rates private investors paid for their funds." They urged that the only type of Government-sponsored secondary market facility that would not disrupt the continued private financing of mortgages would be a facility which received "no subsidy, direct or indirect" from the Government. (19)

The result was the 1954 Charter Act which represented a compromise between the competing interests of those who wished to abolish FNMA completely, those who wished to recharter FNMA as a totally private corporation, those who wished to continue and extend FNMA, and those who wished to place FNMA in a standby position while private enterprise was given an opportunity to solve secondary market problems. (20) President Eisenhower proposed that FNMA be rechartered as part of the Housing Act of 1954 to serve three distinct functions:

- (1) to provide assistance to the secondary market for FHA-insured and VA-guaranteed home mortgages in order to furnish additional liquidity for mortgage investments and thereby improve the distribution of mortgage investment funds;
- (2) to provide Government assistance for certain types of these mortgages, or for mortgages generally, if necessary to retard or stop a decline in homebuilding activities which threatens the stability of a high-level national economy; and
- (3) to manage and liquidate, in an orderly manner, the mortgages held in the portfolio of the present FNMA. (21)

The Charter Act contemplated the eventual transfer of the secondary market operations of FNMA to a privately financed and operated organization and anticipated the use of the secondary market operations of FNMA only as a "reserve facility." (22) Determinations of the volume of purchases and sales, of prices, and of charges or

fees were to "be consistent with the objectives" that "excessive use of the Association's facilities" should be avoided. In addition, the operations of FNMA's secondary market facility should be "within its income derived from such operations and . . . should be fully self-supporting." (23)

By requiring sellers of mortgages to FNMA to make a capital contribution equal to 3 percent of their sales to FNMA and to pay a fee for its services, the Charter Act provided a major disincentive for private lenders or mortgage originators to use FNMA's secondary market facilities. (24) The 1954 Charter Act also prohibited FNMA from making any advance contracts or commitments to purchase mortgages except on a very limited one-for-one basis with a lender who purchased a loan from it. (25)

However, Government support of the secondary market operations of FNMA was continued by the 1954 Charter Act over the objections of the traditional mortgage lenders. Their injunction that there be "no subsidy, direct or indirect, by the Government to such a corporation [FNMA]" was not followed by the Congress. FNMA's ability to raise "its investible funds under the protection of the Treasury at rates below the rates private investors paid" was continued by the 1954 Charter Act. By authorizing FNMA to obtain funds for its secondary market operations under the protection of Treasury and at rates below those paid by private investors, Congress expressly rejected the notion that the secondary market operations authorized by the Charter Act were to be carried out solely as they would be by a private, profit-making corporation.

The disincentives to doing business with FNMA, which were put into the Charter Act at the behest of traditional mortgage lenders to insure FNMA's operation as a "reserve facility," were substantially reduced by subsequent amendments to the Charter Act. In 1956, Congress removed the prohibition against the issuance of standby commitments adopted in 1954 for the purchase of mortgages on newly constructed properties and reduced the stock purchase requirements imposed on lenders doing business with FNMA. (26)

FNMA's impact on mortgage financing in the United States was not reduced by the requirements of the Charter Act of 1954. Purchases of mortgages increased substantially from 1954 to 1956. In 1957, when tight credit conditions prevailed, FNMA purchased more than 11 percent of all single-family residential mortgages originated in that year. The relatively easy credit conditions that prevailed in 1958 marked the first year of significant FNMA sales of mortgages from

its portfolio. (27) However, with tighter credit conditions in 1980, FNMA again entered the market in a substantial way and purchased almost 9 percent of all single-family mortgages originated in that year. During the credit shortage of 1986, FNMA purchased fully 18 percent of all home mortgages originated.

Thus, in 14 years of operation under the Charter Act of 1954, FNMA became the single most important factor in mortgage finance, (28) accomplishing through the conduct of its secondary market operations the very goals envisioned in 1933 by the National Emergency Council for secondary market facilities. (29)

C. THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

Prior to 1968, Congress undertook no steps to implement the 1954 Charter Act design of converting FNMA's secondary market operations to private ownership. Treasury stock was not retired as contemplated by the 1954 Charter Act; rather it was increased on three separate occasions, bringing the Government's capital investment up to more than \$163,000,000 in 1968. (30) Nevertheless, the goal of turning the secondary market operations of FNMA over to private management was realized in 1968 when President Johnson was persuaded to propose the transfer to avoid the effect of an accounting principle that would have required inclusion of FNMA's secondary market operations in the Federal budget. (31)

Under the new statutory scheme, set forth in title VIII of the Housing and Urban Development Act of 1968, FNMA was partitioned into two separate corporations. It became "a Government-sponsored private corporation" and retained all the assets, liabilities, and functions that it had carried out under section 304 (Secondary Market Operations) of the FNMA Charter Act. (32) The other corporation, designated GNMA, remained in the Government and retained all the assets, liabilities, and functions that FNMA had carried out under sections 305 (Special Assistance) and 306 (Management and Liquidation) of the Charter Act.

Moreover, just as the basic secondary market activities to be carried out by FNMA remained intact, so did the public purposes to be achieved by these activities. Nothing either in the language of the 1968 Act or in its legislative history indicates that the long-awaited transfer to private ownership was intended in any way to constrict or alter the public purposes to be achieved by the operation of FNMA's secondary market activities. On the contrary, to permit the accomplishment of public purposes, Congress con-

ferred upon FNMA certain benefits not available to private corporate entities. To insure that those benefits were used to accomplish public purposes, Congress conferred upon the Secretary of Housing regulatory control over the new entity.

The Congressional scheme is apparent from a careful examination of the statute and its legislative history. Under section 309(h) of the Charter Act, Congress specifically authorized the Secretary to require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low-and-moderate-income families. In addition, Congress deleted the provision in the 1954 Charter Act which would have terminated backstop authority to assist FNMA subsequent to the retirement of the Treasury stock, and instead affirmatively conferred backstop authority. Finally, Congress gave the Secretary general regulatory authority over FNMA to insure that the purposes of the Charter Act were accomplished.

The Senate committee report on the proposed Charter Act explained that retention of the backstop authority for FNMA was designed to "enhance the corporation's credit standing," and to "constitute Government recognition of the significance of the corporation's operations to the national interest aspects of the mortgage financing industry." (33) The committee stated that it has imposed safeguards "to assure that the privately owned FNMA will continue the secondary mortgage market operations in a manner consistent with the best interests of the public." (34) Thus, the congressional scheme conferred benefits to insure that the public purposes could be effectively realized, combined with regulations to insure that they were realized.

II. FNMA: THE GOVERNMENT-SPONSORED PRIVATE CORPORATION

A. BENEFITS CONFERRED UPON FNMA

At the outset, Congress realized that it must take the steps necessary to enable FNMA to assume immediately the conduct of its secondary market activities. Accordingly, section 302(a)(2)(B) of the Charter Act permitted FNMA to retain, after it was transformed into a privately owned corporation, all the assets and liabilities of the secondary market operations which it had acquired during the 30 years of its operations as a Government corporation. A large, ongoing, and profitable business was turned over to FNMA. (35) Its stature in the secondary mortgage market in 1968, and other benefits provided by the Charter Act, assured FNMA it could have no effective competition from the private sector.

1. *Backstop Treasury Borrowing.* Section 304(e) of the Charter Act authorized the Secretary of the Treasury to buy up to \$2,250,000,000 in FNMA obligations. This authority, which is similar to that granted on behalf of the Federal home loan banks, enhances the corporation's credit standing and constitutes "Government recognition of the significance of the corporation's operations to the national interest aspects of the mortgage financing industry." (36)

2. *FNMA Obligations as Lawful Investments for Fiduciary Trusts and Public Funds.* Section 311 of the Charter Act makes FNMA obligations lawful investments and security for all fiduciary trusts and public funds under the control of the United States, thereby making these obligations far more salable than the obligations of private corporations.

3. *The Federal Reserve Banks are FNMA's Fiscal and Paying Agent.* Under section 309(g) of the Charter Act, FNMA uses the Federal Reserve Banks as its depository custodian and paying agent, thereby reinforcing the view that FNMA debt securities are in some way connected with the Federal Government.

4. *Exemption from State taxes.* Section 300(c)(2) of the Charter Act exempts FNMA from all taxation imposed by any State (except real property tax)—a provision usually applicable only to governmental entities under the doctrine of intergovernmental tax immunity. In addition to the economic advantage afforded FNMA by the provision, it reinforces the widely held view of FNMA as a government entity.

5. *SEC exemptions.* Under section 311 of the Charter Act, FNMA issuances are treated as exempt securities for purposes of SEC requirements "to the same extent as securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States." (37) This exemption reinforces the view that FNMA is in some way connected with the Federal Government.

The combined effect of these benefits assured the immediate and unqualified acceptance of FNMA's obligations. FNMA's debentures and discount notes are regarded as "federal agency securities." As a result, FNMA has borrowed and continues to borrow the funds necessary to carry the mortgages it purchases at interest rates substantially lower than it would have to pay if it were a private corporation with the highest available credit rating. (38)

B. REGULATORY AUTHORITY

Despite the transfer of ownership and Board control into private hands, Congress recognized that safeguards

were needed to insure that the public purposes of FNMA would be carried out by the newly created "Government sponsored-private corporation." (39) The Charter Act, together with its legislative history, indicates that Congress intended one such safeguard to be the authority of the Secretary of Housing and Urban Development to regulate FNMA after its transfer to private ownership.

As the Senate report states:

The Secretary would have general regulatory powers over FNMA to assure that the purposes of the Charter Act are served. The issuance of all securities or obligations by FNMA would have to receive the prior approval of the Secretary. Through this and other authority, the Secretary would participate in the decision making process as to the level of mortgage purchases at various times. In addition, the Secretary could require that a reasonable portion of FNMA's mortgage purchases be related to housing for low-and-moderate income families, but with reasonable economic return. (40)

Both House and Senate committee reports accompanying the Housing and Urban Development Act of 1968 state that title VIII gives the Secretary of Housing and Urban Development "general regulatory authority over FNMA," and add:

The new FNMA would be a "Government-sponsored private corporation" regulated by the Secretary of the Department of Housing and Urban Development and would have a status analogous to that of the Federal land banks and the Federal home loan banks. (41)

The Senate report also emphasizes that:

The committee feels that adequate safeguards have been provided to assure that the privately owned FNMA will continue the secondary mortgage market operations in a manner consistent with the best interest of the public . . . Finally, the Secretary's regulatory powers over FNMA would be sufficient to protect against abuses of the public interest. (42)

In accordance with these views, the Charter Act requires FNMA to obtain the approval of the Secretary of Housing and Urban Development for the following specific activities:

1. Issuance of stock, obligations, securities, or other instruments. (Sec. 309(h).)
2. The purchase, servicing, sale, or lending on the security of, or otherwise dealing in conventional mortgages. (Sec. 302(b)(2).)
3. Determination of the amount of nonrefundable capital contributions required to be made by each mortgage seller (not to exceed 2 per centum of the unpaid principal amount of mortgages purchased or to be purchased). (Sec. 303(b).)
4. Determination of the level of stock retention requirements imposed on each servicer of its mortgages (not to exceed 2 per centum of the aggregate

outstanding principal balances of all mortgages of the Corporation which have been purchased subsequent to September 1, 1968, and which are then serviced by such servicer for the Corporation). (Sec. 303(o).)

5. Allowing the obligations of the Corporation to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings. (Permitted only if the Secretary fixes higher ratio.) (Sec. 304(b).)

6. Payment of cash dividends to stockholders. (Permitted only if the annual aggregate amount does not exceed the rate determined to be a fair rate of return by the Secretary after consideration of the current earnings and capital condition of the Corporation. (Sec. 303(o).)

In addition to these specific powers, the Secretary was given the power to issue such rules and regulations as she determines to be necessary and proper to assure that the purposes of the Charter Act are carried out. The Senate Report indicates that the general regulatory power of the Secretary over FNMA is plenary. (43)

The general regulatory powers conferred upon the Secretary by the Charter Act are, however, subject to two limitations:

- (1) Regulation must be consistent with the maintenance of a "reasonable economic return" to FNMA, and a "fair rate of return" to its shareholders; (44) and
- (2) Regulation may not extend to FNMA's internal affairs, such as personnel, salary, and other usual corporate matters, *except where the exercise of such powers is necessary to protect the financial interests of the government or [is] otherwise necessary to assure that the purposes of the Charter Act are carried out.* (45) (Emphasis added.)

In addition to the enumerated specific powers and general regulatory authority granted to the Secretary, Congress conferred additional authority upon the executive branch. The President of the United States, under section 308(b) of the Charter Act, is authorized to appoint 5 public members to the 15 member Board of Directors of the Corporation, and to remove both the Presidential appointees and the 10 private members of the Board elected by the shareholders for "good cause." Further, section 304(b) of the Charter Act gives the Secretary of the Treasury total control over the maturity and the rate of interest of any obligations proposed to be issued by FNMA, and the times during which FNMA may have access to the capital markets. By expressly reserving many specific controls to the President of the United States, the Secretary of Treasury, and the Secretary of Housing

and Urban Development, Congress indicated that in turning the secondary market operations of FNMA over to private management, it intended to preserve to the Federal Government the power to assert the public interest to be served by FNMA's operation of these secondary market functions.

In addition to the controls it conferred on the executive branch, Congress restricted the rights of FNMA shareholders over the operations of the Corporation. As noted above, the shareholders elect only 10 out of 15 members of the Board of Directors, and the President may remove any of the 15 Board members for good cause. (Sec. 308(b)). Shareholder rights involving merger, dissolution, and the power to amend the certificate of incorporation (the Charter Act) were retained by Congress (sec. 302(a)(1)). Furthermore, Congress expressly retained the right to dissolve the Corporation, and thereby has implicitly retained the right to alter the composition of its Board of Directors. (46)

Nor does the Charter Act provide for shareholder control over director discretion, the right of shareholders to present proposals for consideration by the Board, or the right of shareholders to inspect corporate books—a right conferred upon the Secretary of Housing and Urban Development (sec. 309(h)). Besides conferring many shareholder rights upon entities outside the Corporation, the Charter Act expressly vests in the Board of Directors the right to approve or amend the bylaws (sec. 308) and the right to set shareholder voting and director quorum requirements.

The provisions of the Charter Act make clear that Congress did not create FNMA in the image of the usual private, profitmaking corporation. The congressional redistribution of FNMA's corporate powers was designed to assure that its secondary market operations were conducted in accordance with the public purposes of the Charter Act.

C. FNMA'S CONDUCT OF ITS SECONDARY MARKET OPERATIONS

In carrying out its "Free Market" auctions, FNMA sells commitments guaranteeing that it will purchase a stated amount of a particular type of home mortgage (conventional or FHA-VA) at a given price and within a given time. Actual delivery of mortgages, however, is at the option of the purchaser of the commitment. If the purchaser can obtain a higher price than FNMA contracted to pay under the commitment, the purchaser will abandon the commitment and sell the mortgages elsewhere.

To support the conduct of its secondary market operation, FNMA is the second largest borrower in the

United States. Only the U.S. Treasury exerts a greater demand on the capital markets. (47) Because of the benefits it has received from Congress, FNMA is able to secure funds from sources in the capital markets that would not otherwise be available to housing, and at the favorable interest rate accorded Federal agency securities. This enables FNMA to perform both successfully and very profitably its function of providing liquidity for mortgage originators and investors.

However, FNMA does not fully meet the public purpose objectives of the Charter Act unless: (1) Some reasonable percentage of its Federal agency rate borrowings flows into areas that have difficulty in obtaining mortgage money; and (2) some reasonable percentage of these borrowings benefits low- and moderate-income families.

On December 9, 10, and 13, 1976 and on June 7 and 8, 1977 the Senate Committee on Banking, Housing and Urban Affairs conducted hearings dealing with FNMA's secondary market operations. (48) During the course of those hearings, the committee uncovered substantial dissatisfaction with FNMA's practices and policies. (49)

Throughout the hearings witnesses testified that FNMA's conduct of its secondary market operations are inadequate to accomplish the public purposes of the Charter Act with respect to urban lending, mortgage interest rates, and the purchase of low- and moderate-income mortgages. (50) FNMA's representatives defended the Corporation's policies in these areas by stressing the need for profits. (51) In addition, they argued that FNMA's purpose is simply "to help finance housing by supplementing the supply of mortgage funds." (52)

Following the hearings, the Senate committee staff concluded that FNMA's management and Board "generally seem to view the Corporation's sole public responsibilities as providing liquidity to the mortgage market and complying with other direct mandates under the charter," and suggested that "FNMA's unique and favored position as a Government-linked Corporation gives it a responsibility to pursue the public interest more broadly." (53)

FNMA's conduct of its secondary market activities has not accomplished the public purposes of the Charter Act. In its secondary market program for conventional mortgages, FNMA has failed to assure that (1) a reasonable percentage of its Federal agency rate borrowings which support the conventional mortgage program flows into central cities—areas that have difficulty in obtaining mortgage credit, and (2) a reasonable percentage of these borrowings benefits low- and

moderate-income families who live in central cities.

1. *FNMA Policies Affecting Urban Areas.* In the conduct of its conventional mortgage program, FNMA has failed to accomplish the public purposes of the Charter Act because it has not adequately encouraged and assisted sound urban lending. (54) Its failure to seek sound urban conventional loans has played a major role in the reluctance of private lenders to make mortgage loans in central city areas. (55) In fact, the underwriting guidelines adopted by FNMA prior to its entry into the conventional market together with its conventional mortgage underwriting policies have adversely affected urban mortgage lending. (56) There is a "conventional" and "urban" mortgage market, with conventional loans concentrated in suburbs and FHA-insured and VA-guaranteed loans left to fill the void in urban centers. FNMA has attributed this practice, in part, to a traditional suburban bias on the part of mortgage lenders. (57) However, separate mortgage markets are largely the result of factors such as the underwriting guidelines adopted by FNMA when it entered the conventional market. The withdrawal of conventional mortgage funds from urban neighborhoods unfairly stigmatizes them as "high risk" areas, frequently on a racially discriminatory basis. (58)

To the extent that FNMA addressed urban lending, it geared its programs to the mortgage needs of affluent white professional families who are part of the "back-to-the-city" movement and ignored the needs of long-term city residents many of whom are moderate income families. (59)

2. *FNMA's Policies Affecting Housing for Low- and Moderate-Income Families.* FNMA has failed to assume any responsibility to direct its growing conventional mortgage purchases to the needs of low- and moderate-income families. The median sales price of homes financed by conventional mortgages which FNMA purchases substantially exceeds the median sales price of homes financed by FHA or VA mortgages which FNMA purchases. (60)

3. *FNMA's Policies Affecting the Auction System.* In the conduct of its bi-weekly auctions FNMA has followed pricing procedures which contribute to increases in mortgage interest rates in periods of generally rising interest rates. (61) FNMA pegs its acceptance of bids to borrowing costs, so that the dollar amount and yield of bids accepted indicate an arbitrary profit decision on the part of FNMA rather than a response to market needs. The result is that FNMA's pricing leads the market when interest rates are rising. (62)

4. *FNMA's Policy on Mortgage Sales and the Size of Its Portfolio.* FNMA maintains a mortgage portfolio larger than necessary to accomplish the public purposes of the Charter Act. Moreover, it has failed to balance mortgage purchases with sales when this was feasible. (63)

III. THE REGULATIONS

A. THE PROPOSED REGULATIONS

The Department's proposed regulations were addressed to these substantial problems in FNMA's conduct of its secondary market operations. Prior to the publication of the proposed regulations, no previous administrations had attempted to clarify the relationship between HUD and FNMA by developing the detailed regulatory framework mandated by Congress in the 1968 Charter Act amendments. In fact, most of the Department's specific regulatory actions with respect to FNMA had been undertaken informally through personal correspondence and meetings between the Secretary of Housing and Urban Development and the President of FNMA.

Before the proposed regulations were issued on February 24, 1978, Congress had indicated dissatisfaction with HUD's failure to exercise general oversight responsibility over FNMA. At hearings before the Senate Committee on Banking, Housing, and Urban Affairs, Senator Proxmire stated:

... FNMA's charter is entirely clear that it has public responsibilities including the support of low- and moderate-income housing. The conduct of these responsibilities is to be overseen through the appointment of one-third of the FNMA board of directors by the President of the United States and, more importantly, through oversight by HUD.

... It is the Committee's impression that, in the case of FNMA, this public oversight function has been neglected by HUD, leaving this massive corporation to conduct its affairs in any manner it sees fit. (64)

The proposed regulations sought to discharge the Department's statutory mandate by clarifying its regulatory relationship with FNMA in accordance with the requirements of the Charter Act. The proposed regulations generally covered those areas in which Congress requires that FNMA obtain HUD's approval prior to implementing a determination or taking an action. (See § 81.12 dealing with issuance of stock and implementing provisions in sections 303 (b) and (c) of the Charter Act; § 81.14 dealing with issuance of debt and implementing provisions in sections 309(h) and 311 of the Charter Act; § 81.15 dealing with maximum debt-to-capital ratio and implementing provisions in section 304(b) of the

Charter Act; §§ 81.16 and 81.17 dealing with conventional mortgages on housing for low-and-moderate income families and implementing section 309(h) of the Charter Act; and §§ 81.31-81.34 dealing with examinations and audits of FNMA's books and financial transactions and implementing section 309(h) of the Charter Act.) (65) This general regulatory framework is maintained in the final rule.

In addition § 81.23 of the proposed regulations set up definitive and regular reporting requirements to enable the Department to obtain the data required to carry out its oversight functions. These reporting requirements are included in the final rule.

In response to FNMA's policies on growth, mortgage sales, and the size of its portfolio, the proposed regulations (§ 81.22) would have required FNMA to develop a general plan for the conduct of its secondary market operations detailing FNMA's proposed method for (1) providing liquidity for mortgage lenders, (2) conducting its stabilization functions (both bringing new sources of mortgage funds into mortgage investments and generally being a net purchaser of mortgage loans in periods of credit stringency and a new seller of mortgage loans in periods of credit ease), (3) transferring mortgage funds from areas of capital surplus to areas of capital shortage (both on a national basis and within Standard Metropolitan Statistical Areas), and (4) providing support for sound market-rate Government-insured mortgages for low- and moderate-income housing. Similar requirements are contained in the final rule.

The proposed regulations addressed the problems raised by FNMA's operation of the biweekly auction. The provisions of § 81.24 would have required FNMA, prior to the close of business on the last business day prior to the day on which FNMA is scheduled to hold commitment auctions, to submit to the Secretary an estimate of the dollar amounts of purchase commitments it expected to issue in its FEA-VA mortgage auction and in its conventional mortgage auction. A similar provision is contained in the final rule.

Because FNMA's underwriting guidelines were causing certain urban areas to be redlined, the proposed regulations (§ 81.18) would have required that HUD approve FNMA's underwriting guidelines to assure that they were nondiscriminatory in effect. This provision sought to implement HUD's general regulatory powers (sec. 309 (h)) under the Charter Act, so that HUD's exercise of its oversight responsibilities with respect to FNMA were conducted in accordance with the Congressional mandate that all HUD programs relating to housing and urban

development affirmatively further the policy of fair housing throughout the United States. (66) The provision is continued in modified form in the final rule.

The proposed regulations (§ 81.19) made explicit equal employment opportunity requirements imposed on FNMA, its contractors and vendors by reasons of FNMA's status as a contractor, subject to the provisions of E.O. 11246. The provision is contained in the final rule.

Finally, the proposed regulations attempted to ensure that a reasonable percentage of the borrowings FNMA is enabled to make at the federal agency rate flowed into central city areas and benefited low- and moderate-income families. (67) Those provisions (§§ 81.16 (d) and (e), and 81.17) were intended to implement sections 302(b)(2) and 309(h) of the Charter Act and to insure that FNMA's conduct of its secondary market operations achieved the purposes of the Charter Act. The final rule contains revised provisions addressing these same problems.

B. THE COMMENTS

Although most of the comments received in response to the proposed regulations were critical half came from mortgage bankers, commercial and investment bankers, and thrift institutions. In addition, a substantial percentage of the comments came from FNMA shareholders who had received from FNMA's management information which characterized the effect of the proposed regulations and informed them of management's view of the proposed regulations. Eight percent of the comments were from non-financial private participants in the housing industry—real estate brokers, and developers, builders and material suppliers.

On the other hand, Senators and Representatives from urban areas who submitted formal comments and large local governments, generally approved the thrust of the proposed regulations. Labor and public interest groups also supported the proposed regulations.

Critical comments focused on four major areas. First, the greatest amount of comment was generated by the provisions of §§ 81.16 (d) and (e), and 81.17 which mandated the use of an absolute percentage of all commitments sold by FNMA and an absolute percentage of all mortgages purchased by it. (Sections 81.16 (d) and (e) would have required that ultimately 30 percent of the aggregate principal amount of commitments to purchase conventional home mortgages issued by FNMA during each calendar year be for the purchase of mortgages secured by properties located in a central city or property improved by a previously occupied home. Section

81.17 would have required that 30 percent of the aggregate principal amount of all mortgages purchased by FNMA in any calendar year consist of mortgages secured by housing for low- and moderate-income families.)

Second, there was substantial opposition to § 81.14(b) which would have prohibited FNMA from issuing any obligation convertible into common stock and § 81.14(c), which would have required FNMA to submit a request for approval to the Secretary of Housing and Urban Development at least 15 days prior to the proposed date of issuance of FNMA debt obligations. Third, numerous commentators objected to § 81.18 which would have required FNMA to obtain HUD approval of a revised statement of home mortgage underwriting guidelines—and required that these guidelines make clear that FNMA would not discriminate in purchasing conventional mortgages; and § 81.19, which would have imposed equal employment opportunity requirements on FNMA, its contractors and vendors. Fourth, FNMA objected to § 81.23 which would have required it to develop a plan for the conduct of its secondary market operations covering a period of at least three years. Moreover, many commentators objected to the twenty-three separate reports which the provisions of § 81.23 would have required FNMA to submit on a regular basis.

In response to the voluminous comments received, revisions and modifications have been made in almost every section of the proposed regulations, specifically, §§ 81.16 and 81.17 previously imposed absolute percentage requirements on the issuance of commitments in central cities, and absolute percentage requirements for purchases of low- and moderate-income mortgages. These sections have been revised to impose goals for the purchases of mortgages in each of these areas.

The provisions of § 81.14 have been extensively modified. Under the final regulations, FNMA's authority to borrow, the form of borrowing, and other matters relating to its borrowings will be regulated only by the Secretary of the Treasury. The Secretary of Housing and Urban Development will exercise her approval authority only with respect to FNMA's purchase of mortgages or issuance of commitments to purchase mortgages.

Finally, the number of reports required in § 81.23 has been reduced from 23 to 9.

The numerous changes made in the regulations as a result of the many comments received and as a result of HUD's reexamination of the proposed regulations are discussed in detail in the following section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS OF FINAL REGULATIONS

SUBPART A—GENERAL PROVISIONS

Section 81.1 *Scope of part.* This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.2 *Definitions.* Changes have been made in most of the terms contained in § 81.2 of the proposed regulations, and eight new definitions have been added. With respect to each new or revised definition, a summary of the change or revision and the reasons therefore, are set forth. The letter designations preceding the defined term correspond to the paragraphs contained in § 81.2 of the final regulations.

(d) "Debt-to-capital ratio"—This term was defined in the proposed regulations to mean the ratio of the outstanding amount of FNMA obligations issued under section 304(b) of the Charter Act (general obligations) to the sum of FNMA's net worth accounts plus the outstanding amount of FNMA obligations issued under section 304(e) of the Charter Act (subordinated obligations). Since section 304(e) provides that subordinated obligations are deemed to be capital of FNMA if "entirely subordinated" to FNMA general obligations, and since section 304(e) provides for the issuance of partially subordinated obligations, language has been added to the definition to provide that section 304(e) obligations will be treated as capital only if entirely subordinated to all FNMA general obligations.

(e) "Home mortgage"—In the proposed regulations this term was defined as a mortgage loan secured by a single-family house. This definition has been extended to include mortgage loans on two-to-four family properties.

(f) "Project mortgage"—The proposed regulations contained no definition of this term. In the final regulations, "project mortgage" means a mortgage loan on a building containing five or more dwelling units.

(g) "Single-family mortgage"—This term was not defined in the proposed regulations because the term "home mortgage" was defined as a mortgage loan on a single-family house. In the final regulations, this term is defined as a mortgage loan on a house containing a single dwelling unit.

(h) "Unit mortgage"—This term is used in both the proposed and final regulations to refer to a mortgage loan on a condominium unit or a unit in a planned unit development project. However, in the final regulations, the definitional language referring to leasehold interests has been deleted since leaseholds are treated in a new definition of "mortgage loan."

(j) "Mortgage loan"—Although this term was used in several instances in the proposed regulations it was not defined. To clarify the final regulations, a definition of "mortgage loan" has been provided. Since similar language relating to mortgages on leasehold interests was contained in two separate definitions in the proposed regulations ("home mortgage" and "unit mortgage"), this language was consolidated in the final regulations in a new definition of "mortgage loan". In this new provision, the term is defined as a loan secured by a first mortgage or first deed of trust on any of three types of interests in real property. The first two—a fee simple estate and a leasehold interest extending or renewable at least 10 years beyond the maturity of the mortgage—are taken from the definitions of "home mortgage" and "unit mortgage" in the proposed regulations. The third interest—a leasehold interest of any duration together with the resulting fee simple estate—was included in response to a comment submitted by FNMA, which noted that "FNMA's contract with mortgage sellers provides that a leasehold estate may expire earlier than the term of the mortgage, provided that fee simple title then vests in the homeowner or owners' association."

(k) "Dwelling unit"—This term was used in several definitions in the proposed regulations, but was not itself defined. In the final regulations, the term has been defined to mean a single, unified combination of rooms designed for residential use by one family.

(l) "Housing for low- and moderate-income families"—In the proposed regulations, this term was defined to include any residential property falling within one of the following three categories:

(1) Any housing financed by a mortgage loan insured by FHA under certain sections of the National Housing Act;

(2) Any housing project having 25 percent or more of its units eligible for rental assistance under section 8 of the U.S. Housing Act of 1937; and

(3) Any single-family dwelling purchased at a price below the current median price for such housing in the geographical area in which the dwelling is located.

Comments received by the Department indicated that the first part of the proposed definition should include a reference to section 237 of the National Housing Act. While the requirements of § 81.17 (purchase of mortgages secured by housing for low- and moderate-income families) are not applicable to FEA-insured mortgages in the final regulations, the first definitional category has been retained and modified as suggested by the com-

ments received. The revised definition remains useful as part of the revised reporting requirements under § 81.23 and will help the Department ascertain the extent to which FNMA purchases of FEA mortgages benefit low- and moderate-income families.

Comments stated that the second part of the proposed definition was ambiguous, in that it was unclear whether the definition would include any project in which 25 percent or more of the units have rents below the applicable existing fair market rent or whether a unit must actually be subjected to a section 8 reservation or contract to qualify. The ambiguity has been resolved by revising the second category to include only those housing projects where the owner has entered into or agreed to enter into a Housing Assistance Contract under which eligible families in not less than 25 percent of the units will receive housing assistance payments under section 8.

Comments on the third section of the proposed definition pointed out the difficulty in determining the current median price for single-family housing in each Standard Metropolitan Statistical Area (SMSA) or county not in an SMSA. Accordingly, this category has been revised to employ a data base of median family income, which is regularly compiled by HUD and will be made available to FNMA. As revised, this section includes any single-family dwelling (including a condominium or planned unit development unit) purchased at a price not in excess of 2.5 times the median family income for the appropriate geographical area in which the dwelling is located. It was pointed out in the comments that there is no assurance that a house priced within the means of a low or moderate income family will be occupied by a low or moderate income family. The Department, however, believes that the regulation will be effective in furthering national housing goals if it results in additional financing for houses which low- and moderate-income families can afford.

(m) "Central city"—The omission of a definition for this term in the proposed regulations was the subject of a number of comments. Accordingly, the term has been defined to mean each of the political subdivisions named in the title of an SMSA as most recently determined by the U.S. Census Bureau. In addition, a current list of such central cities is set forth in Appendix A to these regulations.

(n) "Suburban"—This term, not used in the proposed regulations, is defined as those areas of an SMSA which are not within any census tract located wholly or partially in a central city.

(o) "Debt instrument"—This term, used but not defined in the proposed regulations, is defined as applying to

obligations and securities issued by FNMA under sections 304 (b), (d), and (e) of the Charter Act.

(p) "Obligational authority"—This term which did not appear in the proposed regulations is defined to mean the dollar amount of authority conferred by the Secretary upon FNMA to purchase mortgage loans, issue commitments or otherwise deal in mortgage loans.

SUBPART B—OPERATIONS OF FNMA

Section 81.11 General. This section identifies the specific grants of statutory authority which authorize the Secretary to promulgate these regulations. Minor editorial changes have been made in the proposed regulations and references to title VIII of the Civil Rights Act of 1968 and section 7(d) of the Department of Housing and Urban Development Act have been included.

Section 81.12 Issuance of Common Stock. As in the proposed regulations, the final regulations codify the present temporary suspension of the requirement for FNMA's mortgage sellers to make capital contributions to FNMA. In addition, paragraph (a) has been revised to refer to the Secretary's approval of FNMA determinations to suspend these requirements.

Under the mandate in section 303(b) of the Charter Act that FNMA "shall at all times require each servicer of its mortgages to own a minimum amount of common stock," the proposed regulations would have allowed FNMA to reduce the servicer stock retention requirement to one share of common stock for each \$100,000 of FNMA held mortgages serviced by such servicer. A number of comments pointed out that the present servicer stock retention requirement is one share of common stock for each \$10,000, of FNMA owned mortgages serviced, and that a large number of FNMA shares of common stock would be available for sale if this requirement were reduced to one share for each \$100,000. FNMA expressed the fear that the market price of FNMA stock could be adversely affected if this large number of shares immediately became available for sale. Accordingly, this provision has been revised to recite the Secretary's approval of the one share per \$10,000 requirement which is presently in effect.

The proposed section would also have provided that common stock sold to sellers or servicers be sold at an issue price determined by FNMA with the Secretary's approval. FNMA commented that the Secretary has no statutory authority to approve the issue price of its stock. Although the Secretary does not agree with FNMA's position, this provision has been deleted since the revised regulations do not provide for the issuance of new stock

to mortgage sellers, and since stock retention requirements for mortgage servicers can be met by the purchase of FNMA shares on the open market at the market-determined price.

Paragraph (c) of §81.12 of the final rule provides a means for Secretarial approval of any change in FNMA's determinations as to stock purchase or retention requirements for FNMA mortgage sellers and servicers.

The proposed regulations provided a procedure for the adoption by FNMA shareholders of a resolution denying shareholders preemptive rights in all stock issuances. Because FNMA shareholders have already adopted such a resolution, this language has been deleted.

The proposed regulations required Secretarial approval prior to the issuance of any common stock by FNMA, except for stock issued to mortgage sellers or servicers to meet stock purchase or retention requirements. The requirements of this section are modified in the final regulations. First, the information to be submitted to the Secretary has been changed. Under the final regulations, the proposed stock offering period rather than the issuance date must be disclosed, and the issue price and number of shares to be offered rather than the amount of stock to be issued must be stated. In addition, the description of the proposed use of the proceeds has been modified, and the requirement for a FNMA assessment of current conditions in the capital market has been eliminated. Finally, a new provision has been added requiring the Secretary to act on any stock issuance request within 30 workdays of its receipt.

[Section 81.13 Reserved]

Section 81.14 Issuance of Obligations. The proposed regulations would have required that not less than 15 days prior to the proposed date of the issuance of any obligations, securities or other debt instruments, FNMA submit to the Secretary a written request for approval of the issuance. Included with the request would be information as to the proposed date of issuance, interest rate, maturity, and principal amount; whether the debt is to be secured by mortgages or subordinated to other obligations; and the proposed use of the proceeds. The regulations would also have precluded the issuance by FNMA of any obligation convertible into common stock.

A number of commentators criticized §81.14 asserting that its requirements were unrealistic and failed to recognize the fluid character of the market for securities. The comments further stated that any procedure under which FNMA must submit the terms of any obligation to HUD for approval 15 days prior to its date of is-

suance deprives FNMA of the flexibility to react to changing market conditions. Without the flexibility to wait until the last possible moment to assess the impact of the size and terms of its borrowings, some commentators feared that FNMA would make marketing decisions which would have a disruptive influence on the money market.

Comments from mortgage bankers, savings and loan associations, and security brokers also criticized the proposed regulation of FNMA's marketing of long-term debt instruments as both a duplication and disruption of FNMA's carefully developed process of coordination with the Department of the Treasury. Several comments focused on the fact that because the Treasury Department is unlikely to approve the terms of a FNMA issuance 15 days in advance, the proposed regulations pose the danger of a disagreement between HUD and Treasury, barring FNMA from timely access to the capital markets.

The Department of the Treasury also stated its concerns that the provisions of §81.14 would interfere with its relationship with FNMA.

Paragraph (b) of §81.14, which would have prohibited the issuance by FNMA of any obligation convertible into common stock, was criticized by FNMA as beyond HUD's authority and as an unwise restriction limiting FNMA's ability to raise equity capital. Major changes have been made in this provision to accommodate these adverse comments.

The provision which would have precluded issuance by FNMA of any obligation convertible into common stock has been deleted. The requirement for HUD approval of individual debt issuances by FNMA has been deleted and the final rule requires only that FNMA submit to the Secretary of Housing and Urban Development a copy of any written communication submitted by it to the Secretary of Treasury concerning the issuance of its debt instruments.

In response to comments by FNMA, the final regulations provide a regular procedure for the approval of FNMA's requests for increases in the Corporation's total obligational authority. Based on the new definition in §81.2(p) this requirement relates only to FNMA's authority to purchase mortgages or offer commitments.

Section 81.15 Debt-to-Capital Ratio. Section 304(b) of the Charter Act provides that FNMA's debt-to-capital ratio may not exceed 15 to 1 unless a greater ratio is fixed by the Secretary. The present level fixed by the Secretary is 25 to 1. The proposed and final regulations would provide procedures to be followed in altering the debt-to-capital ratio.

RULES AND REGULATIONS

Several comments were received on the debt-to-capital ratio provisions of the proposed regulations. First, it was pointed out that the prohibition on the issuance of any debt which would cause FNMA's debt-to-capital ratio to exceed 25 to 1 could work a great hardship if there were a need to issue obligations sufficient to finance payments of principal and interest due on outstanding subordinated debentures. While this contingency is very remote the final regulations have been revised to accommodate this possibility. Several commentators asserted that the proposed regulations could be interpreted as authorizing the Secretary to reduce FNMA's maximum debt-to-capital ratio below 15 to 1. The final rule has been revised to reflect that the Secretary may not reduce debt-to-capital ratio to less than 15 to 1.

Some commentators suggested that the Secretary lacks any authority to decrease the debt-to-capital ratio, once a specific ratio above 15 to 1 has been approved. These comments were rejected. The grant of authority to increase the debt-to-capital ratio above 15 to 1 contains the implicit authority to reduce the debt-to-capital ratio back to 15 to 1 if conditions warrant.

In paragraph (c) of the proposed regulations FNMA was required to submit to the Secretary any request to increase its debt-to-capital ratio not less than 30 days prior to the effective date of the increase. In the final regulations the request may be submitted at any time and the Secretary is required to act within 30 workdays after submission.

Under paragraph (e) of the proposed regulations, in order to authorize a decrease in the debt-to-capital ratio the Secretary would have been required to find that the decrease would not be detrimental to the holders of subordinated obligations under section 304(e). The final regulations require, instead, the Secretary to find that the proposed decrease will not impair FNMA's ability to discharge its obligations to the holders of its debt instruments. Finally, the final regulations require 60 workdays notice of the effective date of any decrease in the FNMA's debt-to-capital ratio. The proposed regulations required only that the Secretary give FNMA a reasonable opportunity to comment on any decrease.

Section 81.16 Conventional Mortgages in Central Cities. The proposed regulations required a fixed percentage of commitments to purchase conventional mortgages to be used for mortgages secured by properties in central cities (§ 81.16(d)) and properties improved by previously occupied houses (§ 81.16(e)). In each category the annual percentage requirement

would have been 10 percent in 1978 and 30 percent thereafter.

The comments on these provisions (and the provisions of § 81.17 which mandated low- and moderate-income mortgage purchase requirements) fall into two broad categories: (1) Those relating to the Secretary's legal authority to impose the requirements; and (2) those objecting to the proposed regulations as being impracticable or harmful to FNMA's business.

(1) *Legal Authority.* FNMA, the Mortgage Bankers Association, and a number of others questioned the Secretary's authority to impose the requirements contained in §§ 81.16 (d) and (e) and 81.17. FNMA asserted that the authority provided the Secretary by section 302(b)(2) of the Charter Act with respect to FNMA's dealings in conventional mortgages did not provide a basis for the imposition of the requirements in § 81.16 (d) and (e), and that the grant of general regulatory authority provided the Secretary by section 309(h) of the Charter Act did not authorize her to impose these requirements.

FNMA also denied that the Secretary had legal authority to assert the requirement of section 309(h)—that she may require that a reasonable portion of FNMA's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families; but with reasonable economic return to the Corporation—as to FNMA's dealings in conventional mortgages. FNMA claimed that the provision of section 309(h) which speaks to the national goal of providing adequate housing for low- and moderate-income families is applicable only to FNMA's dealings in FHA-insured or VA-guaranteed mortgages.

The Secretary has considered and rejected all comments that she lacks the authority to assert the requirements of §§ 81.16 (d) and (e) and 81.17 of the proposed regulations. The language of the provisions of section 302(b)(2) and section 309(h) of the Charter Act and the legislative history attendant to the enactment of the Charter Act provide the statutory authority necessary for the Department to impose the requirements contained in §§ 81.16 and 81.17 of the regulations.

(2) *Impracticability and Harmful Effect.* Numerous comments asserted that the requirements of §§ 81.16 (d) and (e), and § 81.17 would seriously disrupt the FNMA auction system. Some comments asserted that FNMA's ability to provide liquidity for the mortgage market would be impaired by the requirements of §§ 81.16 (d) and (e), and 81.17 of the proposed regulations. These comments pointed out that a failure of demand in the mandated categories would prevent FNMA

from being able to serve liquidity needs in nonmandated categories because the aggregate amount of all its commitments and purchases would have to be reduced in order to achieve the mandated percentage in the favored categories.

It was also pointed out that §§ 81.16 (d) and (e) and 81.17 would require FNMA to abandon the forward commitment procedure by which mortgage bankers are able to buy FNMA's commitments to purchase large blocks of mortgages without identifying the individual loans to be delivered. The abandonment of the forward commitment procedure would, it was argued, force many lenders to buy their commitments from FNMA only after specified properties and borrowers had been identified. Therefore, according to the commentators, loans would have to be originated with a higher-than-normal yield in order to cover possible upward interest rate movements in the interim between loan origination and loan transfer. Commentators asserted that the resulting warehousing of loans would cause higher operating costs for originators and higher interest rates for mortgagors. It was also asserted that such a procedure would unnecessarily tie up large amounts of mortgage capital for extended periods. The requirements in the proposed regulations have been substantially modified in view of these comments.

A number of commentators pointed out the § 81.16 of the proposed regulations failed to authorize transactions in conventional mortgages secured by two-to-four family homes, even though the secretary had already given approval to FNMA's dealing in such mortgages. Accordingly, paragraph (b) of § 81.16 of the final regulations will permit FNMA to deal in conventional mortgages on one-to-four family homes, as well as on condominium or PUD units.

Paragraph (b) of the proposed § 81.16 contained provisions which would have codified the limitations now found in the FNMA Conventional Selling Contract Supplement with respect to loan-to-value ratio and maximum principal amount. These provisions were, however, eliminated in response to comments that fixing the details of FNMA's conventional loan programs in the regulations would reduce FNMA's flexibility to adjust its programs to meet changing market needs.

All requirements that some of the commitments issued be used with respect to conventional mortgages secured by existing homes have been eliminated from the final regulations. The requirement that an absolute percentage of all commitments to purchase conventional mortgages be used

in central cities has been eliminated. The final rule asserts only that at the start of any year following a year in which FNMA's purchases of central city conventional mortgages have been less than 30 percent of its aggregate purchases of conventional mortgages, the Secretary may establish an annual goal for the purchase of central city conventional mortgages. In establishing this annual goal the Secretary will consider: (i) The total number of such purchases of conventional mortgages in central cities by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by properties located in central cities purchased by FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the ratio of the number of properties in central cities of the type which may secure conventional mortgages purchased by FNMA to the total number of properties of that type in the United States, as determined by the Secretary; (iv) the condition of the housing market; and (v) general economic factors.

Section 81.17 Conventional Mortgage Purchases Related to Housing for Low- and Moderate-Income Families. The provisions of §81.17 of the proposed regulations would have required that at least 30 percent of the dollar amount of FNMA's mortgage purchases in any calendar year consist of mortgages secured by housing for low- and moderate-income families. As in the case of §81.16, fixed percentage requirements have been abandoned and §81.17 in the final rule utilizes precisely the same goal setting procedures as adopted in §81.16. Moreover, because the Department's review of the sales prices of properties financed with FHA insured and VA guaranteed mortgages revealed they were overwhelmingly within the price range of low- and moderate-income families, the final rule does not subject FHA insured or VA guaranteed mortgages to the provisions of §81.17. If FNMA's regular reports for the first two quarters of any year for which the Secretary has established an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families show a level of purchases for such mortgages below the level needed to reach the goal, FNMA will be required to submit to the Secretary a plan of special actions it proposes to increase its level of purchases of such mortgages or a statement of reasons why the goal should be suspended or altered. The Secretary could approve, reject, or seek modification of the plan of special actions proposed by FNMA or suspend the goal. If the Secretary rejects the special actions proposed by FNMA or

refuses to suspend the goal, she may: (1) Require FNMA to conduct a separate auction for the purchases of sound conventional mortgages which are secured by housing for low- and moderate-income families and which meet regular FNMA standards (with a reasonable rate of return to FNMA); (2) require FNMA to hold open an offer to purchase such mortgages; (3) condition her approval of increase in FNMA's obligational authority upon use of a portion of such authority for the purchase of such mortgages; or (4) any combination of the three. However, the final rule makes clear that the Secretary may take no action which denies FNMA a reasonable rate of return or which requires FNMA to auction commitments to purchase conventional mortgages or to purchase conventional mortgages (1) which fail to meet FNMA's underwriting standards, or (2) which are not deemed by FNMA to be of such quality, type, and class as to meet generally the purchase standards imposed by private institutional mortgage investors, or (3) which can not be purchased within the range of market prices by the particular class of mortgages involved, as determined by the Corporation.

Section 81.18 Home Mortgage Underwriting Guidelines. The provisions of §81.18 were criticized as being unnecessarily duplicative and beyond the authority of the Secretary. While the Department rejected the assertion that the Secretary lacked authority to promulgate the provisions of §81.18, in response to the comments several modifications were made in the proposed regulations.

Paragraph (a) was revised to include a reference to the Secretary's responsibilities under section 808(e)(5) of the Civil Rights Act of 1968 and her general regulatory authority under section 7(d) of the Department of Housing and Urban Development Act. In paragraph (b), the date by which FNMA must submit revised home mortgage underwriting guidelines to the Secretary (for review and comment) has been changed from May 1, 1978 to January 1, 1979 to accommodate the length of time required to complete rulemaking. In addition, discrimination on the basis of the religious composition of the area in which security property is located has been added as a prohibition.

The final regulation contains a new paragraph (d) requiring the Secretary to take action on proposed revised guidelines or guideline amendments within 10 workdays after submission by FNMA for approval.

While some of the provisions in §81.18 which relate to the granting of credit to individuals overlap requirements imposed on credit granting agencies, such as FNMA, by the Equal

Credit Opportunity Act, the provisions of §81.18 relate not only to the granting of credit to individuals but also the standards utilized to judge the value of real property and to possible race-related judgments relating to the making of mortgage loans. In these respects, and in particular with respect to subsection §81.18(b)(iii) of the final rule, relating to neighborhoods and age of property, the provisions do not overlap ECOA requirements and are necessary to properly implement the congressional mandate to the Secretary in section 808(e)(5) of title VII of the Civil Rights Act of 1968.

Furthermore, the general regulatory authority contained in the Department of Housing and Urban Development Act is sufficient to permit the Secretary to implement the responsibilities imposed on her by section 808(e)(5) of Title VIII of the Civil Rights Act of 1968 by requiring review of FNMA appraisal and credit evaluation standards for the limited purpose of assuring the elimination of race (religious, sex) related judgments in such evaluations.

Section 81.19 Equal Employment Opportunity. The proposed regulations made explicit the equal employment opportunity requirements imposed on FNMA, its contractors and vendors by reason of FNMA's status as a Federal contractor, subject to the provisions of E.O. 11246.

FNMA's comments on the proposed regulation asserted that these requirements though inapplicable under the Charter Act already apply to the internal employment practices of FNMA through contract provisions contained in the FNMA-GNMA Combined Services Agreement and that the Corporation's internal practices are in compliance with these provisions. In addition, FNMA asserted that the requirement that it apply these provisions to its contractors and vendors interferes with the internal affairs of FNMA and "equates FNMA with a Government agency."

The provisions contained in §81.19 of the proposed regulations have, since promulgation of E.O. 11246 in 1965, been required to be included in all direct contracts for goods and services between private corporations and agencies of the Federal Government and in all contracts for federally assisted construction programs. They are now contained in substantially the same form in the FNMA-GNMA Combined Services Agreement pursuant to HUD regulations at 24 CFR Part 130. As in the case of private corporations contracting with HUD, the Combined Services Agreement and §81.19 of the regulations require FNMA to include the standard E.O. 11246 clause in contracts with vendors and servicers. FNMA's comments on the proposed

regulations establish that FNMA does not understand and has failed to implement the legal obligations with regard to the national policy of non-discrimination in employment imposed on it as on all major Government contractors. The Secretary has, therefore, rejected FNMA's comments on this provision.

The Secretary has determined as a matter of national policy to impose equal employment opportunity requirements identical to those §81.19 requires FNMA to impose on its contractors and vendors on all GNMA servicers and sellers.

SUBPART C—REPORTING REQUIREMENTS

All of the reporting requirements contained in the proposed regulations have been reexamined and substantial modifications have been made to take into account the various comments received. The total number of reports required has been substantially reduced.

Section 81.21 General. This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.22 Business Activities Report. The proposed regulations would have required FNMA to develop a general 3-year plan for the conduct of its secondary market operations. The plan would have addressed FNMA's proposed methods for providing secondary mortgage market liquidity, conducting its stabilization functions, transferring capital and providing support for low- and moderate-income housing. Under §81.22(c) an annual budget plan would also have been required setting forth estimated dollar amounts of commitments to be purchased and estimated purchase and sales of home and project mortgages. FNMA in its comments asserted that the provisions of §81.22 were beyond the Secretary's authority to the extent that they required reporting on prospective activities.

This assertion was rejected. The authority to require both retrospective and prospective reporting is clearly contained in §309(h) of the Charter Act. Section 309(h) places no limitation upon the nature of the report which may be requested, but states only that the Secretary may " . . . require (FNMA) to make such reports on its activities as he deems advisable." In addition, the general regulatory authority conferred upon the Secretary by section 309(h) of the Charter Act provides authority for the Secretary to require information necessary to enable her to "make such rules and regulations . . . to insure that the purposes of (the Charter Act) are accomplished."

The Secretary has deemed it necessary to require, in order to insure that the public purposes of the Charter Act

are being carried out, reports on: (1) FNMA's plans for the conduct of its secondary market operations; (2) FNMA's mortgage acquisition and borrowing plans; and (3) the general conduct of its business.

In addition, FNMA asserted that market forces determine the level and distribution of its commitments and purchases and that it has no control over, and cannot predict, how market forces will change from month to month let alone over the 3-year period of the proposed plan.

In response to these comments, in the final rule the 3-year general plan has been reduced to a 1-year plan to be set out in the new Business Activities Report.

The new Business Activities Report requires FNMA to provide a general plan for the conduct of its secondary market operations containing an assessment of: (1) The amount of supplementary assistance FNMA will provide to the secondary market, (2) the amount of additional obligational authority it will require, and (3) projected increases or decreases in the size of its mortgage portfolio. FNMA will also be required to estimate its future annual need for additional equity financing, indicate its target for return on equity and the incremental and average cost of its debt.

The provisions of §81.22(b) of the proposed regulations which required FNMA to submit to the Secretary information it currently submits to the OMB have been eliminated and pursuant to Appendix B, item 1(b)(iii) of the final rule FNMA will only have to provide to the Secretary a copy of the report submitted to OMB.

The provisions of §81.22(c) of the proposed regulations which required a budget plan setting forth calendar year estimates of certain activities by FNMA have been replaced by provisions contained in Appendix B, item 1(b)(ii) of the final rule which require that similar information be reported on a quarterly basis only.

Section 81.23 Regular Reports. The proposed regulation would have required the submission of 23 different regular reports at various times during the year. These reports would in general have addressed: the results of FNMA's auctions, its borrowing and debt authority, its loan portfolio, its debt portfolio, investors and mortgage purchasers, yields on mortgages purchased and sold, expenditures, revenues and income, and stock prices.

In general, comments received expressed the opinion that the reporting requirements of §81.23 were excessive or unnecessary, would result in excessive paperwork, and would be time consuming and costly to FNMA. The comments stated that the end result of these requirements would be to in-

crease the cost of mortgage credit to the Nation's homeowners. Several comments suggested that the report's time requirements were unrealistically short in certain instances and that the information required in some reports was available to HUD from other sources. Further concern was expressed that the release of certain information to HUD would in turn result in a release of the information by HUD through the Federal Freedom of Information Act. FNMA stated that several of the reports would require changes in their current internal reporting forms; that section 1 of report 4 contained a typographical error; that report 9 required the disclosure of information similar to that published in the Treasury Department's Survey of Ownership, and that report 22 requiring a disclosure of the ownership of FNMA stock did not consider that two-thirds of the stock was held in street names or by nominees.

In response to these comments, in the final rule the number of reports required has been reduced from 23 to 9. In addition, all reporting deadlines suggested by FNMA have been adopted. A typographical error in report 4 has been corrected. Report 9 (previously report 22) accepts the fact that the names of the beneficial owners may not currently be available to FNMA. Finally, proposed report 7 which requested the reporting of allegedly confidential information has been deleted.

The comment that report 9 (now report 3) requests the same type of information as is required in the Treasury Department's survey of ownership was rejected. A review of this survey showed that the information required in present report 3 is significantly different from the information reported to the Treasury. The comment that a reporting category for "mutual savings bank" be eliminated was considered but it was determined that significant numbers of mutual savings banks do exist and that their situation is sufficiently different from that of other banks and savings and loan associations so as to justify separate treatment. Therefore this reporting category was maintained.

Section 81.23(b) is unchanged. No adverse comments were received.

Section 81.24 Estimates of Amount of Purchase Commitments at FNMA Auctions. The provisions of §81.24 would have required FNMA, one business day before each commitment auction, to submit to the Secretary an estimate of the dollar amounts of purchase commitments it expected to issue in its FHA-VA mortgage auction and in its conventional mortgage auction. Comments submitted by FNMA stated that reliable estimates of the amount of such commitments are

rarely available because of the speculative nature of the market. In addition, it was stated that public disclosure of the estimates in advance of the auction could unnecessarily affect the auction while advance knowledge of the estimates by only a few potential bidders would place these bidders in an unfair competitive advantage.

In response to these comments, § 81.24 has been revised to provide security for the information supplied to the Secretary. Under the final regulation the information will be submitted in a sealed envelope which will be maintained in a safe until the day following the day on which the auction is held. In this manner there will be no opportunity for advance public knowledge of the estimate.

Section 81.25 *Minutes of Meetings*. The proposed regulation (§ 81.25) would have required the submission of completed minutes to the Secretary within 10 days after each meeting of the FNMA Board of Directors or any committee of FNMA.

FNMA commented that with respect to meetings of its Board of Directors the completed minutes could not be submitted to the Secretary within 10 days because minutes do not exist until they are formally approved and this cannot occur until the next regular meeting of the Board. In addition, FNMA stated that the proposed rule was unnecessary because HUD's representative on the Board is provided copies of all minutes. FNMA also stated that the requirements of the proposed rule, to the extent it was interpreted as requiring minutes of all meetings, was an unwarranted intrusion into the day-to-day internal operations of FNMA and would require making public or making available to the Secretary information which was of an internal nature. Finally, FNMA stated that indiscriminate filing of committee minutes would have a chilling effect on the free exchange of ideas within FNMA.

In response to these comments, the requirement that minutes be regularly transmitted to the Secretary has been withdrawn. In the final rule, the provisions of § 81.32(b), relating to maintenance of books and records by FNMA, requires that FNMA maintain a stenographic record of the minutes of each meeting of the Board of Directors available for inspection by duly authorized representatives of the Secretary. Any particular matter in such minutes which FNMA determines contains information the availability of which outside the corporation might financially injure FNMA or adversely affect the conduct of its business will, at the request of FNMA be limited to examination (without copying) by the Secretary or her designated representative at the offices of FNMA.

Section 81.25 *Other Information*. In the proposed regulation this section was designated § 81.26 "Other Reports" and required FNMA to furnish to the Secretary, in addition to the reports and information required by the other provisions of Subpart C, such further reports and other information concerning its activities as the Secretary may request. As revised, this section requires FNMA to furnish only "information concerning its activities", upon written request by the Secretary.

SUBPART D—EXAMINATIONS AND AUDITS

Section 81.31 *General*. This section is unchanged from the proposed regulations. No adverse comments were received.

Section 81.32 *Examination of Books, Records, and Documents*. This section has been revised to reflect more closely the language contained in section 309(h) of the Charter Act. As revised, the section requires FNMA to make available for examination by HUD representatives its books and financial transactions and all records and documents relating to them. This section now also requires the maintenance of minutes discussed under § 81.25.

Section 81.33 *Annual Audit of FNMA*. As contained in the proposed regulations, this section would have required HUD representatives each year to conduct an audit of FNMA's affairs for the preceding calendar year following submission of the annual report by FNMA's independent auditors. In the final regulation, the annual audit of FNMA by HUD representatives will be at the option of the Secretary. In addition, the revised regulation provides that the Secretary may accept the report of FNMA's independent auditors for a particular year in lieu of all or any part of a secretarial audit.

Section 81.34 *Special Audits*. A new § 81.34 has been added to subpart D of the final regulations to provide for limited audits of specific financial transactions of FNMA. This provision is substantively similar to the prior existing regulation governing audits, by the Secretary.

SUBPART E—BOOK-ENTRY PROCEDURES FOR FNMA SECURITIES

Subpart E of the regulations governs book-entry procedures for FNMA securities. This subpart was present in the old regulations and is included here as an accommodation to FNMA. Two proposed sections in this subpart, §§ 81.45 and 81.46, provided that definitive securities would be issued in certain situations. In comments received from FNMA, however, it was pointed out that FNMA discontinued issuing definitive securities on March 10, 1978, and from that date securities have

been issued in book-entry form only. Sections 81.45 and 81.46 have been revised to reflect this.

The only other change made in subpart E is in § 81.48, which provided in the proposed regulation that interest due on FNMA securities was to be charged to the general account of the Treasurer of the United States and that such securities were to be redeemed and charged to the general account of the Treasurer of the United States on the date of maturity, call, or advance refunding. In another comment from FNMA, it was pointed out that FNMA no longer has an account with the Treasurer of the United States but, instead, uses an account with the New York Federal Reserve Bank. Section 81.48 has therefore been revised to refer exclusively to the account at the New York Federal Reserve Bank.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Part 81 is revised by amending the entire text to read as follows:

Subpart A—General Provisions

- Sec. 81.1 Scope of Part.
- 81.2 Definitions.

Subpart B—Operations of FNMA

- 81.11 General.
- 81.12 Issuance of Common Stock.
- 81.13 Dividends on Common Stock. [Reserved]
- 81.14 Issuance of Debt Instruments and Obligational Authority.
- 81.15 Debt-to-Capital Ratio.
- 81.16 Conventional Mortgages in Central Cities.
- 81.17 Conventional Mortgage Purchases Related to Housing for Low-and-Moderate Income Families.
- 81.18 Home Mortgage Underwriting Guidelines.
- 81.19 Equal Employment Opportunity.

Subpart C—Reporting Requirements

- Sec. 81.21 General.
- 81.22 Business Activities Reports.
- 81.23 Regular Reports.
- 81.24 Estimates of Amount of Purchase Commitments at FNMA Auctions.
- 81.25 Other Information.

Subpart D—Examinations and Audits

- 81.31 General.
- 81.32 Examination of Books, Records, and Documents.
- 81.33 Annual Audit of FNMA.
- 81.34 Special Audits.

Subpart E—Book-Entry Procedures for FNMA Securities

- Sec.
 81.41 Definitions.
 81.42 Authority of Reserve Bank.
 81.43 Scope and Effect of Book-entry Procedure.
 81.44 Transfer or Pledge.
 81.45 Withdrawal of FNMA Securities.
 81.46 Delivery of FNMA Securities.
 81.47 Registered Bonds and Notes.
 81.48 Servicing Book-entry FNMA Securities; Payment Interests; Payment at Maturity or Upon Call.
 81.49 Treasury Department Regulations; Applicability to FNMA.

APPENDIX A—Central Cities.

APPENDIX B—Business Activities Report.

APPENDIX C—Reporting Requirements.

ANNOUNCEMENT: Section 7d of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 81.1 Scope of part.

This part contains a codification of regulations implementing the authority of the Secretary of the Department of Housing and Urban Development with respect to the secondary market operations of the Federal National Mortgage Association (FNMA), as authorized by the Federal National Mortgage Association Charter Act. Subpart A contains definitions relating to this entire part. Subpart B contains regulations governing the conduct of FNMA's secondary market operations. Subpart C contains regulations requiring FNMA to prepare and submit certain reports on its activities to the Secretary on a regular basis. Subpart D contains regulations governing examinations and audits of FNMA by the Secretary. Subpart E contains regulations governing book-entry procedures for FNMA securities and related matters.

§ 81.3 Definitions.

As used in this part, the term—

- (a) "Charter Act" means the Federal National Mortgage Association Charter Act (Title III of the National Housing Act, 12 U.S.C. 1716, et seq.).
 (b) "FNMA" means the Federal National Mortgage Association.
 (c) "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.
 (d) "Debt-to-capital ratio" means the ratio of (1) the aggregate principal amount outstanding at any one time of obligations issued by FNMA under section 304(b) of the Charter Act to (2) the sum at such time of FNMA's capital, capital surplus, general surplus, reserves, undistributed earnings, and the outstanding total principal amount of obligations issued by

FNMA under section 304(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 304(b).

(e) "Home mortgage" means a mortgage loan secured by real property upon which is located a structure containing not less than one nor more than four dwelling units.

(f) "Project mortgage" means a mortgage loan secured by real property upon which is located a structure containing five or more dwelling units.

(g) "Single-family mortgage" means a mortgage loan secured by real property upon which is located a structure containing a single dwelling unit.

(h) "Unit mortgage" means a mortgage loan secured by: (1) Real property consisting of a dwelling unit in a condominium or planned unit development project and (2) an undivided interest in the common areas and facilities of the project or a stock interest in an association having title to the common areas and facilities of the project.

(i) "Conventional mortgage" means a mortgage loan not insured or guaranteed by the United States or any agency or instrumentality thereof.

(j) "Mortgage loan" means a loan secured by a mortgage or a deed of trust which creates a first mortgage on one of the following interests in real property:

- (1) An estate in fee simple;
- (2) A leasehold or subleasehold extending or renewable (automatically or at the option of the leaseholder) for a period of at least 10 years beyond the maturity of the loan; or
- (3) A leasehold or subleasehold of any duration and the remaining estate in fee simple.

(k) "Dwelling unit" means a single, unified combination of rooms designed for residential use by one family.

(l) "Housing for low-and-moderate-income families" means—

- (1) Any housing financed by a mortgage loan insured by FEHA under section 221, 235, 236, or 237 of the National Housing Act;
- (2) Any housing project with respect to which the owner has entered into a Housing Assistance Payment Contract, or an agreement to enter into such a contract, pursuant to which eligible families in not less than 25 percent of the dwelling units in the project will receive Housing Assistance Payments under section 8 of the United States Housing Act of 1937; and
- (3) Any single-family dwelling (including a dwelling unit in a condominium or planned unit development project) purchased at a price not in excess of 2.5 times the median family income (as most recently determined by the Secretary) for the Standard Metropolitan Statistical Area so designated

by the Department of Commerce, or county not in such Area, in which the dwelling is located.

(m) "Central city" means each of the political subdivisions named in the title of Standard Metropolitan Statistical Areas so designated by the Office of Federal Statistical Policy and Standards of the Department of Commerce. A list of these political subdivisions is Appendix A to these regulations. The list will be amended from time to time, to add or delete political subdivisions, as designations are made or withdrawn by the Department of Commerce.

(n) "Suburban" means any part of a Standard Metropolitan Statistical Area which is not a part of any census tract in such area which is (or any part of which is) included in a central city.

(o) "Debt instrument" means any obligation or security of FNMA issued under subsections (b), (d), and (e) of section 304 of the Charter Act.

(p) "Obligational authority" means the dollar amount of authority conferred by the Secretary upon FNMA to purchase mortgage loans, issue commitments to purchase mortgage loans, or otherwise deal in mortgage loans, as authorized by the Charter Act.

Subpart B—Operations of FNMA

§ 81.11 General.

(a) Specific provisions of the Charter Act require FNMA to obtain the prior approval of the Secretary before it issues any stock, obligations, securities, participations, or other instruments (sections 309(h), 311), and require FNMA to obtain the approval of the Secretary with respect to the following specific activities: (1) The purchase, service, sale, or lending on the security of or otherwise dealing in conventional mortgages (section 302(b)(2)); (2) FNMA's determination of the amount of nonrefundable capital contributions required to be made by mortgage sellers (which by statute may not exceed 2 per centum of the unpaid principal amount of mortgages purchased or to be purchased) (section 303(b)); (3) FNMA's determination of the level of stock retention requirements imposed on each servicer of its mortgages (which by statute may not exceed 2 per centum of the aggregate outstanding principal balances of all mortgages of the corporation which have been purchased subsequent to September 1, 1968, and which are then serviced by each servicer for the corporation) (section 303(c)); and (4) allowing the aggregate amount of FNMA's securities outstanding at any one time to exceed 15 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings (section 304(b)). In addition, specific provisions of the Charter Act au-

thorize the Secretary of the Department of Housing and Urban Development to (i) require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation; (ii) examine the books and financial transactions of the corporation; and (iii) require the corporation to make such reports on its activities as she deems advisable.

(b) Finally, section 309(h) of the Charter Act provides that the Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and shall make such rules and regulations as shall be necessary and proper to insure that the purposes of the Charter Act are accomplished.

(c) This subpart is promulgated pursuant to the Secretary's authority, as set forth above, to implement the foregoing provisions of the Charter Act; to insure, pursuant to the Secretary's general regulatory authority, as set forth in section 309(h) of the Charter Act, that the purposes of the Charter Act are accomplished; and to implement requirements imposed on the Secretary by section 808(e)(5) of the civil rights Act of 1968 (82 Stat. 84; 42 U.S.C. 3608, et seq.).

§ 81.12 Issuance of common stock.

(a) The first sentence of section 303(c) of the Charter Act directs FNMA to issue shares of its common stock to each seller of mortgage loans who makes capital contributions to FNMA. Under section 303(b) of the Charter Act, such capital contributions may be required by FNMA in such amounts as may be determined from time to time by FNMA with the approval of the Secretary. The Secretary has approved the determinations of FNMA that, with respect to home mortgages purchased by FNMA pursuant to commitments issued on or after February 7, 1977, and project mortgages purchased by FNMA pursuant to commitments issued on or after April 25, 1973, the sellers of such mortgage loans are not required to make any capital contributions to FNMA.

(b) Section 303(c) of the Charter Act directs FNMA to require each servicer of its mortgage loans to own a minimum amount of FNMA common stock, as determined from time to time by FNMA with the approval of the Secretary. The Secretary has approved the determination of FNMA to require each servicer of its mortgage loans to own one share of its common stock (stated value of \$6.25) for each \$10,000, or fraction thereof, of the aggregate outstanding principal balance

of all mortgage loans held by FNMA which have been purchased by FNMA on or after January 26, 1976, and which are being serviced by such servicer for FNMA.

(c)(1) Not less than 30 workdays prior to the date on which FNMA proposes to change its determination that, with respect to home mortgages purchased by FNMA pursuant to commitments issued on or after February 7, 1977, and project mortgages purchased by FNMA pursuant to commitments issued on or after April 25, 1973, the sellers of such mortgage loans are not required to make any capital contributions to FNMA, or its determination to require each servicer of its mortgage loans to own one share of its common stock for each \$10,000, or fraction thereof of the aggregate outstanding principal balance of all mortgage loans held by FNMA which have been purchased pursuant to commitments issued by FNMA on or after January 26, 1976, and which are being serviced by such servicer, FNMA shall request approval of the Secretary for its proposed changed determination and submit to the Secretary together with its request for such approval a statement of the reasons for its proposed changed determination and such supporting data as it deems necessary.

(2) Within 30 workdays after the submission of a request by FNMA under subparagraph (1) of this paragraph, the Secretary shall approve, reject, or request additional information as to FNMA's proposed changed determination.

(d) In addition to authorizing FNMA to issue shares of stock to each seller of mortgages required to make capital contributions to FNMA, section 303(c) of the Charter Act authorizes FNMA to issue shares of its common stock in return for appropriate payments into capital or surplus. Sections 309(h) and 311 of the Charter Act provide that the prior approval of the Secretary is required for all issuances of stock by FNMA.

(e)(1) Except as authorized by paragraph (a) or (b) of this section, the approval of the Secretary is required prior to the issuance by FNMA of any stock. Any request for such approval shall be submitted to the Secretary in writing not less than 30 workdays prior to the date on which FNMA proposes to offer any shares of common stock for sale, and such request shall contain the following information:

(i) The proposed date and duration of the offering period for such shares, the proposed issue price for each share, and the number of shares proposed to be offered, and

(ii) The proposed use of the proceeds from the sale of such shares.

(2) Within 30 workdays after the submission of a request by FNMA pursuant to subparagraph (1) of this paragraph, the Secretary shall approve, reject, or request additional information as to FNMA's proposed offering of shares of common stock.

§ 81.13 Dividends on common stock.

[Reserved]

§ 81.14 Issuance of debt instruments and obligational authority.

(a) Section 309(h) of the Charter Act provides that no stock, obligation, security, or other instrument shall be issued by FNMA without the prior approval of the Secretary. Section 311 of the Charter Act provides that all issuances of stock, obligations, securities, participations, or other instruments by FNMA shall be made only with the approval of the Secretary.

(b)(1) FNMA is authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments from time to time in such amounts as may be necessary to finance its mortgage purchases and its obligations incurred in the conduct of its secondary market operations. In the event at any time of a maturity or other event requiring the payment or redemption of any of FNMA's outstanding debt instruments, the corporation is hereby authorized, upon the approval of the Secretary of the Treasury, to issue its debt instruments at such time in an amount sufficient to provide the proceeds required to pay the principal of and the interest on the debt instruments so required to be paid or redeemed at such time.

(2) FNMA shall submit to the Secretary, at the same time the original is delivered to the Secretary of the Treasury, a copy of any written communication submitted by it to the Secretary of Treasury concerning the issuance of its debt instruments.

(c) Whenever FNMA determines that an increase in the amount of its obligational authority is necessary to the effective conduct of its secondary market operations, it shall submit to the Secretary a written request for the approval of increased obligational authority in such amount as it determines to be necessary. Each such request for approval shall set forth the amount of obligational authority available to FNMA at the time the request is made; the amount of authority that FNMA expects will accrue to it in the next 30 workdays by reason of the expiration of commitments to purchase mortgages, mortgage payments, and other factors; and the projected uses of the requested obligational authority, including the amount expected to be committed for conventional mortgages, or insured or guaranteed mortgages.

RULES AND REGULATIONS

§ 81.16 Debt-to-capital ratio.

(a) Under section 304(b) of the Charter Act, FNMA's debt-to-capital ratio may not exceed 15 to 1, unless a greater maximum ratio is fixed by the Secretary. Effective December 8, 1989, the maximum debt-to-capital ratio for FNMA, was fixed at 25 to 1 by the Secretary.

(b) Except as provided in paragraph (f) of this section, FNMA shall not issue any debt instrument if such issuance would cause its debt-to-capital ratio to exceed 25 to 1.

(c) Any request by FNMA to change the maximum debt-to-capital ratio fixed in paragraph (b) of this section shall be submitted in writing to the Secretary, together with a justification for such change (including possible alternatives thereto) and supporting financial data.

(d) Within 30 workdays after the submission of a request by FNMA under paragraph (c) of this section, the Secretary shall approve, reject, or request additional information as to FNMA's proposed change in its maximum debt-to-capital ratio.

(e) The Secretary may decrease the maximum debt-to-capital ratio fixed in paragraph (a) of this section (but not below a ratio of 15 to 1), if she determines that such action (1) will not adversely affect the fiscal integrity of or limit the availability of credit to the corporation, and (2) will not impair FNMA's ability to discharge its obligations to the holders of FNMA's debt instruments and holders of subordinated debentures issued under section 304(e) of the Charter Act. The Secretary shall provide FNMA 60 workdays written notice of the effective date of any decrease in its maximum debt-to-capital ratio.

(f) In the event at any time of a reduction in the sum of the corporation's capital, capital surplus, general surplus, reserves, and undistributed earnings, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to include all obligations issued pursuant to section 304(b) of the Charter Act and outstanding at such time. In the event at any time of a maturity or other event requiring the payment or redemption of any of the obligations issued under section 304(e) of the Charter Act, the maximum debt-to-capital ratio is automatically increased to such ratio as may be necessary to permit the issuance of obligations under section 304(b) of the Charter Act in an amount sufficient to provide the proceeds required to pay the principal of and interest on the obligations outstanding under such section 304(e) and so required to be paid or redeemed at such time.

§ 81.16 Conventional mortgages in central cities.

(a) section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 301(a) of the Charter Act. Section 309(h) of the Charter Act provides that the Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and that she may require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b) Subject to the limitations and requirements contained in this section and those limitations or requirements expressed in prior written approvals (as required by section, 302(b)(2) of the Charter Act) by the Secretary of FNMA's entry into programs with respect to conventional home and unit mortgages under its secondary market operations, the approval of the Secretary is hereby given for FNMA, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional home and unit mortgages.

(c)(1) FNMA shall submit to the Secretary a written request for approval prior to undertaking, under its secondary market operations, any program with respect to conventional mortgages not approved by the Secretary under paragraph (b) of this section. A FNMA request for approval under this paragraph shall set forth the full content of the program with respect to conventional mortgages proposed, the purposes of the program, and the anticipated effect of the program on other programs being conducted by FNMA under its secondary market operations.

(2) Within 90 workdays from the date of the submission of a request by FNMA under paragraph (c)(1) of this section, the Secretary shall approve, reject, or request additional information as to the program with respect to conventional mortgages which FNMA proposes to undertake.

(d)(1) Beginning on March 1, 1979 and annually thereafter, whenever in the preceding calendar year the number of FNMA's purchases of conventional mortgages secured by properties located in central cities is less than 30 percent of the corporation's aggregate number of purchases of conventional mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conven-

tional mortgages secured by properties located in central cities.

(2) In establishing the annual goal with respect to FNMA purchases of conventional mortgages secured by properties located in central cities, the Secretary shall consider: (i) The total number of such purchases of conventional mortgages in central cities by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by properties located in central cities purchased by FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the ratio of the number of properties located in central cities of the type which may secure conventional mortgages purchased by FNMA to the total number of properties of that type in the United States, as determined by the Secretary; (iv) the condition of the housing market; and (v) general economic factors.

§ 81.17 Conventional mortgage purchases related to housing for low- and moderate-income families.

(a) Section 302(b)(2) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 301(a) of the Charter Act. Section 309(h) of the Charter Act authorizes the Secretary to require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b)(1) Beginning on March 1, 1979 and annually thereafter, whenever in the preceding calendar year FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families, as defined in paragraph (1) of § 81.2 is less than 30 percent of the corporation's aggregate number of purchases of such mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families.

(2) In establishing the annual goal with respect to FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families the Secretary shall consider: (i) The total number of such purchases of conventional mortgages by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by housing for low- and moderate-income families purchased by

FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the relationship of the average sales price of conventionally financed homes in the various sections of the United States to the median income of families in these sections of the United States; (iv) the condition of the housing market; and (v) general economic factors.

(c)(1) In any year for which the Secretary has established and published an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families, the Secretary shall, whenever she determines that FNMA's regular reports covering its secondary market operations for the first two quarters of that year reveal that FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families will fall below the annual goal established pursuant to paragraph (b)(1) of this section, require FNMA to provide, within 30 workdays, after her determination is made and communicated to FNMA, a plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or a statement of reasons why the annual goal should be altered or suspended.

(2) Within 15 days after receipt of the FNMA plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or FNMA's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FNMA plan of special actions proposed, or approve or reject its proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FNMA to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, the Secretary may: (i) Require FNMA to conduct a separate auction, or auctions, of commitments to purchase conventional mortgages secured by housing for low- and moderate-income families or (ii) require FNMA to hold open an offer to purchase newly originated conventional mortgages secured by housing for low- and moderate-income families, or (iii) condition the approval of any increase in obligatory authority upon use of a designated amount of increased obligatory authority for the purchase of conventional mortgages secured by housing for low- and moderate-income

families. FNMA shall not be required to auction commitments to purchase conventional mortgages, or to purchase conventional mortgages, which: (a) Fail to meet FNMA's underwriting standards applicable to such mortgages, or (b) which are not deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors, or (c) which cannot be purchased within the range of market prices for the particular class of mortgages involved, as determined by the corporation.

(d) If in any calendar year the programs authorized to be conducted under paragraph (c)(2) of this section are implemented by FNMA and FNMA is nevertheless unable to accomplish the purchase of conventional mortgages secured by housing for low- and moderate-income families in such numbers as will enable it to meet the annual goal announced by the Secretary pursuant to paragraph (b)(1) of this section, the requirements of paragraph (b)(1) of this section shall be deemed satisfied for that calendar year.

§ 81.18 Home Mortgage underwriting guidelines.

(a) This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations, as set forth in section 7(d) of the Department of Housing and Urban Development Act (79 Stat. 667; 42 U.S.C. 3531 et seq.), and to implement section 808(e)(5) of the Civil Rights Act of 1968.

(b) On or before January 1, 1979 FNMA shall submit to the Secretary for review and comment revised home mortgage underwriting guidelines which make clear that FNMA will not decline to purchase any conventional mortgage, or sell a commitment to purchase any such mortgage, or discriminate in the fixing of the amount, interest rate, duration, or other terms or conditions of any such mortgage: (1) Because of the race, color, religion, sex, marital status, or national origin, (i) of the borrower, (ii) of any persons associated with the borrower in connection with such mortgage or the purposes thereof, or (iii) of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings securing such mortgage; or (2) because of (i) the racial, ethnic or religious composition of the area in which the property which would secure the mortgage is located, or (ii) the age of the area or the housing stock in such area.

(c)(1) Not less than 30 workdays prior to the adoption of any proposed revision to that portion of its underwriting guidelines which contains the

material specified in the nondiscrimination standards set forth in paragraph (b) of this section, FNMA shall submit such proposed revision to the Secretary for review and comment.

(2) Within 10 workdays after receipt of any proposed revision of FNMA's underwriting guidelines submitted for review and comment pursuant to the requirements of subparagraph (1) of this paragraph, the Secretary shall inform FNMA of any modification required to be made to the proposed revision to assure that FNMA's underwriting guidelines remain consistent with the nondiscrimination standards set forth in paragraph (b) of this section.

§ 81.19 Equal employment opportunity.

(a) This section is promulgated pursuant to the Secretary's general authority to issue rules and regulations, as set forth in section 7(d) of the Department of Housing and Urban Development Act.

(b) FNMA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. FNMA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following:

- (1) Employment, upgrading, demotion or transfer;
- (2) Recruitment or recruitment advertising;
- (3) Layoff or termination;
- (4) Rates of pay or other forms of compensation; and
- (5) Selection for training programs.

(c) FNMA shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of paragraph (b) of this section.

(d) FNMA shall, in all solicitations or advertisements for employees placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) FNMA shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of FNMA's obligations under this section, and shall request that such union or representative post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) FNMA shall comply with all provisions of Executive Order 11246, and the applicable rules, regulations, and

orders of the Secretary of Labor promulgated thereunder.

(g) FNMA shall furnish all information and reports required by Executive Order 11246, and by the applicable rules, regulations, and orders of the Secretary of Labor promulgated thereunder, and shall permit access to its books, records, and accounts by the Secretary and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) Unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, FNMA shall include the provisions of paragraphs (b) through (g) of this section in each of its contracts or purchase orders so that such provisions will be binding upon each contractor or vendor. FNMA will take such action with respect to any contract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event FNMA becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Secretary, FNMA may request the United States to enter into such litigation to protect the interest of the United States.

Subpart C—Reporting Requirements

§ 81.21 General.

Section 309(h) of the Charter Act provides that the Secretary may require FNMA to make reports on its activities as the Secretary deems advisable. This subpart contains a codification of the requirements of the Secretary as to the information on FNMA's activities to be provided in reports submitted to the Secretary.

§ 81.22 Business Activities Report.

(a) On or before October 15, 1978 for the calendar year ending December 31, 1977 and not later than 60 workdays following the end of such calendar year thereafter (unless otherwise indicated), a report on the business activities of FNMA as specified in Appendix B to this section (and as may be amended from time to time) shall be submitted to the Secretary.

(b) The report required to be submitted to the Secretary under the provisions of this section shall be signed by a principal officer of FNMA. In addition, one copy of the report shall be sent to the Assistant Secretary-FHA Commissioner and one copy shall be sent to the General Counsel, HUD.

§ 81.23 Regular reports.

(a) FNMA shall submit to the Secretary on a regular basis such reports on the activities and operations of FNMA as are prescribed in this paragraph.

Each such report shall contain the information required for the activity or operation which is the subject of the report, as specified in Appendix C to this section (and as it may be amended from time to time).

(1) A report on each auction of commitments to purchase loans shall be submitted within 5 workdays after the date of each such auction;

(2) A report on stand-by commitments issued during each month shall be submitted within 10 workdays after the end of each month;

(3) A report on investors purchasing FNMA securities issued during each calendar quarter shall be submitted within 15 workdays after the end of each such calendar quarter;

(4) A statement of the composition of FNMA's loan portfolio as of the end of each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(5) A report on the characteristics of home loans purchased during each calendar quarter shall be submitted within 30 working days after the end of each such calendar quarter;

(6) A report on average yields of mortgage loans purchased by FNMA during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(7) A report on the lender groups from whom mortgage loans were purchased and to whom loans were sold during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(8) A report on the composition of revenues received, expenditures made, and net income earned by FNMA during each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter;

(9) A report on the distribution of the holdings of FNMA common stock as of the end of each calendar quarter shall be submitted within 20 workdays after the end of each such calendar quarter.

(b) Each report required to be submitted to the Secretary under the provisions of this section shall be signed by a principal officer of FNMA. In addition, one copy of each such report shall be sent to the Assistant Secretary-FHA Commissioner, and one copy shall be sent to the General Counsel, HUD.

§ 81.24 Estimates of amount of purchase commitments at FNMA auctions.

Prior to the close of business on the last business day prior to the day on which FNMA is scheduled to hold commitment auctions, FNMA shall submit to the Secretary in a sealed envelope an estimate of the dollar amounts of purchase commitments it expects to issue in its FHA-VA mortgage auction and in its conventional

mortgage auction. The Secretary shall place the sealed envelope submitted by FNMA in a safe and retain it there unopened until the first business day following the day on which the commitment auctions are held.

§ 81.25 Other information.

In addition to the regular reports required by the other provisions of this subpart, FNMA shall furnish to the Secretary such information concerning its activities as the Secretary may request in writing from time to time.

Subpart D—Examinations and Audits

§ 81.31 General.

Section 309(h) of the Charter Act provides that the Secretary may examine and audit the books and financial transactions of FNMA. This subpart provides for such examinations and audits.

§ 81.32 Examination of books, records, and documents.

(a) FNMA shall, at all times during its regular business hours and at its several offices, make its books and financial transactions, and all records and documents necessary to a complete examination and audit of such books and financial transactions, available for examination by duly authorized representatives of the Secretary.

(b) FNMA shall maintain a stenographic record of the minutes of each meeting of the Board of Directors of FNMA available at its headquarters for examination by duly authorized representatives of the Secretary. Any particular matter included in such stenographic minutes which FNMA determines contains information the availability of which outside the corporation might financially injure it or adversely affect the conduct of its business will be available only for examination (without copying) by the Secretary or her designated representative at the headquarters of FNMA.

§ 81.33 Annual audit of FNMA.

Within 120 workdays following the submission by FNMA's independent auditors of their report on FNMA's activities for any calendar year, the Secretary may, through duly authorized representatives, conduct an audit of FNMA's books and financial transactions for such calendar year, including such tests of FNMA's accounting records and such other auditing procedures as such representatives may consider necessary in the circumstances. The Secretary may accept a copy of the report of FNMA's independent auditors for a particular calendar year, if voluntarily submitted to her by FNMA, in full or partial satisfaction of the Secretarial audit authorized by

this section and limit her audit to any areas not covered by such report.

§ 81.34 Special audits.

The Secretary may at any time, through duly authorized representatives, conduct a special audit of such books and financial transactions of FNMA as the Secretary shall specify in writing.

Subpart E—Book-entry Procedures for FNMA Securities

§ 81.41 Definitions.

As used in this subpart, the term—

(a) "Reserve bank" means a Federal Reserve bank and its branches acting as Fiscal Agent of FNMA and, when indicated, acting in its individual capacity or as Fiscal Agent of the United States.

(b) "FNMA security" means any obligation of FNMA (except short-term discount notes and obligations convertible into shares of common stock) issued under 12 U.S.C. 1719 (b), (d), and (e) in the form of a definitive FNMA security or a book-entry FNMA security.

(c) "Definitive FNMA security" means a FNMA security in engraved or printed form.

(d) "Book-entry FNMA security" means a FNMA security in the form of an entry made as prescribed in this part on the records of a Reserve bank.

(e) "Pledge" includes a pledge of, or any other security interest in, FNMA securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(f) "Date of call" is, with respect to FNMA securities issued under 12 U.S.C. 1719 (d) and (e), the date fixed in the authorizing resolution of the Board of Directors of FNMA on which the obligor will make payment of the security before maturity in accordance with its terms, and, with respect to FNMA securities issued under 12 U.S.C. 1719(b), the date fixed in the offering notice issued by FNMA.

(g) "Member bank" means any National bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 81.42 Authority of Reserve Bank.

Each Reserve bank is hereby authorized, in accordance with the provisions of this part, to:

(a) Issue book-entry FNMA securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date;

(b) Effect conversions between book-entry FNMA securities and definitive FNMA securities;

(c) Otherwise service and maintain book-entry FNMA securities; and

(d) Issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 81.43 Scope and effect of book-entry procedure.

(a) A Reserve bank as Fiscal Agent of FNMA may apply the book-entry procedure provided for in this part to any FNMA securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(1) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such FNMA securities, the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligations as depositary with respect to such FNMA securities.

(b) A Reserve bank as Fiscal Agent of the corporation may apply the book-entry procedure to FNMA securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other FNMA securities deposited with a Reserve bank, as Fiscal Agent of the United States.

(c) Any person having an interest in FNMA securities which are deposited with a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) for any purpose

shall be deemed to have consented to their conversion to book-entry FNMA securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 81.44 Transfer or pledge.

(a) A transfer or pledge of book-entry FNMA securities to a Reserve bank (in its individual capacity or as Fiscal Agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under §§ 81.41 through 81.48 is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(1) Have the effect of a delivery in bearer form of definitive FNMA securities;

(2) Have the effect of a taking of delivery by the transferee or pledgee;

(3) Constitute the transferee or pledgee a holder; and

(4) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry FNMA securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable FNMA securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as Fiscal Agent of the United States) in a book-entry account under §§ 81.41 through 81.48, including securities in book-entry form under § 81.43(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the FNMA securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry FNMA securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry FNMA securities either in its individual capacity or as Fiscal Agent of the United States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfer

thereof under this paragraph. Where transferable FNMA securities are recorded on the books of a depository (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business FNMA securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) or account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account, hereunder, such depository shall, for purposes of perfecting a pledge of such securities or affecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry FNMA securities or any interest therein.

(d) A Reserve bank shall, upon receipt of appropriate instructions, convert book-entry FNMA securities and deliver them in accordance with such instructions; no such conversion shall affect existing interest in such FNMA securities.

(e) A transfer of book-entry FNMA securities within a Reserve bank shall be made, in accordance with procedures established by the Reserve bank not inconsistent with this part. The transfer of book-entry FNMA securities by a Reserve bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 81.45 Withdrawal of FNMA securities.

(a) For all book-entry FNMA securities issued prior to March 10, 1978:

(1) A depositor of book-entry FNMA securities may withdraw them from a Reserve bank by requesting delivery of like definitive FNMA securities to itself or on its order to a transferee.

(2) FNMA securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

(b) Notwithstanding any other provision in this subpart, no definitive securities will be issued or available for any debenture issued on or after March 10, 1978. Debentures issued on or after March 10, 1978, will be issued in book-entry form only.

§ 81.46 Delivery of FNMA securities.

A Reserve bank which has received FNMA securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. Customers of a member bank or other depository (other than a Reserve bank) may obtain FNMA securities only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank under the conditions set forth in paragraph (a) of § 81.45.

§ 81.47 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry FNMA securities of registered FNMA securities held by a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) on the effective date of this part for any purpose specified in § 81.43(a). Registered FNMA securities deposited thereafter with a Reserve bank for any purpose specified in § 81.43 shall be assigned for conversion to book-entry FNMA securities. The assignment, which shall be executed in accordance with the provisions of Subpart F of 31 CFR Part 306, so far as applicable, shall be to "Federal Reserve Bank of _____, as Fiscal Agent of the Federal National Mortgage Association, for conversion to book-entry FNMA securities."

§ 81.48 Servicing book-entry FNMA securities; payment of interest; payment at maturity or upon call.

Interest becoming due on book-entry FNMA securities shall be charged to the Federal National Mortgage Association's account at the New York Federal Reserve Bank on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged to the Federal National Mortgage Association's account at the New York Federal Reserve Bank on the date of maturity, call or advance refunding, and the redemption proceeds, principal and interest, shall dispose of in accordance with the depositor's instructions.

§ 81.49 Treasury Department regulations; applicability to FNMA.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than Subpart O), as amended from time to time, shall apply, insofar as appropriate, to obligations of FNMA for which a Reserve bank shall act as Fiscal Agent of FNMA and to the extent that such provisions are consistent with agreements between FNMA and the Reserve banks acting as Fiscal Agents of FNMA. Definitions and terms used in Treasury Department Circular No. 300 should read as though modified to effectuate the application of the regulations to FNMA.

Issued at Washington, D.C., August 9, 1978.

PATRICIA ROBERTS HARRIS,
Secretary, Department of
Housing and Urban Development.

Footnotes

1. Title III of the National Housing Act; 12 U.S.C. 1716 et seq.

2. 24 CFR Part 81.

3. 43 FR 7659.

4. Executive Order No. 6443 A (November 17, 1933).

5. The Associations were designed to "provide an effective means of attracting funds from financial centers in which there is a surplus of capital for investment to areas in which local savings are insufficient to meet the requirements of home financing, and in which the local cost of such financing is therefore unduly high. In this manner the advantages of low-cost, long-term financing can be spread to communities throughout the country." Unpublished Memorandum of the National Emergency Council dated May 14, 1934 at page 4.

6. Unpublished Memorandum of the National Emergency Council dated April 17, 1934.

7. Pub. L. 479 (June 27, 1934), 48 Stat. 1252.

8. See Hearings on H.R. 8520 Before the House Committee on Banking and Currency, 75th Cong., 2d Sess. at 36 (1937) (Testimony of Jesse Jones, Chairman, Board of Directors of RFC).

9. Pub. L. 1, January 31, 1935, 49 Stat. 1. Section 5(c) authorized the RFC, with the approval of the President, to subscribe for, or make loans upon the non-assessable stock of any National Mortgage Association organized under Title III of the National Housing Act, and of any mortgage loan company or other financial institution principally engaged in making loans secured by real estate mortgages. Between September 1935 and 1948 (when it was dissolved), the RFC Mortgage Co. purchased 63,424 FEA-insured mortgages in the aggregate amount of \$282.2 million. *Background and History*, published by FNMA, 1975 at 3.

10. Pub. L. 424 (February 3, 1938), 52 Stat. 16.

11. The President's message requesting the legislation stated that in order that one or more such associations may be promptly organized, "I shall ask the Reconstruction Finance Corporation to make available, out of the funds already allocated to the RFC Mortgage Company, \$50,000,000 for capital purposes. Under the amendments here pro-

posed, this would provide the basis for \$1,000,000,000 of private funds obtainable through the sale of National Mortgage Association debentures." Message from the President on H.R. 8730, H. Doc. No. 408, 75th Cong., 3d Sess. (November 29, 1937) at 4-5.

12. The Association began operations with initial capital of \$10 million and paid in surplus of \$1 million provided by the RFC which maintained supervisory control over the Association. *Background and History*, supra n. 9, at 2.

13. Although the FNMA portfolio was quickly inundated with these below-market rate GI mortgages, FNMA continued to defray operating expenses and prosper on its earnings from all its activities. In the period from 1938 to 1953, FNMA paid the Treasury interest and dividends aggregating \$91 million, and in addition, accumulated a surplus of \$42.5 million. *Recommendations on Government Housing Policies and Programs, A Report of the President's Advisory Committee on Housing Policies and Programs*, December 1953, p. 362. (Hereinafter *President's Advisory Committee Report*.)

14. See H. Rep. No. 313, 76th Cong. 1st Sess. (March 25, 1939) at 3: "The Committee feels that it would be a serious mistake to leave the act in such a state that the Administrator would have to charter these Associations indiscriminately and without regard to the need for them with the danger that there may be outstanding a large number of issues of debentures which would not be properly supported in the market, and would lead to a repetition of our experience with the joint-stock land banks."

15. Pub. L. 111 (June 3, 1939), 53 Stat. 808.

16. Pub. L. 864 (July 1, 1948), 62 Stat. 1208.

17. 1950 Reorganization Plan No. 22, 15 FR 4388, 64 Stat. 1277, effective July 9, 1950, in operation September 7, 1950.

18. The secondary market facility proposals advocated by these segments of the housing industry were among the programs that were considered by the President's Advisory Committee on Government Housing Policies and Programs during the latter part of 1953. See *President's Advisory Committee Report*, supra n. 13.

19. The viewpoint of traditional mortgage lenders with respect to continuation of FNMA was best expressed by Charles A. Wellman, Executive Vice President of the Glendale Federal Savings and Loan Association: "The postwar FNMA purchased loans of a type and at a price higher than the private market offered; hence, it became loaded with what the President termed 'frozen investments'. The reason it could purchase at terms and conditions other than those offered by the private market was because its operations were animated by motives other than the pecuniary incentives which dominated the investment decisions of the private secondary market. It raised its investable funds under the protection of the Treasury at rates below the rates private investors paid for their funds. A successful Government-sponsored mortgage facility must therefore be reasonably held to the same profit and loss bookkeeping as is a large insurance company or any other purchaser of mortgages. This means there can be no subsidy, direct or indirect, by the Government to such a corporation. Such a subsidy can only operate to weaken, if not to completely destroy, the pecuniary motives which must dominate the facility's oper-

ations and, consequently, compel the facility to operate as a primary lender." (Emphasis added). Hearings on H.R. 7839 before the House Committee on Banking and Currency, 83rd Cong. 2d Sess. 657 (1954) (Hereinafter 1954 House Hearings).

20. *President's Advisory Committee Report*, supra n. 13, at 11-12, 341-368.

21. Conf. Rep. No. 2271 on H.R. 7839, 83rd Cong. 2d Sess. 81 (1954). These three functions are set forth in section 301 of the Charter Act:

"(a) Provide supplementary assistance to the secondary market for home mortgages by providing a degree of liquidity for mortgage investments, thereby improving the distribution of investment capital available for home mortgage financing;

"(b) Provide special assistance (when, and to the extent that, the President has determined that it is in the public interest) for the financing of (1) selected types of home mortgages (pending the establishment of their marketability) originated under special housing programs designed to provide housing of acceptable standards at full economic costs for segments of the national population which are unable to obtain adequate housing under established home financing programs, and (2) home mortgages generally as a means of retarding or stopping a decline in mortgage lending and home building activities which threatens materially the stability of a high level national economy; and

"(c) Manage and liquidate the existing mortgage portfolio of the Federal National Mortgage Association in an orderly manner, with a minimum of adverse effect upon the home mortgage market and minimum loss to the Federal Government." (Id. at 28.)

The language of the statute as well as the legislative history makes clear that FNMA's secondary market operations were intended to "provide supplementary assistance" by tapping non-traditional sources of funds through the issuance of its debt instruments which would be more liquid and entail less risk than investments in individual mortgages. These funds would then be transferred to housing purposes by FNMA's use of them to purchase mortgages. "Improving the distribution of investment capital available for home mortgage financing" would be accomplished by FNMA's willingness to purchase "sound" mortgages in areas where traditional mortgage lenders, for any number of reasons, were not functioning effectively. The Administration's spokesman testifying on behalf of the 1954 Charter Act, Mr. Albert Cole, then Housing and Home Finance Administrator, explained the concept during a colloquy with Congressman McDonough:

"Mr. McDonough. . . . Do I understand you to say that Fannie Mae should purchase only those marketable mortgages that the banks and other financial institutions will not purchase?"

"Mr. Cole. No, not on the basis of soundness, but on the basis of not being willing to go into the areas, let us say, as one reason. You see, a bank located at remote—(Emphasis added.)

"Mr. McDonough. In other words, they are mortgages in which the normal financial institutions do not want to invest, although they are sound mortgages, in your opinion? (Emphasis added.)

"Mr. Cole. The best evidence of that is the record of practically no loss which FNMA or the FHA has had on these mortgages." (1954 House Hearings, supra n. 19, at 107-108.)

FNMA as an institution survived in the 1954 legislation only because FNMA supporters successfully argued that there were legitimate governmental functions which could be exercised only through its auspices. See, "Minority Report of the President's Advisory Committee Report," supra n. 13, at 359.

22. H. Rept. No. 1429, Part 2, 83rd Cong., 2d Sess., 3 (1954). The transfer of FNMA to private ownership was to take place after the gradual replacement of public funds by private capital. (Approximately \$70 million of preferred stock owned by the Secretary of the Treasury was to be retired by capital to be contributed for this purpose by users of FNMA's secondary market facilities after enactment of the Charter Act.) As soon as the Treasury stock was retired, the Housing and Home Finance Administrator was directed to submit recommendations for legislation to transfer the assets and liabilities, and the management and control, of the FNMA secondary market operations to the private owners of its capital stock. In connection with its secondary market operations, FNMA was authorized to issue non-guaranteed obligations at a debt-equity ratio of 10 to 1, with a \$1 billion Treasury "backstop".

23. National Housing Act, section 304(a)(1); 12 U.S.C. 1719(a)(1). The secondary market operation FNMA was authorized to conduct by the Charter Act of 1954 was expected to be an enterprise of modest dimensions. A 10-year projection of expected activity, prepared by FNMA at the time the Charter Act was being considered by Congress, indicated that by the 10th year of operations FNMA would have a total mortgage portfolio (under its secondary market operations) of \$1 billion, and that this portfolio would be carried by the issuance of \$900 million in debentures and the availability of \$100 million of equity capital. The projection showed annual purchases of mortgages in a \$400-450 million range and annual sales of mortgages in a \$300-350 million range. Hearings on S. 2938, before the Senate Committee on Banking and Currency, 83rd Cong., 2d Sess., 140-143 (1954).

24. These discounts were estimated to be the equivalent of a discount of 8.5 to 7 percent. 1954 House Hearings, supra n. 19, at 606.

25. Section 304(d) of the Housing Act of 1954, Pub. L. 560, August 2, 1954, 68 Stat. 690, 616. The purpose of this provision is discussed in Hearings on S. 2889 and S. 2949, 83rd Cong., 2d Sess., 939 (1954).

26. Sections 204(d), 203 and 202 of the Housing Act of 1956, Pub. L. 1020, August 7, 1956, 70 Stat. 1091, 1096. However, Congress refused to repeal the provision of the Charter Act limiting the maximum price of housing eligible for purchase by FNMA in the conduct of its secondary market operations, stating that FNMA's activities "should be directed toward the support of homes priced to suit the needs of the great bulk of American families concentrated in the middle and lower income ranges." H. Rept. No. 2363, 85th Cong., 2d Sess., 22 (1956).

27. FNMA was a significant and consistent seller of mortgages between 1961-1963. In that period FNMA sold more than \$1.5 bil-

lion in mortgages; these sales combined with payments made on mortgages it retained resulted in a decrease in the FNMA portfolio, despite moderate purchases, from \$2.9 billion at the end of 1960 to \$2 billion at the end of 1963. The failure of FNMA to be a net seller of mortgages, even during periods of credit ease, since 1963 has embroiled the corporation in controversy with traditional mortgage lenders and Congressional committees which exercise oversight over housing programs. "Background and History," *supra* n. 9, at 8.

28. Tables found at pages 51 and 52 of a FNMA publication, "FNMA, Background and History, 1970," demonstrate the enormous growth of FNMA's mortgage portfolio during this period.

29. For an excellent discussion of the function of a secondary market facility under the Charter Act of 1964 See "FNMA, Background and History," *supra* n. 9, at 6-7.

30. Independent Offices and Department of Housing and Urban Development Appropriations for 1970, Hearings Before a Subcommittee of the House Committee on Appropriations, 91st Cong., 1st Sess., 989 (1969).

31. See "Report of the President's Commission on Budget Concepts," 54, 59-60 (1967); Hearings on Housing and Urban Development Legislation of 1968 before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 2d Sess., 1419 (1968).

32. Pub. L. 90-448, August 1, 1968, 82 Stat. 538, section 303 of the amended Charter Act provided for the rapid retirement of the preferred stock held by the Secretary of the Treasury. On September 30, 1968, FNMA retired all of this preferred stock. FNMA Annual Report 1968, note 5, page 10. FNMA's common stock was changed from nonvoting, \$100 par value, to voting, no par value, conferring (after a 2-to-8-year transition period) the right to elect 10 members of the 15 member board of directors. Sections 303 and 308(b) of the Charter Act. Section 310(b) of the 1968 Amendments provided that during the transition period the board of directors would consist of nine persons, all of whom were appointed by the Secretary of HUD until the first shareholders' meeting was held, and a majority of whom were appointed by the Secretary of HUD until the end of the transitional period. Since the end of the transitional period, the five directors' positions which are not subject to shareholder control have been filled annually by appointments made by the President.

33. S. Rept. No. 1123, 90th Cong., 2d Sess., 81 (1968).

34. *Id.* at 82.

35. Treasury held preferred stock worth \$163,820,304.97 on August 31, 1968. "Background and History," *supra*, n. 9, at 21. FNMA held a portfolio of 886,634 mortgages worth \$7,170,313,000 at the end of 1968. *Id.* at 52.

36. H. Rept. No. 1588, 90th Cong., 2d Sess., 70 (1968). Similar language appears in the Senate Report, S. Rept. No. 1123, *supra*, n. 33, at 81.

37. Section 311 of the Charter Act; 12 U.S.C. 1723c.

38. The "1976 Annual Report of FNMA" recognizes this fact at page 9: "These factors give FNMA access to a market for its debt instruments that is broader than that available to other corporations. This makes

it possible for FNMA to borrow at costs lower than other corporate borrowers."

39. Hearings on Proposed Housing Legislation for 1968 Before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 2d Sess., 1420 (1968). When some witnesses expressed reservations that private ownership would change the public interest policies of FNMA, Senator Sparkman wrote to then Secretary Weaver asking him whether these concerns were justified. Secretary Weaver assured Senator Sparkman that changes in the functions of the secondary market operations would be "relatively few and of a minor nature."

40. S. Rept. No. 1123, *supra*, n. 33, at 82.

41. H. Rept. No. 1588, *supra*, n. 36, at 69; S. Rept. No. 1123, *supra*, n. 33, at 79.

42. S. Rept. No. 1123, *supra*, n. 33, at 82, 43. *Id.*

44. See sections 303(a) and 309(h) of the Charter Act; 12 U.S.C. 1718(a), 1723a(h).

45. S. Rept. No. 1123, *supra*, n. 33, at 82.

46. Opinion of the Attorney General of the United States, June 3, 1977. The subject of the opinion was the constitutionality of S. 1397, a bill to enlarge the board of directors of FNMA.

47. In calendar year 1977, FNMA issued \$10,845,000,000 in commitments to purchase home mortgages; \$6,240,000,000 were for commitments to purchase Government-insured or guaranteed mortgages, and \$4,605,000,000 were for commitments to purchase conventional mortgages. FNMA actually purchased home mortgages in the amount of \$4,650,000,000; \$2,284,000,000 were for purchase of Government-insured or guaranteed mortgages and \$2,366,000,000 were for purchases of conventional mortgages.

During calendar year 1977, FNMA issued total debt in the amount of \$8,840,000,000. During the 12-month period ending June 30, 1978, FNMA issued total debt in excess of \$13 billion.

As of June 30, 1978, FNMA had general and secured obligations outstanding in amounts exceeding \$35 billion, and the size of its mortgage and loan portfolio exceeded \$38 billion.

48. Hearings on the Secondary Operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation Before the Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. (1976) (Hereinafter cited as Hearings on FNMA); Hearings on S. 1397 Before the Senate Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. (1977) (Hereinafter cited as Hearings on S. 1397).

49. Memorandum Regarding the Policies and Performance of the Federal National Mortgage Association, 95th Cong., 1st Sess. (1977) (Hereinafter cited as Committee Memorandum).

50. Hearings on FNMA, *supra*, n. 48, at 62, 76; Hearings on S. 1397, *supra*, n. 49, at 69, 76 and 78.

51. Hearings on FNMA, *supra*, n. 48, at 280, 295, 298, 413-416, 426, 446, 529-530; Hearings on S. 1397, *supra*, n. 49, at 81.

52. Hearings on FNMA, *supra*, n. 48, at 295.

53. Committee Memorandum, *supra*, n. 49, at 33-34.

54. Hearings on FNMA, *supra*, n. 48, at 78; Committee Memorandum, *supra*, n. 49, at 2. In 1975, Congress found a "growing disparity between the availability of mortgage

credit for new and for existing housing—particularly existing housing in neighborhoods that happen to be urban, racially integrated, built prior to World War II, or all three."

"The result of this disparity, ironically, is to discourage revitalization of cities just at a time when the energy shortage, the increase in housing costs, and a shift in values is leading many Americans to reconsider older, established communities as attractive places to live." S. Rept. No. 94-187, 94th Cong., 1st Sess., at 3 (1975).

55. Hearings on FNMA, *supra*, n. 48, at 34; Hearings on S. 1397, *supra*, n. 49, at 44, 53; Committee Memorandum, *supra*, n. 49, at 8.

56. Hearings on FNMA, *supra*, n. 48, at 255, 259-261, 268-271; Hearings on S. 1397, *supra*, n. 49, at 8, 60; Committee Memorandum, *supra*, n. 49, at 2, 8-22.

57. Hearings on FNMA, *supra*, n. 48, at 416; Hearings on S. 1397, *supra*, n. 49, at 137-138, 200.

58. Hearings on S. 1397, *supra*, n. 49, at 65, 211.

59. Hearings on S. 1397, *supra*, n. 49, at 45, 51-53, 59, and 78-79; Committee Memorandum, *supra*, n. 50, at 25-26.

60. Hearings on FNMA, *supra*, n. 48, at 256; Witnesses complaining of effect of this attitude, Hearings on S. 1397, *supra*, n. 49, at 65, 221.

61. Hearings on FNMA, *supra*, n. 48, at 78, 109, 121, 772.

62. *Id.* at 120-121; Committee Memorandum, *supra*, n. 49, at 41.

63. A number of witnesses at the hearings questioned the propriety of FNMA's policy of constantly increasing the size of its mortgage portfolio. Hearings on FNMA, *supra*, n. 48, at 74-78, 389-400. In addition, they pointed out that a failure to balance mortgage purchases with sales, when this was feasible, was inconsistent with the Charter Act. See comments of Mortgage Bankers Association, *id.* at 171.

Profit motives underlie FNMA's desire to maintain a large portfolio. The income generated from the spread between earnings on its portfolio and its costs of borrowing is FNMA's largest source of income. The Library of Congress Congressional Research Service, "The Role of the Federal National Mortgage Association in the Secondary Mortgage Market," *id.* at 735. The substantial increases in FNMA's earnings have been caused primarily by a continually growing mortgage portfolio. *Id.* at 737. Portfolio earnings, of course, are a function of the positive spread between portfolio income and borrowing costs and the size of the portfolio. In 1977, this spread was 1.3 percent (1977 average portfolio return was 8.2 percent and 1977 average borrowing cost was 6.9 percent.) On a 1977 year-end portfolio of \$33,187,560, FNMA therefore obtained a gross return in excess of \$400 million.

64. Hearings on FNMA, *supra*, n. 48, at 2.

65. HUD has not conducted an audit of FNMA during the last 10 years. And although the Charter Act originally authorized GAO to conduct audits of FNMA, the provision which granted GAO that authority was repealed in 1974. See section 810(e) of the Charter Act, as enacted, repealed by Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 726.)

66. See section 808(e)(5) of the Civil Rights Act of 1968; 16 U.S.C. 245 et seq.

67. There is a clear nexus between the goal in § 81.15 which is designed to produce more FNMA supported mortgage activity in central cities and the goal in § 81.17 which is designed to assure that a percentage of FNMA's borrowings are used to finance housing for low- and moderate-income families. The maximum mortgage limits for FNMA's conventional mortgage purchase program, and the disproportionately large proportion of low- and moderate-income housing located in central city areas, assure that a central city conventional mortgage purchase program will be related to the goal of providing adequate housing for low- and moderate-income families. The legislative history of the Charter Act establishes the connection between housing for low- and moderate-income families and FNMA's support of sound mortgages in central cities. (See exchange of correspondence between Senator Sparkman and Secretary Weaver cited in the text.)

APPENDIX A—CENTRAL CITIES

		DISTRICT OF COLUMBIA	Haverhill	Whitman
		Washington	Holyoke	Worcester
			Lawrence	
		FLORIDA		MICHIGAN
		Boca Raton	Ann Arbor	Kalamazoo
		Bradenton	Battle Creek	Lansing
		Cocoa	Bay City	Muskegon
		Daytona Beach	Detroit	Muskegon Heights
		Fort Lauderdale	East Lansing	Norton Shores
		Fort Myers	Flint	Portage
		Gainesville	Grand Rapids	Saginaw
		Hollywood	Jackson	
		Jacksonville		MICHIGAN
		Lakeland	Duluth	Rochester
		Melbourne	Minneapolis	St. Cloud
			Moorhead	St. Paul
		GEORGIA		MISSISSIPPI
		Augusta		Madison
		Albany		Pascagoula
		Atlanta		
			Ellen	
		HAWAII	Gulfport	
		Honolulu	Jackson	
				MISSOURI
		IDAHO		St. Louis
		Boise City (Boise)		Springfield
		ILLINOIS		MONTANA
		Bloomington		Great Falls
		Champaign		
		Chicago		NEBRASKA
		Decatur		Omaha
		Kankakee		
		Moline		NEVADA
		Normal		Reno
				NEW HAMPSHIRE
		INDIANA		Nashua
		Anderson		
		Bloomington		NEW JERSEY
		East Chicago		New Brunswick
		Evansville		Passaic
		Fort Wayne		Paterson
		Gary		Perth Amboy
		Hammond		Sayreville
				Trenton
				Vineland
				NEW MEXICO
				Albuquerque
				NEW YORK
				Rochester
				Rome
				Schenectady
				Suffolk
				Syracuse
				Troy
				Utica
				NORTH CAROLINA
				Greensboro
				High Point
				Raleigh
				Wilmington
				Winston-Salem
				NORTH DAKOTA
				Grand Forks
				OHIO
				Lorain
				Mansfield
				Marion

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Cleveland	Middletown		WASHINGTON
Columbus	Springfield		
Dayton	Staubenville	Everett	Spokane
Elyria	Toledo	Kennewick	Tacoma
Hamilton	Warren	Richland	Yakima
Lima	Youngstown	Seattle	
	OKLAHOMA		WEST VIRGINIA
Lawton	Tulsa	Charleston	Weirton
Oklahoma City		Huntington	Wheeling
	OREGON	Parkersburg	
Eugene	Salem		WISCONSIN
Portland	Springfield	Appleton	Madison
		Eau Claire	Milwaukee
	PENNSYLVANIA	Green Bay	Oshkosh
Allentown	Lancaster	Kenosha	Racine
Altoona	Philadelphia	La Crosse	Superior
Bethlehem	Pittsburgh		
Easton	Reading		
Erie	Scranton		
Harrisburg	Wilkes-Barre		
Hazleton	Williamsport		
Johnstown	York		
	PUERTO RICO		
Caguas	Ponce		
Mayaguez	San Juan		
	RHODE ISLAND		
Pawtucket	Warwick		
Providence			
	SOUTH CAROLINA		
Charleston	North Charleston		
Columbia	Spartanburg		
Greenville			
	SOUTH DAKOTA		
Sioux Falls			
	TENNESSEE		
Bristol	Kingsport		
Chattanooga	Knoxville		
Clarksville	Memphis		
Johnson City	Nashville		
	TEXAS		
Abilene	Longview		
Amarillo	Lubbock		
Austin	McAllen		
Beaumont	Midland		
Brownsville	Odessa		
Bryan	Orange		
College Station	Pharr		
Corpus Christi	Port Arthur		
Dallas	San Angelo		
Denison	San Antonio		
Edinburg	San Benito		
El Paso	Sherman		
Fort Worth	Temple		
Galveston	Texarkana		
Harlingen	Texas City		
Houston	Tyler		
Killeen	Waco		
Laredo	Wichita Falls		
	UTAH		
Salt Lake City	Orem		
Ogden	Provo		
	VIRGINIA		
Colonial Heights	Petersburg		
Hampton	Portsmouth		
Hopewell	Richmond		
Lynchburg	Roanoke		
Newport News	Virginia Beach		
Norfolk			

APPENDIX B—BUSINESS ACTIVITIES REPORT

Pursuant to 24 CFR 81.22, FNMA shall supply the Secretary with a report containing the following information:

In order to avoid reporting potentially misleading information, FNMA shall supply, where necessary, information in addition to that requested. Wherever information is requested as to FNMA, the same information shall be separately supplied as to any subsidiaries or other persons in which FNMA has a substantial interest (other than as mortgage owner). Except where information is required to be given on a calendar year basis, or as of a specified date, it shall be given as of the latest practicable date.

As soon as is practicable FNMA shall inform the Secretary of the occurrence of any material change in the information provided in this report.

ITEM 1—BUSINESS

(a) Description of business activities:

(i) Describe the business done and intended to be done by FNMA (not as set out in the Charter Act but as actually or intended to be done).

(ii) Describe any material changes and developments since the beginning of the calendar year in the business activities done and intended to be done by FNMA. Describe any significant developments or trends in FNMA's business occurring over the preceding five years.

(iii) Describe in detail any planned or proposed new business activities or services to be undertaken by FNMA including the investment in such activities to date and any market survey or other studies undertaken relating to the activities or services.

(iv) Describe the competitive position of FNMA in the marketplace including, to the extent reasonably known: (i) FNMA's principal methods of competition; (ii) positive and negative factors affecting that position; and (iii) all competitors actual or proposed and their effect on that position.

(b) Reports on business activities:

(i) Provide a general plan for the conduct of FNMA's secondary market operations including but not limited to FNMA's assessment of: (a) The amount of supplementary assistance it will provide to the secondary market or residential mortgages; (b) the amount of additional obligational authority it will require; (c) the amount of increase or decrease, in the size of its mortgage portfolio expected over the year; (d) any action (other than the regular auction of commitments) it proposes to take to facilitate the transfer of mortgage funds from areas of credit surplus to areas of credit shortage; (e) any actions it proposes to take to increase

the use of its facilities in connection with mortgages secured by properties in central cities; (f) its needs for additional equity financing; (g) its target for return on equity; (h) its need to issue additional debt instruments; (i) the average and incremental cost of debt necessary to carry the mortgage portfolio; (j) the average and incremental return expected on the mortgage portfolio for the ensuing year; and (k) such other eventualities as prudent managers would consider and plan to deal with in the ensuing calendar year.

(ii) Provide not less than 15 workdays before the beginning of each calendar quarter, a special budget plan for the secondary market operations of FNMA for the following quarter. This plan shall include but not be limited to the following information with separate figures given for FHA-insured, VA-guaranteed, and conventional loans in the data relating to home loans:

(a) Estimated commitments to purchase home mortgage loans expected to be (i) offered to and (ii) accepted by FNMA under the Free Market System auctions and otherwise;

(b) Estimated FNMA purchases and sales of home mortgage loans or participation or other interests in such loans;

(c) Estimated commitments to purchase multifamily residential or other project loans expected to be (i) offered to and (ii) accepted by FNMA;

(d) Estimated purchases and sales of multifamily residential and other project loans or participation or other interests in such loans;

(e) Estimated amounts expected to be borrowed through issuance of debt securities, other than discount notes, (i) for repayment of maturing debt securities and (ii) for expected loan purchases.

(iii) Submit to the Secretary, simultaneously with delivery to the Office of Management and Budget, its report setting forth the dollar volume of its loan purchases and sales during the Federal fiscal year, together with projections of these data for the current calendar year, the following calendar year, and the current Federal fiscal year.

ITEM 2—PROPERTIES

State briefly the location and general character of the principal operating sites of FNMA and its subsidiaries whether held in fee or leased, and if leased, the expiration dates of material leases.

ITEM 3—PARENTS AND SUBSIDIARIES

Furnish a list of all parents and subsidiaries of FNMA and after each person named indicate the percentage of voting securities owned, or other basis of control, by its immediate parent, if any.

The list shall include FNMA and shall be prepared so as to show clearly the relationship as to each person named to FNMA and to the other persons named. If any person is controlled by means of the direct ownership of its securities by two or more persons to indicate by appropriate cross-reference. Include the jurisdiction in which each subsidiary is organized or does business.

ITEM 4—LEGAL PROCEEDINGS

Briefly describe any material pending legal proceedings other than routine litigation incidental to its business, to which FNMA is a party or of which any of its property is the subject. Include the name of

the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any proceedings known to be contemplated by governmental authorities.

ITEM 5—EXECUTIVE OFFICERS

(a) List the names and ages of all executive officers of FNMA and all persons chosen to become executive officers. State the nature of all family relationships between them. Indicate all positions and offices with FNMA held by each such person. State his or her term of office; the period during which he or she has served as an officer; and briefly describe any arrangement or understanding between the officer and any other person pursuant to which he or she was selected.

The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function and any other person who performs similar policy making functions for FNMA.

The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(b) Give a brief account of the business experience during the past five years of each executive officer, including the officer's principal occupation and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by FNMA for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. The information supplied should relate to the level of the officer's professional competence, which may include such specific information as the size or type of operation supervised.

ITEM 6—INDemnIFICATION OF DIRECTORS AND OFFICERS

State the general effect of any bylaw, contract, arrangement or statute under which any director or officer of FNMA is insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such an officer or director.

ITEM 7—SECURITY OWNERSHIP OF MANAGEMENT

Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of FNMA or of any of its parents or subsidiaries, other than director's qualifying shares beneficially owned by all directors and executive officers of FNMA individually and all directors and officers as a group without naming them. Show in column (2) the total number of shares beneficially owned and in column (3) the percent of total shares so owned. Of the number of shares shown in column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership.

- (1) Name of Executive Officer, Director, or Title of Class.
- (2) Amount Beneficially Owned.
- (3) Percent of Total.

ITEM 8—DIRECTORS AND OFFICERS

(a) List the name and age of each director of FNMA, the date on which the director's present term of office will expire and the nature of all other positions and offices with FNMA presently held by the director. The same information shall be provided with respect to each person chosen to become a director.

(b) If not previously reported, state the nature of any family relationship between each such director and any other director or any executive officer and give a brief account of his or her business experience during the past 5 years, including, principal occupations and employment during that period, and the name and principal business of any corporation or other organization in which such occupation or employment was carried on. Where a person has been on FNMA's board for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in previous positions to provide adequate disclosure of prior business experience.

(c) Describe any of the following events which may have occurred during the past 10 years with respect to any director or executive officer of FNMA:

(i) A petition filed by or against such person under the Bankruptcy Act or any state insolvency law; the court appointment of a receiver, fiscal agent or similar officer for business or property of such person, or any partnership in which he or she was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he or she was an executive officer at or within 2 years before the time of such filing; or

(ii) Conviction in a criminal proceeding (excluding traffic violations and other

minor offenses) or being the subject of a pending similar criminal proceeding or

(iii) Being subject to any order, judgment or decree of any court or agency of competent jurisdiction permanently or temporarily enjoining or restricting him or her from acting as an investment adviser, underwriter, broker or dealer in securities; or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company; or from engaging in or continuing any conduct or practice in connection with any such activity;

(iv) Identify all director committees or subcommittees. Set forth the functions and composition of any audit, nominations, executive compensation and/or conflict of interest committees or subcommittees;

(v) Identify the reasons for the resignation of any director within the period covered by this report.

ITEM 9—REMUNERATION OF DIRECTORS AND OFFICERS

(a) Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by FNMA and its subsidiaries during FNMA's last calendar year to the following persons for services in all capacities:

(1) Each director and each executive officer, naming each such director and officer. As to directors, include the basis on which the remuneration was paid and the number and date of each director meeting or other meeting attended by each director.

(2) All directors and officers of FNMA as a group, stating the number of persons in the group, without naming them.

This information shall be provided on an accrual basis. Any contracts of employment for these persons shall be attached.

Name of individual or number of persons in group	Capacities in which remuneration was received	Aggregate direct remuneration
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(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by FNMA or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph. (a)(1), naming each such person.

(2) All directors and officers of FNMA who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Amount set aside or accrued during registrant's last fiscal year	Estimated annual benefits upon retirement

Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors or officers as a group. The information called for by Column (C) may be given in the form of a table showing the

annual benefits payable upon retirement to persons in specified salary classifications. In the case of any plan (which must be reported under this section) where the amount set aside each year depends upon the amount of earnings of the registrant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information

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called for by Column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) Describe briefly all remuneration payments (other than accrued payments reported under paragraph (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (i) each director or officer named in answer to paragraph (a)(1), naming each such person, and (ii) all directors and officers of the registrant as a group, without naming them.

Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration pay-

ments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

ITEM 10—OPTIONS GRANTED TO MANAGEMENT TO PURCHASE SECURITIES

Furnish the following information, in substantially the tabular form indicated, as to all options to purchase any securities from FNMA or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the calendar year, and as to all options held by such persons as of the latest practicable date regardless of when such options were granted: (a) Each director and officer named in answer to Item 10(a)(1), naming each such person; and (b) all directors and officers of FNMA as a group, without naming them:

	Insert name	Insert name	Insert name	All directors and officers as a group
Options granted:				
Number of shares	_____	_____	_____	_____
Average option price per share	_____ \$	_____ \$	_____ \$	_____ \$
Options exercised:				
Number of shares	_____	_____	_____	_____
Aggregate option price of shares purchased	_____ \$	_____ \$	_____ \$	_____ \$
Aggregate market value of shares on date options were exercised	_____ \$	_____ \$	_____ \$	_____ \$
Unexercised options held at (insert date):				
Number of shares	_____	_____	_____	_____
Average option price per share	_____ \$	_____ \$	_____ \$	_____ \$

ITEM 11—INTEREST OF MANAGEMENT AND OTHERS

(a) Describe briefly any transactions since the beginning of the last calendar year or any presently proposed transactions, to which FNMA or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to FNMA, the nature of his or her interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of FNMA;
 - (2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person who is a director or officer of FNMA.
- It should be noted that this item calls for disclosure of indirect, as well as direct material interests in transactions.

A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with FNMA or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. A person who is a director, executive officer, partner, limited partner, trustee or fiduciary for or the holder of more than two percent of any class of ownership interests in any such firm, corporation or entity shall be deemed to have a material interest in any transactions with FNMA.

(b) State as to each of the following per-

sons who was indebted to FNMA or its subsidiaries at any time since the beginning of the last calendar year of FNMA, (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon:

- (1) Each director or officer of FNMA; and
- (2) Each associate of any such director or officer.

This subparagraph does not apply to any person whose indebtedness was incurred in the regular course of FNMA's business.

(c) Describe briefly any transactions since the beginning of FNMA's last calendar year or any presently proposed transaction, to which any pension, retirement, savings or similar plan provided by FNMA or any of its parents or subsidiaries, was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to FNMA, the nature of his or her interest in the transaction and, where practicable, the amount of such interest:

- (1) Any director or officer of FNMA;
- (2) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person who is a director or officer of FNMA;

or
(3) FNMA or any of its subsidiaries.

No information need be given in answer to subparagraph (c) with respect to payments to the plan or payments to beneficiaries, pursuant to the terms of the plan or to any interest of FNMA or any of its subsidiaries which arises solely from its general interest in the success of the plan.

APPENDIX C—REGULAR REPORTS

Pursuant to 24 CFR 81.23, FNMA shall submit certain regular reports to the Secre-

tary. All dollar figures shall be in millions of dollars, unless otherwise specified.

1. AUCTIONS OF COMMITMENTS TO PURCHASE LOANS

Provide the results of each Free Market System auction of commitments to purchase home mortgage loans, including the status of obligational authority using the following form:

Results of free market system auctions

	Received			Accepted		
	FHA-VA loans	Conventional loans	Total loans	FHA-VA loans	Conventional loans	Total loans
(a) Date of auction						
(b) Number of offers						
(c) Dollar value of offers						
(d) Number of competitive offers						
(e) Number of noncompetitive offers						
(f) Dollar value of noncompetitive offers						
(g) Highest yield on offers						
(h) Lowest yield on offers						
(i) Average yield on offers						
(j) Median yield on offers						
(k) Total value offered by mortgage companies						
(l) Total value offered by mutual savings banks						
(m) Total value offered by savings and loan associations						
(n) Total value offered by other lender groups						
(o) Total value offered by all lender groups						
(p) Number of offers from sellers who made two or more offers						
(q) Number of such sellers who made two or more offers						
(r) Dollar value of offers from sellers who made two or more offers						

RESULTS OF FREE MARKET SYSTEM AUCTIONS

STATUS OF OBLIGATIONAL AUTHORITY

- (a) Total obligation authority.
- (b) Per (date of latest authorization).
- (c) Obligational authority committed.
- (d) Obligational authority available.
- (e) Expected mortgage repayments over next calendar month.
- (f) Commitments outstanding.
- (g) Expected run off of commitments over next calendar month.
- (h) New commitments expected to be accepted during next calendar month.

2. STANDBY COMMITMENTS

Provide a tabulation of convertible standby commitments issued during the month for home and project mortgage loans, including the following data with separate figures for (a) FHA insured-VA guaranteed home loans (b) conventional home loans and (c) FHA insured project loans:

- (a) Month, year.
- (b) Number of commitments issued.
- (c) Dollar value of commitments issued.
- (d) Highest yield required.
- (e) Lowest yield required.
- (f) Average yield.
- (g) Median yield required.

3. INVESTORS PURCHASING FNMA SECURITY ISSUES

Provide a tabulation showing which investor groups purchased the securities issued by FNMA during the quarter. For the report filed following the last annual quarter, this information shall be provided on a cumulative basis for all securities issued.

Separate figures should be shown for purchases of long-term securities (greater than six month maturity) and short-term securities as well as total securities purchased by each of the following investor groups:

- (a) Commercial banks (excluding trust departments).
- (b) Mutual savings banks.
- (c) Savings and loan associations.
- (d) Life insurance companies.
- (e) State and local government retirement funds.
- (f) State and local governments.
- (g) Private, non-insured pension funds.
- (h) Credit unions.
- (i) Bank administered personal trusts and estates.
- (j) Fire and casualty insurance companies.
- (k) Non-financial corporations.
- (l) Individuals and others.
- (m) Retained by members of selling group classified by the Federal Reserve Bank of

New York as "Government Security Dealers".

(n) Retained by other members of selling group not so classified.

4. STATEMENT OF LOAN PORTFOLIO

Provide a statement of the FNMA loan portfolio, indicating both aggregate dollar amounts of mortgages and the number of mortgages, as of the end of each calendar quarter in the following categories:

- (a) Quarter, year.
- (b) VA guaranteed.
- (c) Conventional.
- (d) FHA Section 203.
- (e) FHA Section 221 (d)(2).
- (f) FHA Section 235.
- (g) Other FHA insured home loans.
- (h) Total dollar amount and number of mortgages reported in (b)-(g).
- (i) In central cities.
- (j) In suburbs.
- (k) In other areas.
- (l) FHA insured project mortgages (indicate number of dwelling units covered by each project mortgage).

NOTE: For each of the categories enumerated above indicate:

- (1) Number of loans with one monthly debt service payment due at the end of the quarter.
- (2) Number of loans with two monthly debt service payments due at the end of the quarter.
- (3) Number of loans with three or more monthly debt service payments due at the end of the quarter.
- (4) Number of loans assigned, repurchased, or foreclosed during the quarter.

5. CHARACTERISTICS OF CURRENT MORTGAGE PURCHASES

Provide a print-out of all mortgages purchased by FNMA during the quarter indicating the following:

- (a) Geographic location by Standard Metropolitan Statistical Area (SMSA) or county if outside an SMSA location by census tract. (Indicate for each property within an SMSA whether the location is in a central city or a suburb).
- (b) purchase price of home.
- (c) mortgage amount.
- (d) age of property.
- (e) income of owner-occupant.
- (f) median income of SMSA or non SMSA county in which property is located and (g) type of financing (FHA, VA or conventional loan).

Provide a summary of all mortgages purchased in the following categories:

- (a) Central city.
- (b) Suburban.
- (c) Other.

HOUSING FOR LOW AND MODERATE INCOME FAMILIES

- (d) FHA § 221.
- (e) FHA § 235.
- (f) FHA § 236.
- (g) FHA § 237.
- (h) Total number of units in housing projects defined in § 81.2(1)(2) which are not reported under clauses (d) or (f) above.
- (i) Single family dwellings defined in § 81.2(1)(3) which are not reported under clauses (e) or (g) above.

NOTE: The information requested by clauses (a), (b), (c), and (i) should be presented separately for:

- (1) Conventional home loans.
- (2) VA guaranteed home loans.

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- (3) FHA § 203 loans.
 (4) All other FHA insured home loans.

6. YIELDS ON LOANS PURCHASED

Provide a tabulation showing the average yield (gross of loan servicing) of (a) the home mortgage loans, and (b) project loans purchased during the quarter. If the loans were purchased via a (GNMA Tandem Plan, the purchase price and yield should reflect the effective price at which the loans were purchased.

Note: The distribution by average yield should be provided separately (where applicable) for

- (a) Conventional loans.
 (b) VA guaranteed loans.
 (c) FHA Section 203 loans.
 (d) All other FHA insured home loans.
 (e) Total home loans.
 (f) All FHA project loans.

7. SELLERS AND PURCHASERS OF MORTGAGE LOANS

Provide a tabulation by lender (group) of the dollar amount and number of loans purchased from and sold to during the quarter, with separate information for home mortgage loans and project loans. The lender groups include:

- (a) Mortgage companies.
 (b) Commercial banks.
 (c) Mutual savings banks.
 (d) Savings and loans associations.
 (e) Government National Mortgage Association.
 (f) All other financial institutions.
 (g) Total institutions and agencies.

8. REVENUES, EXPENDITURES AND NET INCOME

Provide a tabulation of the revenues, expenditures and net income (measured in thousands of dollars) during the quarter, including the following:

1. REVENUES

- (a) Quarter, year.
 (b) Interest and discounts on home mortgage loans.
 (c) Interest and discounts on project mortgage loans.
 (d) Income from investments in securities.

- (e) Commitment fees for home mortgage loans.
 (f) Commitment fees for project mortgage loans.
 (g) Capital gains on sales of mortgages.
 (h) Compensation for services performed for Government National Mortgage Association.
 (i) Foreclosure claims collected.
 (j) Other income (explain in footnotes).
 (k) Total revenues.

In addition, the quarterly report should also show a breakdown of the commitment fees, measured in thousands of dollars, as follows:

- (a) Underwriting revenue fees.
 (b) Offer fees for competitive Free Market System bids.
 (c) Commitment fees for Free Market System offers accepted.
 (d) Proceeding fees for Convertible Standby Commitment Offers.
 (e) Commitment fees for Convertible Standby Commitment offers accepted.
 (f) Commitment fees upon delivery of a non-converted Convertible Standby Commitment.
 (g) Commitment fees upon receipt of a conversion of Convertible Standby Commitments.

II. EXPENDITURES

- (a) Quarter, year.
 (b) Interest cost on discount notes.
 (c) Interest cost on all other debt securities.
 (d) Capital losses on sales of mortgages.
 (e) Loan servicing fees paid to servicers of home mortgage loans.
 (f) Loan servicing costs attributable to project mortgage loans holdings.
 (g) Actual losses suffered because of foreclosure actions.
 (h) Provisions for possible future losses on mortgage portfolio (amounts credited to reserves for losses).
 (i) Costs attributable to fiscal agent department and other costs associated with issuance of debt securities.
 (j) Costs associated with sale or issuance of common stock.

- (k) Payments to transfer agents and registrars for FNMA securities.
 (l) Payments to independent public auditors.
 (m) Payments for office space and equipment.
 (n) Total salary payments to principal FNMA officers.
 (o) Other salaries and expenses for FNMA staff.
 (p) Total expenditures.

III. NET INCOME

- (a) Quarter, year.
 (b) Total revenues (line I (k)).
 (c) Total expenditures (line II (p)).
 (d) Net income (line b minus line c).
 (e) Adjusted net income before taxes (adjustments for non-deductible items plus other adjustments, which should be explained in footnotes to table).
 (f) Federal income taxes paid or payable.
 (g) Transfers to retained earnings.
 (h) Dividend payments.

9. COMMON STOCK

Provide a tabulation showing the distribution of the holdings of FNMA's outstanding common stock, as of the end of each calendar quarter, including the following:

- (a) Quarter, year.
 (b) Number of shares held by sellers of mortgage loans.
 (c) Number of shares held by financial institutions.
 (d) Number of shares held by individuals.
 (e) Number of shares held by security dealers.
 (f) Number of shares held by others.
 (g) Total number of shares outstanding.
 (h) Changes in number of shares outstanding (including date of change).
 (i) Per share earnings, dividends.

Where information reported under this section as to the beneficial ownership of stock is unavailable to FNMA, it may be supplied by "street name" or nominee identifications. The basis for the computation of per share earnings shall also be set forth including the number of shares used in the computation.

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