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Rules and Regulations

Federal Register
Vol. 69, No. 85
Monday, May 3, 2004

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–47–AD; Amendment 39–13566; AD 2004–07–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2004–07–22 that was published in the **Federal Register** on April 7, 2004 (69 FR 18250). The typographical error resulted in reference to an incorrect paragraph number. This AD is applicable to all Boeing Model 747 series airplanes. This AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure.

DATES: Effective May 12, 2004.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2004–07–22, amendment 39–13566, applicable to all Boeing Model 747 series airplanes, was published in the **Federal Register** on April 7, 2004 (69 FR 18250). That AD requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure.

As published, Note 1 of the AD has a typographical error in the paragraph reference of the sentence "requesting approval for an alternative method of compliance per paragraph (h)(1) of this AD." The correct reference is paragraph (g)(1) of this AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains May 12, 2004.

§ 39.13 [Corrected]

■ On page 18254, in the first column, Note 1 of AD 2004–07–22 is corrected to read as follows:

* * * * *

Note 1: * * * For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance per paragraph (g)(1) of this AD. * * *

* * * * *

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9899 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17148; Airspace Docket No. 04–ACE–14]

Modification of Class E Airspace; Festus, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Festus, MO.

DATES: *Effective Date:* 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 2004 (69 FR 10606). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 19, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9920 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17149; Airspace Docket No. 04–ACE–15]

Modification of Class E Airspace; Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Fulton, MO.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal

Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 2004 (69 FR 10608). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 20, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9919 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17151; Airspace Docket No. 04–ACE–17]

Modification of Class E Airspace; Johnson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Johnson, KS.

DATES: *Effective Date:* 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 12, 2004 (69 FR 11797). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 21, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9918 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17147; Airspace Docket No. 04–ACE–13]

Modification of Class E Airspace; Excelsior Springs, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Excelsior Springs, MO.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 2004 (69 FR 10604). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 19, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9917 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17420; Airspace Docket No. 04–ACE–21]

Modification of Class E Airspace; Moberly, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Moberly, MO. The Omar N. Bradley Airport airport reference point (ARP) has been redefined. A review of controlled airspace for Omar N. Bradley Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 2, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17420/ Airspace Docket No. 04–ACE–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Moberly, MO. The Omar N. Bradley Airport ARP was redefined on March 23, 2004, in National Flight Data Digest 056–9. An examination of controlled airspace for Omar N. Bradley Airport revealed it does not the meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient to 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment reduces the airspace area from a 6.5-mile radius to a 6.4-mile radius of Omar N. Bradley Airport, incorporates the revised ARP and brings the legal description of the Moberly, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17420/Airspace Docket No. 04–ACE–21." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

ACE MO E5 Moberly, MO

Moberly, Omar N. Bradley Airport, MO
(Lat. 30°27′50″ N., long. 92°25′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5–mile radius of Omar N. Bradley Airport.

* * * * *

Issued in Kansas City, MO on April 13, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9916 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17423; Airspace Docket No. 04–ACE–24]

Modification of Class E Airspace; Gothenburg, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Gothenburg, NE. A review of controlled airspace for Quinn Field revealed it does not comply with the criteria for 700 feet above ground level (AGL)

airspace required for diverse departures. The review also identified other discrepancies in the legal description for the Gothenburg, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 3, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17423/ Airspace Docket No. 04–ACE–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Gothenburg, NE. An examination of controlled airspace for Quinn Field revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also identified discrepancies in the Quinn Field ARP. The Class E airspace extension and the bearing from Willow NDB describing the Class E airspace area extension are deleted. The extension is totally enclosed within the Cozad, NE Class E airspace area and is therefore redundant. This amendment expands the airspace area from a 6-mile radius to a 6.5-mile radius of Quinn Field, corrects the ARP in the legal description, deletes the extension and reference to Willow NDB and brings the legal description of the Gothenburg, NE Class E airspace areas into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 fee or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17423/Airspace Docket No. 04–ACE–24." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

ACE NE E5 Gothenburg, NE

Gothenburg, Quinn Field, NE

(Lat. 40°55′35″ N., long. 100°08′54″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Quinn Field.

* * * * *

Issued in Kansas City, MO, on April 20, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9915 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17152; Airspace Docket No. 04–ACE–18]

Modification of Class E Airspace; Cassville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Cassville, MO.

DATES: *Effective Date:* 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 12, 2004 (69 FR 11795). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 21, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region..

[FR Doc. 04–9914 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17150; Airspace Docket No. 04–ACE–16]

Modification of Class E Airspace; Gideon, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Gideon, MO.

DATES: *Effective Date:* 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 12, 2004 (69 FR 11794). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 10, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on April 20, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–9913 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–17042; Airspace Docket No. 04–AAL–03]

Revision of Class E Airspace; Platinum, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Platinum, AK to provide adequate controlled airspace to contain aircraft executing a new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) above the surface at Platinum, AK.

EFFECTIVE DATE: 0901 UTC, August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 25, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to add to the Class E airspace upward from 700 ft. above the surface at Platinum, AK (69 FR 8585). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing a new SIAP for the Platinum Airport. The new approach is Area Navigation-Global Positioning System (RNAV GPS) Runway 13, original. Additional Class E controlled airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Platinum Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations* *and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 revises Class E airspace at Platinum, Alaska. Additional Class E airspace is being created to accomodate aircraft executing a new SIAP and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Platinum Airport, Platinum, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Platinum, AK [Revised]

Platinum Airport, AK

(Lat. 59°00′41″ N., long. 161°49′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Platinum Airport.

* * * * *

Issued in Anchorage, AK, on April 22, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–9911 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17019; Airspace Docket No. 04–AAL–02]

Establishment of Class E Airspace; Wales, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Wales, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP) and a new Textual Departure Procedure. This Rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 feet above the surface at Wales, AK.

DATES: *Effective Date:* 0901 UTC, August 5, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 25, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Wales, AK (69 FR 8586). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures and a new Departure Procedure for the Wales Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) RWY 18 original and RNAV GPS RWY 36, original. New Class E controlled airspace extending upward from 700 feet and 1,200 feet above the surface in the Wales Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Wales, Alaska. This additional Class E airspace was created to accomodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Wales Airport, Wales, Alaska.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Wales, AK [New]

Wales Airport, AK

(Lat. 65°37′26″ N., long. 168°05′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.35-mile radius of the Wales Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 65°24′00″ N 168°30′00″ W to 65°53′00″ N 168°30′00″ W to 66°00′00″ N 167°50′00″ W to 65°24′00″ N 167°50′00″ W to point of beginning excluding that airspace within Tin City Class E airspace area.

* * * * *

Issued in Anchorage, AK, April 22, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–9910 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. FAA–2000–7479; Amendment Nos. 121–304, 135–94]

RIN 2120–AG96

Certification of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical correction.

SUMMARY: The Federal Aviation Administration (FAA) is making a minor technical change to a final rule published in the **Federal Register** on February 10, 2004 (69 FR 6380). That final rule revises the airport certification regulations and establishes certification requirements for certain airports. This technical change substitutes for the word "shall" the word "must" to reflect the current legal practice for mandatory language. It also provides consistent use of this word within the part. This correction is not a substantive change.

EFFECTIVE DATES: These technical changes are effective on June 9, 2004.

FOR FURTHER INFORMATION CONTACT: Linda Bruce; Airport Safety and Operations Division; Office of Airport Safety and Standards; FAA; 800 Independence Avenue, SW.; Washington, DC 20591; telephone (202) 267–8553; or e-mail *Linda.Bruce@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA published in the **Federal Register** of February 10, 2004 (69 FR 6380), a final rule revising the airport certification regulations and establishing certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats, but less than 31 passenger seats. The final rule also amends the air carrier operation regulations to conform with changes to airport certification requirements. The final rule is necessary to ensure safety in air transportation at all certificated airports and becomes effective June 9, 2004.

In 14 CFR part 139, the final rule establishes a large number of requirements applicable to both airport and aircraft operators. The final rule uses both the word "shall" and the word "must" to establish the requirements. For example, compare final § 139.907(a)(3) "The full-strength surfaces *shall* be adequately compacted * * *." with final § 139.907(a)(4) "The full-strength surfaces *must* have no holes * * *." The FAA is concerned that two different ways of establishing requirements may suggest separate meanings. It is simpler and clearer to establish requirements in a consistent manner. For this reason, we are using this technical correction to change all requirements to a consistent format. We have chosen to replace "shall" with "must" to avoid possible confusion over the meaning of "shall." This action is consistent with the advice of legal drafting authorities. *See* Bryan A. Garner, *A Dictionary of Modern Legal Usage,* 939–42 (2nd ed. 1995) and Richard C. Wydick, *Plain English for Lawyers,* 66–67 (4th ed. 1998). This change is editorial in nature. We intend no substantive changes to any of the requirements established by the final rule. This correction does not impose any additional requirements on operators affected by these regulations.

Justification for Expedited Rulemaking

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections and do not change the requirements of the rule. Thus, notice and public procedure are unnecessary.

List of Subjects in 14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ Accordingly, the FAA amends Chapter 1 of Title 14 of the Code of Federal Regulations as follows:

PART 139—CERTIFICATION OF AIRPORTS

■ 1. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44706, 44709, 44719.

■ 2. Amend Part 139 by correcting all references to the word "shall" to read "must" in the following locations:

a. Section 139.7;

b. The introductory language of § 139.103;

c. Section 139.105;

d. The second and third sentences of § 139.113;

e. The introductory language of paragraph (b) and paragraph (c) of § 139.201;

f. Paragraphs (a) and (b) of § 139.203;

g. Paragraph (b) of § 139.205;

h. The introductory language of § 139.301;

i. The introductory language, the second and third sentences of paragraph (c), and the second sentence of paragraph (d) of § 139.303;

j. The introductory language of paragraph (a) and paragraphs (a)(1) through (a)(6) of § 139.305;

k. The introductory language of paragraph (a) and paragraphs (a)(1) through (a)(3) of § 139.307;

l. The introductory language of paragraphs (a) and (b) and paragraphs (b)(1) through (b)(4) of § 139.309;

m. The introductory language of paragraphs (a) and (b); paragraphs (b)(2) and (3); the first and second sentences of paragraph (c); and paragraphs (d), (e), and (g) of § 139.311;

n. Paragraph (a) and the introductory language of paragraph (b) of § 139.313;

o. The first and second sentences of the introductory language of paragraph (f), paragraph (f)(2), and paragraphs (i) and (k) of § 139.317;

p. Paragraphs (a) and (b); the introductory language of paragraphs (d) through (g); paragraphs (g)(1) and (2); the first, second, and third sentences of paragraph (g)(3); the introductory language of paragraph (h); the introductory language of paragraph (h)(2); paragraphs (h)(2)(i) and (ii); the introductory language of paragraph (i); the second and third sentences of paragraph (i)(2); paragraph (i)(3); the second and third sentences of paragraph (i)(4); paragraph (i)(5); and paragraphs (j), (k), and (m) of § 139.319;

q. The first and second sentences of paragraphs (a) and (b), paragraph (c) in two places, paragraph (d), the introductory language of paragraph (e), the first and second sentences of paragraph (e)(1), paragraph (e)(2), and the first and second sentences of paragraphs (f) and (g) of § 139.321;

r. The first and second sentences of the introductory language of paragraph (a); paragraph (e); the first and third sentences of paragraph (f); the introductory language of paragraph (g); and paragraphs (h), (i), and (k) of § 139.325;

s. The introductory language of paragraphs (a), (b), (b)(3), and (c) of § 139.327;

t. The introductory language and the second sentences of paragraph (f)(1) and (2) of § 139.329;

u. The first sentence of § 139.331;

v. The introductory language of § 139.333;

w. The introductory language of paragraph (a) of § 139.335;

x. Paragraph (a) and the introductory language of paragraphs (b) through (e) of § 139.337;

y. The introductory language and paragraph (d) of § 139.339;

z. The introductory language of paragraph (a) of § 139.341; and

aa. Section 139.343.

Issued in Washington, DC, on April 27, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 04–9912 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2004D–0065]

Guidance for Industry: Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)." The guidance responds to various questions raised about section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulation, which require the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Prior Notice Help Desk at 1–800–216–7331 or 301–575–0156, or FAX: 301–210–0247. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Domenic Veneziano, Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 866–521–2297.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA issued an interim final rule (IFR) to implement section 307 of the Bioterrorism Act. The prior notice regulation requires the submission to FDA beginning on December 12, 2003, of prior notice of food, including animal feed, that is imported or offered for import into the United States. On December 16, 2003, FDA issued the first edition of a guidance entitled "Prior Notice of Imported Food Questions and Answers (Edition 1)." This guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)" is a revision of the guidance published on December 16, 2003, and responds to additional questions about the prior notice IFR. It is intended to help the industry better understand and comply with the regulation in 21 CFR part 1, subpart I. FDA is issuing this guidance entitled "Questions and Answers Regarding the Interim Final Rule on Prior Notice of Imported Food (Edition 2)" as a level 1 guidance. Consistent with FDA's good guidance practices regulation (§ 10.115(g)(2) (21 CFR 10.115)(g)(2)), the agency will accept comments, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. As noted, the Bioterrorism Act requires prior notice submission to FDA starting on December 12, 2003. Clarifying the provisions of the IFR will facilitate timely and accurate prior notice submissions and thus, assist in the implementation of the IFR. FDA continues to receive a large number of questions regarding the prior notice IFR, and is responding to these inquires under § 10.115 as promptly as possible, using a question-and-answer format. The agency believes that it is reasonable to maintain all responses to questions concerning prior notice of imported food in a single document that is periodically updated as the agency receives and responds to additional questions. The following four indicators will be employed to help users of the guidance identify revisions: (1) The guidance will be identified as a revision of a previously issued document, (2) the revision date of the guidance will appear on its cover, (3) the edition number of the guidance will be included in its title, and (4) questions and answers that have been revised or added to the original guidance will be identified as such in the body of the guidance.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–10023 Filed 4–29–04; 11:01 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9123]

RIN 1545–AY17

Electing Mark to Market for Marketable Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide procedures for certain United States persons holding marketable stock in a passive foreign investment company (PFIC) to elect mark to market treatment for that stock under section 1296 of the Internal Revenue Code and related provisions of sections 1291 and 1295. These final regulations affect United States persons owning marketable stock in a PFIC.

DATES: *Effective Date:* These regulations are effective May 3, 2004.

Applicability Date: For dates of applicability, see §§ 1.1291–1(j), 1.1295–1(k), and 1.1296–1(j).

FOR FURTHER INFORMATION CONTACT: Alexandra K. Helou, (202) 622–3840 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2002, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–112306–00; 2002–44 I.R.B. 767) under section 1296 and related provisions of the Internal Revenue Code (Code). Two written comments were received in response to the notice of proposed rulemaking. No public hearing was requested or held on the notice of proposed rulemaking. After consideration of the comments, the proposed regulations are adopted as final regulations with the modifications discussed below.

Summary of Public Comments and Explanation of Changes

A. Deferral of Post-October PFIC Losses by Regulated Investment Companies (RICs) Under Section 852(b)(10)

One commentator recommended that the regulations provide guidance regarding the determination of post-October "net reduction in value" of PFIC stock held by a RIC under section 852(b)(10). Section 852(b)(10) provides that taxable income of a RIC (other than a RIC to which an election under section 4982(e)(4) applies) shall be computed without regard to any net reduction in value occurring after October 31 of the taxable year of any stock of a PFIC with respect to which an election under section 1296(k) is in effect and that any such reduction shall be treated as occurring on the first day of the following taxable year.

To address concerns relating to a RIC's post-October period, the commentator provided three recommendations. First, that the regulations clarify whether the deferral of post-October PFIC losses under section 852(b)(10) is elective or mandatory; second, that RICs be permitted to defer their post-October losses under rules similar to those that apply to foreign currency gains and losses under § 1.852–11; and third, that RICs be allowed to include actual post-October dispositions of PFIC stock when computing losses eligible for deferral.

The IRS and Treasury have considered these recommendations and determined that the issues raised with respect to section 852(b)(10) are issues under the RIC tax provisions that are beyond the scope of this regulations project.

B. Situations Arising From Different Tax Years of RICs and the Foreign Corporations in Which They Invest

One commentator requested guidance in instances where the RIC and a foreign corporation in which it invests have different or "mismatching" taxable years. This commentator noted that a RIC may experience uncertainties with respect to determining its taxable income and minimum distribution amount in situations where, following the end of its taxable year, the RIC learns that a foreign corporation in which it has invested is a PFIC or that the foreign corporation no longer satisfies the income or asset tests of section 1297(a) for the current taxable year. To address administrative concerns arising in this situation, this commentator recommended that RICs be permitted to recognize a change in a foreign corporation's PFIC status in the RIC's taxable year within which the taxable year of the foreign corporation ends.

Issues arising from different taxable years are not specific to PFICs for which a taxpayer has made a section 1296 election. Accordingly, this issue is beyond the scope of this regulations project. However, comments are requested for approaches that address issues arising when a taxpayer and a PFIC have different taxable years. Such issues may be addressed in a future regulations project.

C. Situations Where a RIC Owns Stock in a Foreign Corporation That No Longer Satisfies the PFIC Definition in the Current Year

One commentator suggested that the regulations should address certain issues that arise with respect to a shareholder that has made a section 1296 election for its PFIC stock and the foreign corporation does not satisfy the income or asset test in section 1297(a) for the year. First, the commentator suggested that the regulations clarify that the character of gains from the disposition of the stock of the foreign corporation during the time that the corporation did not qualify as a PFIC should be capital gain. The commentator also requested that the regulations provide that the character of losses with respect to stock for which a section 1296 election was made but that is recognized in a taxable year during which the foreign corporation is not a PFIC be treated as ordinary income to the extent of any unreversed inclusions at the time of disposition.

After consideration of these comments, and in accordance with the statutory provisions of section 1296, the IRS and Treasury have adopted the first comment, but not the second comment. Accordingly, two examples were added to the regulations. *Example 2* in § 1.1296–1(c)(7) clarifies that any gain from the disposition of stock of a foreign corporation that does not qualify as a PFIC for the year of disposition will be capital gain because section 1296(c)(1)(A) no longer applies at such time. In the case of losses with respect to stock for which a section 1296 election was made but that is recognized in a taxable year during which the foreign corporation is not a PFIC, *Example 4* in § 1.1296–1(c)(7) was added to clarify that any loss from the disposition of such stock will be a capital loss because section 1296(c)(1)(B) no longer applies at such time.

Second, the commentator recommended that the regulations provide automatic consent for RICs to terminate a section 1296 election during a year that a foreign corporation no longer satisfies the requirements for PFIC status. The IRS and Treasury have not adopted this recommendation. The IRS and Treasury believe that it is appropriate to require consent of the Commissioner to terminate a section 1296 election. Under § 1.1296–1(h)(3), a shareholder can request the consent of the Commissioner to revoke a section 1296 election upon a finding of a substantial change in circumstances, which may include a foreign corporation ceasing to be a PFIC.

D. Technical Coordination Issues Arising From Marking PFIC Stock to Market Under the Former Proposed § 1.1291–8 and Notice 92–53

A commentator suggested that the regulations should clarify how the former proposed § 1.1291–8 (*see* Notice 92–53 (1992–2 C.B. 384)) and the current statutory PFIC mark to market rules under section 1296 interact. For example, the commentator requested clarification concerning the RIC's adjustments to the basis of its PFIC stock to reflect gains previously included under the former proposed § 1.1291–8.

The IRS and Treasury believe that no additional clarification is needed. To the extent a taxpayer increased its basis or received a new holding period under the former proposed § 1.1291–8, those consequences will be respected even though the proposed regulations were withdrawn without being finalized following the enactment of current section 1296 (*see* 64 FR 5015 (February 2, 1999) withdrawing proposed § 1.1291–8). As a result, the suggestion was not adopted.

This same commentator also recommended that *Example 2* of proposed § 1.1296–1(i)(4) be clarified by specifically providing that the RIC had not made a mark to market election under the former proposed § 1.1291–8. The commentator suggested this modification to eliminate potential ambiguities that may arise over the relationship between an election under the former proposed § 1.1291–8 and section 1296. This suggestion was adopted, and the example has been revised accordingly.

E. The Regulations Should Allow Qualified Shareholders To Make Protective and Retroactive Mark to Market Elections

One commentator recommended that the regulations should provide rules similar to those contained in the qualified electing fund (QEF) regime for purposes of making a retroactive QEF election. The IRS and Treasury have considered this comment and continue to believe that the appropriate process for retroactive relief for late mark to market elections is under the § 301.9100 relief provisions, as set forth in § 1.1296–1(h)(1)(iii). Accordingly, this suggestion was not adopted.

F. Termination of Existing Section 1296 Mark to Market Elections Without the Consent of the Commissioner

One commentator suggested permitting a taxpayer with an existing section 1296 election to make a QEF election and terminate its existing 1296 election without the consent of the Commissioner. The proposed regulations were structured to facilitate an election for mark to market treatment by permitting a taxpayer with an existing QEF election to make a section 1296 election and terminate the existing QEF election without requiring the consent of the Commissioner. Conversely, a taxpayer with an existing section 1296 election is permitted to make a QEF election only if the section 1296 election is terminated as provided by section 1296 and the regulations thereunder (*e.g.*, if the PFIC stock ceases to be marketable) or is revoked with consent of the Commissioner. This approach reflects consideration of the relative administrative burdens imposed under each set of rules, and the stated intent of Congress that one of the purposes for enacting section 1296 was to provide another alternative to the interest charge rules of section 1291 that would be available in instances where taxpayers cannot obtain sufficient information to make a QEF election. See H.R. Rep. No. 105–148, at 533 (1997); S. Rep. No. 105–33 at 94 (1997). After consideration of the comment, the IRS and Treasury continue to believe the rules coordinating QEF elections and mark to market elections under section 1296 are appropriate for the reasons discussed above. Accordingly, this recommendation was not adopted.

G. Proposals To Enhance the Utility of QEF Elections for RICs

One commentator provided two suggestions focused on enhancing the utility of QEF elections for RICs. Specifically, the commentator first suggested allowing RICs to use U.S. Generally Accepted Accounting Principles (U.S. GAAP) or International Financial Reporting Standards (IFRS) for purposes of computing QEF inclusions under section 1295(a)(2). The commentator also suggested revising the retroactive QEF election rules in cases where a RIC learns of the PFIC status of a foreign corporation immediately prior to the deadline for making a QEF election. These comments, which raise issues regarding the QEF rules, are beyond the scope of this regulation. Accordingly, these comments were not adopted but will be considered in the context of any guidance to be issued under the appropriate substantive provisions.

H. Additional Revisions

The final regulations also clarify that the regulations apply to taxable years beginning on or after May 3, 2004. Additionally, the several examples in proposed § 1.1296–1(c) have been grouped together in new § 1.1296–1(c)(7) in order to make the regulation more readable.

Special Analysis

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

Drafting Information

The principal author of these regulations is Alexandra K. Helou, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes; Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.1296–1 also issued under 26 U.S.C. 1296(g) and 26 U.S.C. 1298(f). * * *

§ 1.1291–0 [Amended]

■ 2. § 1.1291–0 (table of contents) is amended by revising the introductory text and by adding the entries for § 1.1291–1 to read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

This section contains a listing of the headings for §§ 1.1291–1, 1.1291–9, and 1.1291–10.

* * * * *

§ 1.1291–1 [Amended]

■ 3. Section 1.1291–1 is amended by:
■ 1. Revising paragraphs (a) through (d).
■ 2. Adding paragraphs (f) through (j).

The revisions and additions read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs.

(a) and (b) [Reserved].

(c) *Coordination with other PFIC rules.*

(1) and (2) [Reserved].

(3) *Coordination with section 1296: distributions and dispositions.* If PFIC stock is marked to market under section 1296 for any taxable year, then, except as provided in § 1.1296–1(i), section 1291 and the regulations thereunder shall not apply to any distribution with respect to section 1296 stock (as defined in § 1.1296–1(a)(2)), or to any disposition of such stock, for such taxable year.

(4) *Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296*—(i) *In general.* If PFIC stock is marked to market for any taxable year under section 475 or any other provision of chapter 1 of the Internal Revenue Code, other than section 1296, regardless of whether the application of such provision is mandatory or results from an election by the taxpayer or another person, then, except as provided in paragraph (c)(4)(ii) of this section, section 1291 and the regulations thereunder shall not apply to any distribution with respect to such PFIC stock or to any disposition of such PFIC stock for such taxable year. *See* §§ 1.1295–1(i)(3) and 1.1296–1(h)(3)(i) for rules regarding the automatic termination of an existing election under section 1295 or section 1296 when a taxpayer marks to market PFIC stock under section 475 or any other provision of chapter 1 of the Internal Revenue Code.

(ii) *Coordination rule*—(A) Notwithstanding any provision in this section to the contrary, the rule of paragraph (c)(4)(ii)(B) of this section shall apply to the first taxable year in which a United States person marks to market its PFIC stock under a provision of chapter 1 of the Internal Revenue Code, other than section 1296, if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in section 1291(a)(3)(A) and § 1.1296–1(f)) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(B) For the first taxable year of a United States person that marks to market its PFIC stock under any provision of chapter 1 of the Internal Revenue Code, other than section 1296, such United States person shall, in lieu of the rules under which the United States person marks to market, apply the rules of § 1.1296–1(i)(2) and (3) as if the United States person had made an election under section 1296 for such first taxable year.

(d) [Reserved].

* * * * *

(f) through (i) [Reserved].

(j) *Effective dates.* This section applies for taxable years beginning on or after May 3, 2004, except as otherwise provided in paragraph (e)(2) of this section.

§ 1.295–0 [Amended]

■ 4. § 1.1295–0 (table of contents) is amended by:
■ 1. Revising the entries for § 1.1295–1(i)(3) and (i)(4) and adding paragraph (i)(5), (i)(5)(i), and (i)(5)(ii).
■ 2. Revising the entry for § 1.1295–1(k).

The revisions and addition read as follows:

§ 1.1295–0 Table of contents. * * *

* * * * *

§ 1.1295–1 [Amended]

■ 5. Section 1.1295–1 is amended by:
■ 1. Redesignating paragraphs (i)(3) and (i)(4) as paragraphs (i)(4) and (i)(5), respectively.
■ 2. Adding a new paragraph (i)(3).
■ 3. Revising newly designated paragraph (i)(5).
■ 4. Revising paragraph (k).

The revisions and addition read as follows:

§ 1.1295–1 Qualified electing funds.

* * * * *

(i) * * *

(3) *Automatic termination.* If a United States person, or the United States shareholder on behalf of a controlled foreign corporation, makes an election pursuant to section 1296 and the regulations thereunder with respect to PFIC stock for which a QEF election is in effect, or marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, the QEF election is automatically terminated with respect to such stock that is

marked to market under section 1296 or another provision of chapter 1 of the Internal Revenue Code. Such termination shall be effective on the last day of the shareholder's taxable year preceding the first taxable year for which the section 1296 election is in effect or such stock is marked to market under another provision of chapter 1 of the Internal Revenue Code.

Example. Corp Y, a domestic corporation, owns directly 100 shares of marketable stock in foreign corporation FX, a PFIC. Corp Y also owns a 50 percent interest in FP, a foreign partnership that owns 200 shares of FX stock. Accordingly, under section 1298(a)(3) and § 1.1296–1(e)(1), Corp Y is treated as indirectly owning 100 shares of FX stock. Corp Y also owns 100 percent of the stock of FZ, a foreign corporation that is not a PFIC. FZ owns 100 shares of FX stock, and therefore under section 1298(a)(2)(A), Corp Y is treated as owning the 100 shares of FX stock owned by FZ. For taxable year 2005, Corp Y has a QEF election in effect with respect to all 300 shares of FX stock that it owns directly or indirectly. See generally § 1.1295–1(c)(1). For taxable year 2006, Corp Y makes a timely election pursuant to section 1296 and the regulations thereunder. For purposes of section 1296, Corp Y is treated as owning stock held indirectly through a partnership, but not through a foreign corporation. Section 1296(g); § 1.1296–1(e)(1). Accordingly, Corp Y's section 1296 election covers the 100 shares it owns directly and the 100 shares it owns indirectly through FP, but not the 100 shares owned by FZ. With respect to the first 200 shares, Corp Y's QEF election is automatically terminated effective December 31, 2005. With respect to the 100 shares Corp Y owns through foreign FZ, Corp Y's QEF election remains in effect unless invalidated, terminated, or revoked pursuant to this paragraph (i).

* * * * *

(5) *Effect after invalidation, termination, or revocation*—(i) *In general.* Without the Commissioner's consent, a shareholder whose section 1295 election was invalidated, terminated, or revoked under this paragraph (i) may not make the section 1295 election with respect to the PFIC before the sixth taxable year in which the invalidation, termination, or revocation became effective.

(ii) *Special rule.* Notwithstanding paragraph (i)(5)(i) of this section, a shareholder whose section 1295 election was terminated pursuant to paragraph (i)(3) of this section, and either whose section 1296 election has subsequently been terminated because its PFIC stock ceased to be marketable or who no longer marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, may make a section 1295 election with respect to its PFIC stock before the sixth taxable year in which its prior section 1295 election was terminated.

* * * * *

(k) *Effective dates.* Except as otherwise provided, paragraphs (b)(2)(iii), (b)(3), (b)(4), and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1, 1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998, and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however, a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired. Paragraphs (i)(3) and (i)(5)(ii) of this section are applicable for taxable years beginning on or after May 3, 2004.

§ 1.1296–1 [Added]

■ 6. Section 1.1296–1 is added to read as follows:

§ 1.1296–1 Mark to market election for marketable stock.

(a) *Definitions*—(1) *Eligible RIC.* An *eligible RIC* is a regulated investment company that offers for sale, or has outstanding, any stock of which it is the issuer and which is redeemable at net asset value, or that publishes net asset valuations at least annually.

(2) *Section 1296 stock.* The term *section 1296 stock* means marketable stock in a passive foreign investment company (PFIC), including any PFIC stock owned directly or indirectly by an eligible RIC, for which there is a valid section 1296 election. Section 1296 stock does not include stock of a foreign corporation that previously had been a PFIC, and for which a section 1296 election remains in effect.

(3) *Unreversed inclusions*—(i) *General rule.* The term *unreversed inclusions* means with respect to any section 1296 stock, the excess, if any, of—

(A) The amount of mark to market gain included in gross income of the United States person under paragraph (c)(1) of this section with respect to such stock for prior taxable years; over

(B) The amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock for prior taxable years.

(ii) *Section 1291 adjustment.* The amount referred to in paragraph (a)(3)(i)(A) of this section shall include any amount subject to section 1291 under the coordination rule of paragraph (i)(2)(ii) of this section.

(iii) *Example.* An example of the computation of unreversed inclusions is as follows:

Example. A, a United States person, acquired stock in Corp X, a foreign corporation, on January 1, 2005 for $150. At such time and at all times thereafter, Corp X was a PFIC and A's stock in Corp X was marketable. For taxable years 2005 and 2006, Corp X was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election with respect to the X stock, effective for taxable year 2007. The fair market value of the X stock was $200 as of December 31, 2006, and $240 as of December 31, 2007. Additionally, Corp X made no distribution with respect to its stock for the taxable years at issue. In 2007, pursuant to paragraph (i)(2)(ii) of this section, A must include the $90 gain in the X stock in accordance with the rules of section 1291 for purposes of determining the deferred tax amount and any applicable interest. Nonetheless, for purposes of determining the amount of the unreversed inclusions pursuant to paragraph (a)(3)(ii) of this section, A will include the $90 of gain that was taxed under section 1291 and not the interest thereon.

(iv) *Special rule for regulated investment companies.* In the case of a regulated investment company which had elected to mark to market the PFIC stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company makes a section 1296 election, the amount referred to in paragraph (a)(3)(i)(A) of this section shall include amounts previously included in gross income by the company pursuant to such mark to market election with respect to such stock for prior taxable years. For further guidance, see Notice 92–53 (1992–2 C.B. 384) (*see* also 601.601(d)(2) of this chapter).

(b) *Application of section 1296 election*—(1) *In general.* Any United States person and any controlled foreign corporation (CFC) that owns directly, or is treated as owning under this section, marketable stock, as defined in § 1.1296–2, in a PFIC may make an election to mark to market such stock in accordance with the provisions of section 1296 and this section.

(2) *Election applicable to specific United States person.* A section 1296 election applies only to the United States person (or CFC that is treated as a U.S. person under paragraph (g)(2) of this section) that makes the election. Accordingly, a United States person's

section 1296 election will not apply to a transferee of section 1296 stock.

(3) *Election applicable to specific corporation only.* A section 1296 election is made with respect to a single foreign corporation, and thus a separate section 1296 election must be made for each foreign corporation that otherwise meets the requirements of this section. A United States person's section 1296 election with respect to stock in a foreign corporation applies to all marketable stock of the corporation that the person owns directly, or is treated as owning under paragraph (e) of this section, at the time of the election or that is subsequently acquired.

(c) *Effect of election*—(1) *Recognition of gain.* If the fair market value of section 1296 stock on the last day of the United States person's taxable year exceeds its adjusted basis, the United States person shall include in gross income for its taxable year the excess of the fair market value of such stock over its adjusted basis (mark to market gain).

(2) *Character of gain.* Mark to market gain, and any gain on the sale or other disposition of section 1296 stock, shall be treated as ordinary income.

(3) *Recognition of loss.* If the adjusted basis of section 1296 stock exceeds its fair market value on the last day of the United States person's taxable year, such person shall be allowed a deduction for such taxable year equal to the lesser of the amount of such excess or the unreversed inclusions with respect to such stock (mark to market loss).

(4) *Character of loss*—(i) *Losses not in excess of unreversed inclusions.* Any mark to market loss allowed as a deduction under paragraph (c)(3) of this section, and any loss on the sale or other disposition of section 1296 stock, to the extent that such loss does not exceed the unreversed inclusions attributable to such stock, shall be treated as an ordinary loss, deductible in computing adjusted gross income.

(ii) *Losses in excess of unreversed inclusions.* Any loss recognized on the sale or other disposition of section 1296 stock in excess of any prior unreversed inclusions will be subject to the rules generally applicable to losses provided elsewhere in the Internal Revenue Code and the regulations thereunder.

(5) *Application of election to separate lots of stock.* In the case in which a United States person purchased or acquired shares of stock in a PFIC at different prices, the rules of this section shall be applied in a manner consistent with the rules of § 1.1012–1.

(6) *Source rules.* The source of any amount included in gross income under paragraph (c)(1) of this section, or the allocation and apportionment of any amount allowed as a deduction under paragraph (c)(3) of this section, shall be determined in the same manner as if such amounts were gain or loss (as the case may be) from the sale of stock in the PFIC.

(7) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Treatment of gain as ordinary income. A, a United States individual, purchases stock in FX, a foreign corporation that is not a PFIC, in 1990 for $1,000. On January 1, 2005, when the fair market value of the FX stock is $1,100, FX becomes a PFIC. A makes a timely section 1296 election for taxable year 2005. On December 31, 2005, the fair market value of the FX stock is $1,200. For taxable year 2005, A includes $200 of mark to market gain (the excess of the fair market value of FX stock ($1,200) over A's adjusted basis ($1,000)) in gross income as ordinary income and pursuant to paragraph (d)(1) of this section increases his basis in the FX stock by that amount.

Example 2. Treatment of gain as capital gain. The facts are the same as in *Example 1.* For taxable year 2006, FX does not satisfy either the asset test or the income test of section 1297(a). A does not revoke the section 1296 election it made with respect to the FX stock. On December 1, 2006, A sells the FX stock when the fair market value of the stock is $1,500. For taxable year 2006, A includes $300 of gain (the excess of the fair market value of FX stock ($1,500) over A's adjusted basis ($1,200)) in gross income as long-term capital gain because at the time of sale of the FX stock by A, FX did not qualify as a PFIC, and, therefore, the FX stock was not section 1296 stock at the time of the disposition. Further, A's holding period for non-PFIC purposes was more than one year.

Example 3. Treatment of losses as ordinary where they do not exceed unreversed inclusions. The facts are the same as in *Example 1.* On December 1, 2006, A sells the stock in FX for $1,100. At that time, A's unreversed inclusions (the amount A included in income as mark to market gain) with respect to the stock in FX are $200. Accordingly, for taxable year 2006, A recognizes a loss on the sale of the FX stock of $100, (the fair market value of the FX stock ($1,100) minus A's adjusted basis ($1,200) in the stock) that is treated as an ordinary loss because the loss does not exceed the unreversed inclusions attributable to the stock of FX.

Example 4. Treatment of losses as long-term capital losses. The facts are the same as in *Example 3,* except that FX does not satisfy either the asset test or the income test of section 1297(a) for taxable year 2006. For taxable year 2006, A's $100 loss from the sale of the FX stock is treated as long-term capital loss because at the time of the sale of the FX stock by A FX did not qualify as a PFIC, and, therefore, the FX stock was not section 1296 stock at the time of the disposition. Further, A's holding period in the FX stock for non-PFIC purposes was more than one year.

Example 5. Long-term capital loss treatment of losses in excess of unreversed inclusions. The facts are the same as in *Example 3,* except that A sells his FX stock for $900. At the time of A's sale of the FX stock on December 1, 2006, A's unreversed inclusions with respect to the FX stock are $200. Accordingly, the $300 loss recognized by A on the disposition is treated as an ordinary loss to the extent of his unreversed inclusions ($200). The amount of the loss in excess of A's unreversed inclusions ($100) will be treated as a long-term capital loss because A's holding period in the FC stock for non-PFIC purposes was more than one year.

Example 6. Application of section 1296 election to separate lots of stock. On January 1, 2005, Corp A, a domestic corporation, purchased 100 shares (first lot) of stock in FX, a PFIC, for $500 ($5 per share). On June 1, 2005, Corp A purchased 100 shares (second lot) of FX stock for $1,000 ($10 per share). Corp A made a timely section 1296 election with respect to its FX stock for taxable year 2005. On December 31, 2005, the fair market value of FX stock was $8 per share. For taxable year 2005, Corp A includes $300 of gain in gross income as ordinary income under paragraph (c)(1) of this section with respect to the first lot, and adjusts its basis in that lot to $800 pursuant to paragraph (d)(1) of this section. With respect to the second lot, Corp A is not permitted to recognize a loss under paragraph (c)(3) of this section for taxable year 2005. Although Corp A's adjusted basis in that stock exceeds its fair market value by $200, Corp A has no unreversed inclusions with respect to that particular lot of stock. On July 1, 2006, Corp A sells 100 shares of FX stock for $900. Assuming that Corp A adequately identifies (in accordance with the rules of § 1.1012–1(c)) the shares of FX stock sold as being from the second lot, Corp A recognizes $100 of long term capital loss pursuant to paragraph (c)(4)(ii) of this section.

(d) *Adjustment to basis*—(1) *Stock held directly.* The adjusted basis of the section 1296 stock shall be increased by the amount included in the gross income of the United States person under paragraph (c)(1) of this section with respect to such stock, and decreased by the amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock.

(2) *Stock owned through certain foreign entities.* (i) In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the basis adjustments under paragraph (d)(1) of this section shall apply to such stock in the hands of the foreign entity actually holding such stock, but only for purposes of determining the subsequent treatment under chapter 1 of the Internal Revenue Code of the United States person with respect to such stock. Such increase or decrease in the adjusted basis of the section 1296 stock shall constitute an adjustment to the basis of partnership property only with respect to the

partner making the section 1296 election. Corresponding adjustments shall be made to the adjusted basis of the United States person's interest in the foreign entity and in any intermediary entity described in paragraph (e) of this section through which the United States person holds the PFIC stock.

(ii) *Example.* The following example illustrates this paragraph (d)(2):

Example. FP is a foreign partnership. Corp A, a domestic corporation, owns a 20 percent interest in FP. Corp B, a domestic corporation, owns a 30 percent interest in FP. Corp C, a foreign corporation, with no direct or indirect shareholders that are U.S. persons, owns a 50% interest in FP. Corp A, Corp B, and FP all use a calendar year for their taxable year. In 2005, FP purchases stock in FX, a foreign corporation and a PFIC, for $1,000. Corp A makes a timely section 1296 election for taxable year 2005. On December 31, 2005, the fair market value of the PFIC stock is $1,100. Corp A includes $20 of ordinary income in taxable year 2005 under paragraphs (c)(1) and (2) of this section. Corp A increases its basis in its FP partnership interest by $20. FP increases its basis in the FX stock to $1,020 solely for purposes of determining the subsequent treatment of Corp A, under chapter 1 of the Internal Revenue Code, with respect to such stock. In 2006, FP sells the FX stock for $1,200. For purposes of determining the amount of gain of Corp A, FP will be treated as having $180 in gain of which $20 is allocated to Corp A. Corp A's $20 of gain will be treated as ordinary income under paragraph (c)(2) of this section. For purposes of determining the amount of gain attributable to Corp B, FP will be treated as having $200 gain, $60 of which will be allocated to Corp B.

(3) *Stock owned indirectly by an eligible RIC.* Paragraph (d)(2) of this section shall also apply to an eligible RIC which is an indirect shareholder under § 1.1296–2(f) of stock in a PFIC and has a valid section 1296 election in effect with respect to the PFIC stock.

(4) *Stock acquired from a decedent.* In the case of stock of a PFIC which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which a section 1296 election was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

(5) *Transition rule for individuals becoming subject to United States income taxation*—(i) *In general.* If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis, before adjustments under this paragraph (d), of any section 1296 stock owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value or its adjusted basis on such first day.

(ii) An example of the transition rule for individuals becoming subject to United States income taxation is as follows:

Example. A, a nonresident alien individual, purchases marketable stock in FX, a PFIC, for $50 in 1995. On January 1, 2005, A becomes a United States person and makes a timely section 1296 election with respect to the stock in accordance with paragraph (h) of this section. The fair market value of the FX stock on January 1, 2005, is $100. The fair market value of the FX stock on December 31, 2005, is $110. Under paragraph (d)(5)(i) of this section, A computes the amount of mark to market gain or loss for the FX stock in 2005 by reference to an adjusted basis of $100, and therefore A includes $10 in gross income as mark to market gain under paragraph (c)(1) of this section. Additionally, under paragraph (d)(1) of this section, A's adjusted basis in the FX stock for purposes of this section is increased to $110 (and to $60 for all other tax purposes). A sells the FX stock in 2006 for $120. For purposes of applying section 1001, A must use its original basis of $50, with any adjustments under paragraph (d)(1) of this section, $10 in this case, and therefore A recognizes $60 of gain. Under paragraph (c)(2) of this section (which is applied using an adjusted basis of $110), $10 of such gain is treated as ordinary income. The remaining $50 of gain from the sale of the FX stock is long term capital gain because A held such stock for more than one year.

(e) *Stock owned through certain foreign entities*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the following rules shall apply in determining stock ownership for purposes of this section. PFIC stock owned, directly or indirectly, by or for a foreign partnership, foreign trust (other than a foreign trust described in sections 671 through 679), or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. PFIC stock owned, directly or indirectly, by or for a foreign trust described in sections 671 through 679 shall be considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock. The determination of a person's proportionate interest in a foreign partnership, foreign trust or foreign estate will be made on the basis of all the facts and circumstances. Stock considered owned by reason of this paragraph shall, for purposes of applying the rules of this section, be treated as actually owned by such person.

(2) *Stock owned indirectly by eligible RICs.* The rules for attributing ownership of stock contained in § 1.1296–2(f) will apply to determine the indirect ownership of PFIC stock by an eligible RIC.

(f) *Holding period.* Solely for purposes of sections 1291 through 1298, if section 1296 applied to stock with respect to the taxpayer for any prior taxable year, the taxpayer's holding period in such stock shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(g) *Special rules*—(1) *Certain dispositions of stock.* To the extent a United States person is treated as actually owning stock in a PFIC under paragraph (e) of this section, any disposition which results in the United States person being treated as no longer owning such stock, and any disposition by the person owning such stock, shall be treated as a disposition by the United States person of the stock in the PFIC.

(2) *Treatment of CFC as a United States person.* In the case of a CFC that owns, or is treated as owning under paragraph (e) of this section, section 1296 stock:

(i) Other than with respect to the sourcing rules in paragraph (c)(6) of this section, this section shall apply to the CFC in the same manner as if such corporation were a United States person. The CFC will be treated as a foreign person for purposes of applying the source rules of paragraph (c)(6).

(ii) For purposes of subpart F of part III of subchapter N of the Internal Revenue Code—

(A) Amounts included in the CFC's gross income under paragraph (c)(1) or (i)(2)(ii) of this section shall be treated as foreign personal holding company income under section 954(c)(1)(A); and

(B) Amounts allowed as a deduction under paragraph (c)(3) of this section shall be treated as a deduction allocable to foreign personal holding company income for purposes of computing net foreign base company income under § 1.954–1(c).

(iii) A United States shareholder, as defined in section 951(b), of the CFC shall not be subject to section 1291 with respect to any stock of the PFIC for the period during which the section 1296 election is in effect for that stock, and the holding period rule of paragraph (f) of this section shall apply to such United States shareholder.

(iv) The rules of this paragraph (g)(2) shall not apply to a United States person that is a shareholder of the PFIC for purposes of section 1291, but is not a

United States shareholder under section 951(b) with respect to the CFC making a section 1296 election.

(3) *Timing of inclusions for stock owned through certain foreign entities.* In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the mark to market gain or mark to market loss is determined in accordance with paragraphs (c) and (i)(2)(ii) of this section as of the last day of the taxable year of the foreign partnership, foreign trust or foreign estate and then included in the taxable year of such United States person that includes the last day of the taxable year of the entity.

(h) *Elections*—(1) *Timing and manner for making a section 1296 election*—(i) *United States persons.* A United States person that owns marketable stock in a PFIC, or is treated as owning marketable stock under paragraph (e) of this section, on the last day of the taxable year of such person, and that wants to make a section 1296 election, must make a section 1296 election for such taxable year on or before the due date (including extensions) of the United States person's income tax return for that year. The section 1296 election must be made on the Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund", included with the original tax return of the United States person for that year, or on an amended return, provided that the amended return is filed on or before the election due date.

(ii) *Controlled foreign corporations.* A section 1296 election by a CFC shall be made by its controlling United States shareholders, as defined in § 1.964–1(c)(5), and shall be included with the Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations", for that CFC by the due date (including extensions) of the original income tax returns of the controlling United States shareholders for that year. A section 1296 election by a CFC shall be binding on all United States shareholders of the CFC.

(iii) *Retroactive elections for PFIC stock held in prior years.* A late section 1296 election may be permitted only in accordance with § 301.9100 of this chapter.

(2) *Effect of section 1296 election*—(i) A section 1296 election will apply to the taxable year for which such election is made and remain in effect for each succeeding taxable year unless such election is revoked or terminated pursuant to paragraph (h)(3) of this section.

(ii) *Cessation of a foreign corporation as a PFIC.* A United States person will not include mark to market gain or loss pursuant to paragraph (c) of this section with respect to any stock of a foreign corporation for any taxable year that such foreign corporation is not a PFIC under section 1297 or treated as a PFIC under section 1298(b)(1) (taking into account the holding period rule of paragraph (f) of this section). Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1296 election. Thus, if a foreign corporation is a PFIC in a taxable year after a year in which it is not treated as a PFIC, the United States person's original election (unless revoked or terminated in accordance with paragraph (h)(3) of this section) continues to apply and the shareholder must include any mark to market gain or loss in such year.

(3) *Revocation or termination of election*—(i) *In general.* A United States person's section 1296 election is terminated if the section 1296 stock ceases to be marketable; if the United States person elects, or is required, to mark to market the section 1296 stock under another provision of chapter 1 of the Internal Revenue Code; or if the Commissioner, in the Commissioner's discretion, consents to the United States person's request to revoke its section 1296 election upon a finding of a substantial change in circumstances. A substantial change in circumstances for this purpose may include a foreign corporation ceasing to be a PFIC.

(ii) *Timing of termination or revocation.* Where a section 1296 election is terminated automatically (*e.g.*, the stock ceases to be marketable), section 1296 will cease to apply beginning with the taxable year in which such termination occurs. Where a section 1296 election is revoked with the consent of the Commissioner, section 1296 will cease to apply beginning with the first taxable year of the United States person after the revocation is granted unless otherwise provided by the Commissioner.

(4) *Examples.* The operation of the rules of this paragraph (h) is illustrated by the following examples:

Example 1. A, a United States person, owns stock in FX, a PFIC. A makes a QEF election in 1996 with respect to the FX stock. For taxable year 2005, A makes a timely section 1296 election with respect to its stock, and thus its QEF election is automatically terminated pursuant to § 1.1295–1(i)(3). In 2006, A's stock in FX ceases to be marketable, and therefore its section 1296 election is automatically terminated under paragraph (h)(3) of this section. Beginning with taxable year 2006, A is subject to the rules of section 1291 with respect to its FX stock unless it makes a new QEF election. See § 1.1295–1(i)(5).

Example 2. The facts are the same as in *Example 1*, except that A's stock in FX becomes marketable again in 2007. A may make a new section 1296 election with respect to the FX stock for its taxable year 2007, or thereafter. A will be subject to the coordination rules under paragraph (i) of this section unless it made a new QEF election in 2006.

(i) *Coordination rules for first year of election*—(1) *In general.* Notwithstanding any provision in this section to the contrary, the rules of this paragraph (i) shall apply to the first taxable year in which a section 1296 election is effective with respect to marketable stock of a PFIC if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in paragraph (f) of this section) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(2) *Shareholders other than regulated investment companies.* For the first taxable year of a United States person (other than a regulated investment company) for which a section 1296 election is in effect with respect to the stock of a PFIC, such United States person shall, in lieu of the rules of paragraphs (c) and (d) of this section—

(i) Apply the rules of section 1291 to any distributions with respect to, or disposition of, section 1296 stock;

(ii) Apply section 1291 to the amount of the excess, if any, of the fair market value of such section 1296 stock on the last day of the United States person's taxable year over its adjusted basis, as if such amount were gain recognized from the disposition of stock on the last day of the taxpayer's taxable year; and

(iii) Increase its adjusted basis in the section 1296 stock by the amount of excess, if any, subject to section 1291 under paragraph (i)(2)(ii) of this section.

(3) *Shareholders that are regulated investment companies.* For the first taxable year of a regulated investment company for which a section 1296 election is in effect with respect to the stock of a PFIC, such regulated investment company shall increase its tax under section 852 by the amount of interest that would have been imposed under section 1291(c)(3) for such taxable year if such regulated investment company were subject to the rules of paragraph (i)(2) of this section, and not this paragraph (i)(3). No deduction or increase in basis shall be allowed for the increase in tax imposed under this paragraph (i)(3).

(4) The operation of the rules of this paragraph (i) is illustrated by the following examples:

Example (1). A, a United States person and a calendar year taxpayer, owns marketable stock in FX, a PFIC that it acquired on January 1, 1992. At all times, A's FX stock was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election effective for taxable year 2005. At the close of taxable year 2005, the fair market value of A's FX stock exceeded its adjusted basis by $10. Pursuant to paragraph (i)(2)(ii) of this section, A must treat the $10 gain under section 1291 as if the FX stock were disposed of on December 31, 2005. Further, A increases its adjusted basis in the FX stock by the $10 in accordance with paragraph (i)(2)(iii) of this section.

Example (2). Assume the same facts as in *Example (1)*, except that A is a RIC that had not made an election prior to 2005 to mark to market the PFIC stock. In taxable year 2005, A includes $10 of ordinary income under paragraph (c)(1) of this section, and such amount is not subject to section 1291. A also increases its tax imposed under section 852 by the amount of interest that would have been determined under section 1291(c)(3), and no deduction is permitted for such amount. Finally, under paragraph (d)(1) of this section, A increases its adjusted basis in the FX stock by $10.

(j) *Effective date.* The provisions in this section are applicable for taxable years beginning on or after May 3, 2004.

■ 7. Section 1.1296(e)-1 is redesignated as § 1.1296–2 and amended by:
■ 1. Revising paragraph (b)(2).
■ 2. Adding paragraph (b)(3).
■ 3. Revising both references to "sections 958(a)(1) and (2)" in paragraph (f)(1) to read "section 1298(a)".

The revisions and addition read as follows:

§ 1.1296–2 Definition of marketable stock.

* * * * *

(b) * * *

(2) *Special rule for year of initial public offering.* For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, such class of stock meets the requirements of paragraph (b)(1) of this section for such year if the stock is regularly traded on such exchanges or markets, other than in de minimis quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the taxpayer's calendar year. In cases where a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of paragraph (b)(1) of this section in the calendar year of the offering if the stock is regularly traded on such exchanges or markets, other than in de minimis quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days.

(3) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirements of paragraph (b)(1) or (2) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) or (2) of this section if there is a pattern of trades conducted to meet the requirement of paragraph (b)(1) or (2) of this section. Similarly, paragraph (b)(2) of this section shall not apply to a public offering of stock that has as one of its principal purposes to avail itself of the reduced trading requirements under the special rule for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the trading requirements of paragraph (b)(1) of this section are satisfied in the subsequent calendar year.

* * * * *

§ 1.6031(a)–1 [Amended]

■ 8. Section 1.6031(a)–1 is amended by:
■ 1. Redesignating the text of paragraph (b)(1) as (b)(1)(i).
■ 2. Adding a heading to newly designated paragraph (b)(1)(i).
■ 3. Adding paragraph (b)(1)(ii).

The additions read as follows:

§ 1.6031(a)–1 Return of partnership income.

* * * * *

(b) * * * (1) * * * (i) *Filing requirement.* * * *

(ii) *Special rule.* For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1296.

* * * * *

Mark E. Matthews,
Deputy Commissioner of Services and Enforcement.

Approved: April 7, 2004.

Gregory F. Jenner,
Acting Assistant Secretary of the Treasury.

[FR Doc. 04–9645 Filed 4–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9124]

RIN 1545–BA69

At-Risk Limitations; Interest Other Than That of a Creditor

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These regulations finalize the rules relating to the treatment, for purposes of the at-risk limitations, of amounts borrowed from a person who has an interest in an activity other than that of a creditor or from a person related to a person (other than the borrower) with such an interest. These regulations affect taxpayers subject to the at-risk limitations and provide them with guidance necessary to comply with the law.

DATES: *Effective Date:* These regulations are effective May 3, 2004.

Applicability Date: For dates of applicability, see §§ 1.465–8(e) and 1.465–20(d).

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Christopher L. Trump, 202–622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide rules relating to the treatment, for purposes of the at-risk limitations under section 465 of the Internal Revenue Code (Code), of amounts borrowed from a person who has an interest in an activity other than that of a creditor. On June 5, 1979, the IRS published in the **Federal Register** (44 FR 32235) proposed regulations (LR–166–76) relating to the treatment of investments in certain activities under section 465 of the Code. On July 8, 2003, a notice of proposed rulemaking (REG–209377–89) amending §§ 1.465–8 and 1.465–20 of the proposed regulations was published in the **Federal Register** (68 FR 40583). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations under §§ 1.465–8 and 1.465–20 are adopted by this Treasury decision.

Explanation of Provisions

Section 465 limits the deductibility of losses to a taxpayer's economic investment (the amount at risk) in the activity at the close of a taxable year. A taxpayer is generally considered at risk in an activity to the extent of cash and the adjusted basis of property contributed by the taxpayer to the activity. In general, a taxpayer's amount at risk also includes any amounts borrowed for use in the activity if the taxpayer is personally liable for repayment or if property other than property used in the activity is pledged as security.

Under section 465(b)(3), amounts borrowed for use in an activity will not increase the borrower's amount at risk in the activity if the lender has an interest other than that of a creditor in the activity (a disqualifying interest) or if the lender is related to a person (other than the borrower) who has a disqualifying interest in the activity. This rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. Section 465(c)(3)(D) provides that this rule applies to new activities (activities that were not subject to section 465 before 1978) only to the extent provided in regulations.

These regulations apply the rule of section 465(b)(3) to new activities and provide rules for determining when a person has an interest in an activity other than that of a creditor. Additional rules are provided with respect to related persons, interests as a shareholder, and qualified nonrecourse financing.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Tara P. Volungis and Christopher L. Trump of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.465–8 also issued under 26 U.S.C. 465.

Section 1.465–20 also issued under 26 U.S.C. 465. * * *

■ 2. Sections 1.465–8 and 1.465–20 are added to read as follows:

§ 1.465–8 General rules; interest other than that of a creditor.

(a) *In general*—(1) *Amounts borrowed.* This section applies to amounts borrowed for use in an activity described in section 465(c)(1) or (c)(3)(A). Amounts borrowed with respect to an activity will not increase the borrower's amount at risk in the activity if the lender has an interest in the activity other than that of a creditor or is related to a person (other than the borrower) who has an interest in the activity other than that of a creditor. This rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. For additional rules relating to the treatment of amounts borrowed from these persons, *see* § 1.465–20.

(2) *Certain borrowed amounts excepted.* (i) For purposes of determining a corporation's amount at risk, an interest in the corporation as a shareholder is not an interest in any activity of the corporation. Thus, amounts borrowed by a corporation from a shareholder may increase the corporation's amount at risk.

(ii) For purposes of determining a taxpayer's amount at risk in an activity of holding real property, paragraph (a)(1) of this section does not apply to financing that is secured by real property used in the activity and is either—

(A) Qualified nonrecourse financing described in section 465(b)(6)(B); or

(B) Financing that, if it were nonrecourse, would be financing described in section 465(b)(6)(B).

(b) *Loans for which the borrower is personally liable for repayment*—(1) *General rule.* If a borrower is personally liable for the repayment of a loan for use in an activity, a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

(2) *Capital interest.* For the purposes of this section a capital interest in an activity means an interest in the assets of the activity which is distributable to the owner of the capital interest upon the liquidation of the activity. The partners of a partnership and the shareholders of an S corporation are considered to have capital interests in the activities conducted by the partnership or S corporation.

(3) *Interest in net profits.* For the purposes of this section it is not necessary for a person to have any incidents of ownership in the activity in order to have an interest in the net profits of the activity. For example, an employee or independent contractor any part of whose compensation is determined with reference to the net profits of the activity will be considered to have an interest in the net profits of the activity.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A, the owner of a herd of cattle sells the herd to partnership BCD. BCD pays A $10,000 in cash and executes a note for $30,000 payable to A. The three partners, B, C, and D, each assumes personal liability for repayment of the amount owed A. In addition, BCD enters into an agreement with A under which A is to take care of the cattle for BCD in return for compensation equal to 6 percent of BCD's net profits from the activity. Because A has an interest in the net profits of BCD's farming activity, A is considered to have an interest in the activity other than that of a creditor. Accordingly, amounts payable to A for use in that activity do not increase the partners' amount at risk even though the partners assume personal liability for repayment.

Example 2. Assume the same facts as in *Example 1* except that instead of receiving compensation equal to 6 percent of BCD's net profits from the activity, A instead receives compensation equal to 1 percent of the gross receipts from the activity. A does not have a capital interest in BCD. A's interest in the gross receipts is not considered an interest in the net profits. Because B, C, and D assumed personal liability for the amounts payable to A, and A has neither a capital interest nor an interest in the net profits of the activity, A is not considered to have an interest in the activity other than that of a creditor with respect to the $30,000 loan. Accordingly, B, C, and D are at risk for their share of the loan if the other provisions of section 465 are met.

Example 3. Assume the same facts as in Example 1 except that instead of receiving compensation equal to 6 percent of BCD's net profits from the activity, A instead receives compensation equal to 6 percent of the net profits from the activity or $15,000, whichever is greater. A is considered to have an interest in the net profits from the activity and accordingly will be treated as a person with an interest in the activity other than that of a creditor.

(c) *Nonrecourse loans secured by assets with a readily ascertainable fair market value*—(1) *General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which has a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity.

(2) *Example.* The provisions of this paragraph (c) may be illustrated by the following example:

Example. X is an investor in an activity described in section 465(c)(1). In order to raise money for the investment, X borrows money from A, the promoter (the person who brought X together with other taxpayers for the purpose of investing in the activity). The loan is secured by stock unrelated to the activity which is listed on a national securities exchange. X's stock has a readily ascertainable fair market value. A does not have a capital interest in the activity or an interest in its net profits. Accordingly, with respect to the loan secured by X's stock, A does not have an interest in the activity other than that of a creditor.

(d) *Nonrecourse loans secured by assets without a readily ascertainable fair market value*—(1) *General rule.* This paragraph shall apply in the case of a nonrecourse loan for use in an activity where the loan is secured by property which does not have a readily ascertainable fair market value. In the case of such a loan a person shall be considered a person with an interest in the activity other than that of a creditor if the person stands to receive financial gain (other than interest) from the activity or from the sale of interests in the activity. For the purposes of this section persons who stand to receive financial gain from the activity include persons who receive compensation for services rendered in connection with the organization or operation of the activity or for the sale of interests in the activity. Such a person will generally include the promoter of the activity who organizes the activity or solicits potential investors in the activity.

(2) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Example. A is the promoter of an activity described in section 465(c)(1). As the promoter, A organizes the activity and solicits potential investors. For these services A is paid a flat fee of $130x. This fee is paid out of the amounts contributed by the investors to the activity. X, one of the investors in the activity, borrows money from A for use in the activity. X is not personally liable for repayment to A of the amount borrowed. As security for the loan, X pledges an asset which does not have a readily ascertainable fair market value. A is considered a person with an interest in the activity other than that of a creditor with respect to this loan because the asset pledged as security does not have a readily ascertainable fair market value, X is not personally liable for repayment of the loan, and A received financial gain from the activity. Accordingly, X's amount at risk in the activity is not increased despite the fact that property was pledged as security.

(e) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

§ 1.465–20 Treatment of amounts borrowed from certain persons and amounts protected against loss.

(a) *General rule.* The following amounts are treated in the same manner as borrowed amounts for which the taxpayer has no personal liability and for which no security is pledged—

(1) Amounts that do not increase the taxpayer's amount at risk because they are borrowed from a person who has an interest in the activity other than that of a creditor or from a person who is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor; and

(2) Amounts (whether or not borrowed) that are protected against loss.

(b) *Interest other than that of a creditor; cross reference. See* § 1.465–8 for additional rules relating to amounts borrowed from a person who has an interest in the activity other than that of a creditor or is related to a person (other than the taxpayer) who has an interest in the activity other than that of a creditor.

(c) *Amounts protected against loss; cross reference. See* § 1.465–6 for rules relating to amounts protected against loss.

(d) *Effective date.* This section applies to amounts borrowed after May 3, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–10010 Filed 4–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–166]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 in Fort Lauderdale, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the East Sunrise Boulevard (SR 838) and East Las Olas bridges, mile 1062.6 and 1064.0 in Fort Lauderdale, Broward County, Florida. These drawbridges will be allowed to remain closed to navigation for periods of time during the first weekend of May to facilitate vehicle traffic flow to and from the Air and Sea Show each year.

DATES: This rule is effective May 3, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–03–166] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Branch, Seventh District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 16, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Miles 1062.6 and 1064.0 in Fort Lauderdale, FL in the **Federal Register** (69 FR 2552). We received one letter commenting on the notice of proposed rulemaking. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It is necessary to effectuate the rule immediately in order to enhance public safety during a weekend of increased vehicular and pedestrian traffic flow. Enactment of this rule 30 days after publication is thus impracticable and contrary to the public interest.

Background and Purpose

The East Las Olas Boulevard bridge, mile 1064.0, has a vertical clearance of 31 feet above mean high water and a horizontal clearance of 91 feet between the fenders. The existing regulation in 33 CFR 117.5 requires the bridge to open on signal.

The East Sunrise Boulevard bridge (SR 838), mile 1062.6, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 90 feet between the fenders. The existing regulation at 33 CFR 117.261(gg) requires the bridge to open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

Annually, the City of Fort Lauderdale Police Department, on behalf of the City of Fort Lauderdale, requests that the Coast Guard temporarily change the operating regulations for these bridges during parts of the annual Air and Sea Show to allow the considerable volume of vehicular and pedestrian traffic to be routed as safely and quickly as possible. This final rule would require the East Sunrise Boulevard (SR 838) and East Las Olas bridges in Fort Lauderdale, Florida to remain closed to navigation from 4 p.m. to 6 p.m. and from 9:45 p.m. to 10:45 p.m. on Saturday, and from 4 p.m. to 6 p.m. on Sunday, the first weekend of May.

Discussion of Comments and Changes

We received one comment on the notice of proposed rulemaking in favor of the new operating schedule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule will modify the existing bridge schedule to allow for efficient vehicle traffic flow and provide scheduled openings for vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Intracoastal Waterway in the vicinity of the East Sunrise Boulevard (SR 838) and East Las Olas bridges and persons intending to drive over the bridge and nearby business owners. Owners or operators of vessels that require a bridge opening will not be able to transit in the area during the periods the bridges remain closed. Since the change to the current regulation increases the amount of time the bridges will remain closed to five hours over a two day period and bridge openings are still provided for, the rule will not be significant for small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.261 redesignate paragraph (hh) as paragraph (ii), revise paragraph (gg) and add a new paragraph (hh) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(gg) The draw of the East Sunrise Boulevard bridge (SR 838), mile 1062.6 at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. On the first weekend in May, the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

(hh) The draw of the East Las Olas bridge, mile 1064 at Fort Lauderdale shall open on signal; except that on the first weekend in May the draw need not open from 4 p.m. to 6 p.m. on Saturday and Sunday, and, on the first Saturday in May, the draw need not open from 9:45 p.m. to 10:45 p.m.

* * * * *

Dated: April 16, 2004.

Harvey E. Johnson, Jr.,

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

[FR Doc. 04–9907 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

RIN 1660–AA19

Disaster Assistance Definitions; Statutory Change

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim final rule.

SUMMARY: FEMA is publishing an interim final rule to amend the definitions of "Local government," "State," and "United States" as set forth in 44 CFR 206.2 to coincide with those definitions established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This rule takes effect immediately, but before publishing a final rule on this subject, FEMA requests and invites comments from all interested or affected parties.

EFFECTIVE DATE: Effective May 3, 2004. FEMA invites comments on this interim final rule, which should be received by FEMA on or before July 2, 2004.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *FEMA-RULES@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Michael S. Herman, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *Michael.S.Herman@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Disaster Mitigation Act of 2000, Public Law 106–390, 114 Statutes at Large 1552 *et seq.* was enacted on October 30, 2000, and amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5204c (the Stafford Act). Among these changes were the definitions of "Local government" in 42 U.S.C. 5122(6), "State" in 42 U.S.C. 5122(4), and "United States" in 42 U.S.C. 5122(3). Corresponding definitions of these terms can be found in 44 CFR 206.2(a). FEMA is issuing this interim final rule to amend the definitions of "Local government," "State," and "United States" found in 44 CFR 206.2(a) so that these definitions match the statutory authority.

The definition of "Local government" is amended for clarification, and among other changes, includes: a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government. FEMA believes that this definition codifies the agencies' interpretation of the previous definition of local government, except for a council of government, which was added by statute.

The definition of "State" is changed to delete reference to the Trust Territory of the Pacific Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands. The definition of "State" is now any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

The definition of "United States" has been changed to correct the name of the Commonwealth of the Northern Mariana Islands and to delete reference to the Trust Territory of the Pacific Islands. The defintion of the "United States" is now the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

National Environmental Policy Act

This interim final rule falls within the 44 CFR 10.8(d)(2)(ii) exclusion category, which addresses the preparation, revision, and adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. This interim final rule qualifies for this exclusion, and no other extraordinary circumstances have been identified; therefore, this interim final rule will not require the preparation of an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866—Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in th[e] Executive [O]rder.

The purpose of this rule is to amend the definitions of "Local government," "State," and "United States" in FEMA's regulations to make those definitions consistent with statutory definitions in the Stafford Act as amended. Therefore, this rule is neither a significant regulatory action, nor an economically significant rule under the Executive Order. OMB has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act of 1995

This interim final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132—Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this rule under Executive Order 13132 and concludes that the rule does not have federalism implications as defined by the Executive Order. The rule does not significantly affect the rights, roles, and responsibilities of States. It involves no preemption of State law, and does not limit State policymaking discretion. The rule merely amends the definitions of "Local government," "State," and "United States" in our regulations to make those definitions consistent with those terms' statutory definitions in the Stafford Act as amended.

Administrative Procedure Act Statement

In general, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12, FEMA publishes a rule for public comment before issuing a final rule. However, the Administrative Procedure Act provides an exception to that general rule where the agency finds the procedures for comment and response contrary to the public interest for good cause.

The public benefit of this rule is to establish consistency between the definitions of "Local government," "State," and "United States" as set forth in 44 CFR 206.2 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5204c. We are making our regulations consistent with the law so that readers of the regulations are not misinformed as to the eligibility of states and local governments for disaster assistance.

Therefore, FEMA believes it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553 (d)(3), FEMA finds that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to coincide with the Stafford Act, as amended.

In addition, FEMA believes that under the circumstances, delaying the effective date of this rule until after a comment period would not further the public interest.

For the reasons above, FEMA believes there is good cause to immediately issue an interim final rule.

Congressional Review of Agency Rulemaking

The Administrator of the Office of Information and Regulatory Affairs of OMB has not designated this interim final rule as a "major rule" as that term is defined by the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq*. Pursuant to section 5 U.S.C. 808(2) of the Congressional Review of Agency Rulemaking Act, the Department nonetheless finds that "good cause" exists for establishing an effective date for this rule upon publication because delay would be impracticable. The public benefit of this rule is to establish consistency between the definitions of "Local government," "State," and "United States" as set forth in 44 CFR 206.2 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended. 42 U.S.C. 5121–5204c.

Accordingly, this interim final rule is effective on May 3, 2004.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Community facilities, Disaster assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ Accordingly, FEMA amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

■ 1. The authority citation for Part 206 continues to read:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 2. Amend § 206.2 by revising paragraphs (a)(16), (a)(22), and (a)(26) to read as follows:

§ 206.2 Definitions.

(a) * * *

(16) *Local government:*

(i) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(ii) An Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(iii) A rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

* * * * *

(22) *State:* Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

(26) *United States:* The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

* * * * *

Dated: April 27, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–9985 Filed 4–30–04; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

RIN 1018–AI85

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances; Revisions to the Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), revise our regulations pertaining to enhancement of survival permits issued under the Endangered Species Act. The purpose of these revisions is to improve the current implementing regulations for permits associated with Safe Harbor Agreements (SHAs) and Candidate Conservation Agreements with Assurances (CCAAs). These revisions will make Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to understand and implement.

DATES: This final rule is effective June 2, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours, at the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, Fish and Wildlife Service, at the above address, telephone 703/358–2171, or facsimile 703/358–1735.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) was established to provide a means to conserve the ecosystems upon which endangered and threatened species depend, to provide a program for the conservation of these endangered and threatened species, and to take the appropriate steps that are necessary to bring any endangered or threatened species to the point where measures provided for under the Act are no longer necessary. Section 10(a)(1)(A) of the Act authorizes us to issue permits for otherwise prohibited activities in order to enhance the propagation or survival of the affected species. Section 10(d) requires that such permits be applied for in good faith and, if granted, will not operate to the disadvantage of endangered species, and will be consistent with the purposes of the Act.

On June 17, 1999, we issued two policies and published revisions of our regulations to add two categories of permits to enhance the propagation or survival of listed, proposed, candidate, and other at-risk species. One category, called "permits for the enhancement of survival through Safe Harbor Agreements," is detailed at §§ 17.22(c) and 17.32(c) (for endangered and threatened species, respectively), and in the Safe Harbor Policy (64 FR 32717). The other category, called "permits for the enhancement of survival through Candidate Conservation Agreements with Assurances," is detailed at §§ 17.22(d) and 17.32(d) (for endangered and threatened species, respectively), and in the Candidate Conservation Agreements with Assurances Policy (64 FR 32726).

The Safe Harbor policy and associated regulations are intended to facilitate the conservation of listed species through a collaborative approach with non-Federal property owners. The policy and regulations are designed to create incentives for non-Federal property owners to implement voluntary conservation measures for certain listed species by providing certainty with regard to possible future restrictions should the covered species later become more numerous as a result of the actions taken by the non-Federal cooperator. Non-Federal property owners, who through a Safe Harbor Agreement commit to implement voluntary conservation measures for a listed species, will receive assurances that no additional future regulatory restrictions will be imposed. When the property owner meets the issuance criteria of the regulations we will issue an enhancement of survival permit under section (10)(a)(1)(A) of the Act, authorizing incidental taking of the covered species at a level that enables the property owner to return the property back to population levels or habitat conditions agreed upon as baseline. Before issuing such a permit, we must make a written finding that all covered species in the SHA will receive a net conservation benefit from management actions taken pursuant to the agreement.

Candidate Conservation Agreements with Assurances are voluntary agreements between us and non-Federal property owners to benefit proposed species, candidate species, and species likely to become candidates in the near future. Under a CCAA, non-Federal property owners commit to implement mutually agreed upon conservation measures which, when combined with benefits that would be achieved if it is assumed that those conservation measures were to be implemented on other necessary properties, would preclude the need to list the covered species. In return for the cooperator's proactive management, we provide an enhancement of survival permit under section 10(a)(1)(A) of the Act, which, if the species were to become listed, would authorize take of individuals or the modification of habitat conditions to the levels specified in the CCAA.

The objective of these revisions to the regulations pertaining to SHAs and CCAAs is to: (1) Rectify inconsistencies between the policies and their respective implementing regulations; (2) correct drafting errors in the regulations overlooked when the regulations were published in 1999; and (3) clarify ambiguities in the regulations to eliminate confusion. Our proposed rule, which was published in the **Federal Register** (68 FR 53320) on September 10, 2003, included a request for public comments. The closing date for the comment period was November 10, 2003.

Summary of Comments and Recommendations

In response to our request for comments on the proposed revisions to the regulations, we received letters from 22 entities. Thirteen were generally in support of our proposed regulation changes, while nine expressed concerns over certain parts of the changes. We reviewed all comments received and have incorporated accepted suggestions or clarifications into the final regulations. Because most of these letters included similar comments, we grouped the comments according to issues. Following is a summary of the relevant comments and our responses.

Transfer of Permits

Issue 1: Several commenters agreed with our revision to 50 CFR13.25(c) that authorizes permits to be transferred provided that the new owner agrees to become a party to the original agreement and permits. Some commenters also noted that this change provides more incentive to landowners to enter into SHAs and CCAAs as entering into an SHA or CCAA should not be a detriment to selling one's property. One commenter stated that we should maintain discretion to allow permit transfer, but not be obligated to do so. This commenter specifically noted that it may be preferable for us to negotiate a new Safe Harbor permit with a potentially higher baseline condition with the new owner than it would be to allow the new owner to return the property to baseline conditions established under the prior owner.

Response 1: While we acknowledge that circumstances may occur that are beyond the control of the landowner and that may warrant consideration of a new baseline, we will not make renegotiation of the baseline a requirement when a permit is transferred to a new owner. Since these agreements are totally voluntary and a new owner does not have to agree to become a party to the existing SHA, there is no advantage to making renegotiation of the baseline a requirement when transferring permits. Including such a requirement may be a disincentive to property owners who are initially entering into an SHA as well as to potential new owners of a property covered under an existing agreement.

If a new owner does not agree to become a party to the existing SHA, they would be in violation of the take provisions of section 9 of the Act (and associated regulations) if they return the property to baseline without an appropriate authorization/permit from us. Thus, just as there is an incentive for the original property owner to enter in an SHA, this same incentive exists for a new property owner to participate in and accept the transfer of an existing agreement.

Definition of Property Owner

Issue 2: We proposed to revise 50 CFR 17.22(c)(1), 17.22(d)(1), 17.32(c)(1), and 17.32(d)(1) to define applicants as property owners, including anyone with a fee-simple, leasehold, or other property interest sufficient to carry out the proposed management activities. One commenter stated that, by defining an applicant in terms of property ownership, our proposal creates confusion and is overly restrictive. The commenter points out that, in other sections of the regulations (*e.g.*, permit application requirements at 50 CFR 17.32(c)(1)(i) and issuance criteria at 50 CFR 17.32(c)(2)), we refer to the "applicant" and do not make any mention that the applicant must be a "property owner." The commenter suggests that we should consistently use the term "applicant" rather than attempting to broaden property interests to cover the myriad of possibilities beyond fee simple ownership. The commenter believes that the requirements for CCAAs do not necessitate that an "applicant" also be a "property owner'; the critical standard is whether an "applicant" can demonstrate the ability to meet the issuance criteria. Other commenters agreed with our proposed revision but some also noted that we should clarify the regulations further by specifically indicating that these agreements can take place only on non-Federal land consistent with the SHA and CCAA policies. Two commenters objected to any revision broadening the availability of SHAs or CCAAs for use on leased Federal/State lands or rights of way. Another commenter suggested that we further elaborate in the regulatory language to indicate that "property owner" includes owners of easements, water rights, and rights under long-term licenses.

Response 2: The purpose of the proposed revision related to this issue was to clarify which types of property owners could qualify for an enhancement of survival permit for an SHA or CCAA and receive the assurances granted under these types of permits, as the SHA and CCAA policies refer to property owners in several different ways. The proposed regulation was not intended to limit certain types of entities or property owners from being permit holders, but simply to state that persons/entities who have a fee simple, leasehold, or other property interest that is sufficient to carry out the proposed management activities subject to State law qualify as property owners and may receive the assurances under an enhancement of survival permit. The important consideration is not the type of property ownership, but whether it gives the person/entity the power and authority to carry out the management activities and other provisions of the SHA or CCAA.

We did not intend to broaden the availability of the assurances provided under these permits to make them include activities by non-Federal property owners that are conducted on Federal lands. Such activities are subject to regulation by the responsible Federal agency. Federal agencies are not eligible for the assurances provided under SHAs or CCAAs as they have an affirmative responsibility for species conservation under section 7(a)(1) of the Act, and authorization for incidental take involving Federal land is covered under the provisions of section 7(a)(2) of the Act and implementing regulations. Only non-Federal property owners conducting activities on non-Federal land may receive the assurances under an enhancement of survival permit for an SHA or CCAA (see 50 CFR 17.22(c)(5)(i), 17.22(d)(5), 17.32(c)(5)(i), and 17.32(d)(5)). This limitation in assurances to only non-Federal property owners is also clearly stated in the 1999 SHA policy, where we defined "enrolled property" to mean "all private or non-Federal property, waters, or natural resources to which the assurances in a Safe Harbor Agreement apply and on which incidental taking is authorized under the enhancement of survival permit."

Under some circumstances, a State, tribal, or local agency, or other entity, may be able to work more promptly, effectively, and efficiently with individual property owners toward conservation of listed, candidate, or other at-risk species. In these cases, under the SHA and CCAA policies, we can enter into an "umbrella" or programmatic agreement with the appropriate agency or other entity. The agreement and associated enhancement of survival permit would specify the assurances and take allowances that could be distributed by the participating agency or other entity to the eligible individual non-Federal property owners, usually through a Certificate of Inclusion. In these situations, the assurances and take allowances in the permit apply only to the individual non-Federal property owners who choose to be included. In some cases, which we anticipate will occur only very infrequently, we may issue the enhancement of survival permit to a part of our agency (*e.g.*, a Species Recovery Coordinator), who in turn issues Certificates of Inclusion to the non-Federal property owners. Again, it is only the non-Federal property owners who receive the assurances for the specified allowable take.

Based on the confusion created by our proposal to use the term property owner, we will not make this proposed revision. Instead, we will continue to use the term "applicant" in 50 CFR 17.22(c)(1), 17.22(d)(1), 17.32(c)(1), and 17.32(d)(1). The term "non-Federal property owner" is defined in the both the SHA and CCAA policies, but those definitions do not make it clear that persons who have a leasehold or other property interest that is sufficient to carry out the proposed management activities subject to State law qualify as non-Federal property owners. Therefore, in this final rule we are adding a definition of "property owner" to 50 CFR 17.3 to clarify this issue.

Issue 3: One commenter stated that the proposed revision will allow individuals who hold temporary or limited property interest to enter into agreements on properties that they do not own. The commenter believed this may be problematic and suggested we clarify our view on this or not make the proposed change.

Response 3: The proposed revision would not change what type of property owner can receive an SHA or CCAA enhancement of survival permit. Persons/entities that have a lease on a property that they do not own have always been able to apply for and receive a permit for an SHA or CCAA provided they meet the issuance criteria. While the length of time a person holds a lease on a property and the terms of the lease will be considered when we issue these types of permits and can have an influence on the conservation benefit to the species, we are not establishing thresholds on these timeframes; each application will be evaluated on a case-by-case basis. Depending on the nature of the SHA or CCAA, we believe that entities with less-than-permanent interests in property or less-than-complete interests in property could meet the requirement that the applicant must have "shown capability for and commitment to implementing all of the terms of the SHA or CCAA."

Acknowledgement of Two Categories of Take (Safe Harbor Agreements Only)

Issue 4: We proposed to revise 50 CFR 17.22(c)(1)(ii) and 17.32(c)(1)(ii) to acknowledge that there are two broad categories of incidental take that may occur under an SHA. One commenter believed the proposed revisions require the property owner to submit more information to obtain a permit than was previously required since they would now have to indicate how take will occur as a result of both management and a return to baseline. The commenter believed this will increase the cost of obtaining a permit and, therefore, be less likely to occur. Other commenters agreed with the proposed change to the regulations, stating that it was appropriate that we amend these provisions.

Response 4: We disagree with the commenter who believes that this change in the regulations requires the property owner to submit more information than was previously required. Information regarding how incidental take is likely to occur, both as a result of management activities and as a result of the return to baseline, has always been required in order to issue an enhancement of survival permit associated with an SHA, as we need this information to analyze the benefits and potential adverse effects of implementing the SHA. We acknowledge that, in some cases, management activities that a landowner undertakes may result in incidental take of the species, and such activities should be described in the SHA. The revision of the regulation is making this information requirement more obvious to an applicant who uses the regulations as a guide in applying for this type of permit.

Description of Future Land Use (Safe Harbor Agreements Only)

Issue 5: Several commenters agreed with our proposed change at 50 CFR 17.22(c)(1(ii) and 17.32(c)(1)(ii) to clarify the information being requested about future activities in relation to incidental take, as they believed this provision may have led to decreased use of SHAs in the past. Two commenters agreed with the revision. One of these commenters also stated that the existing language—which requires a "description of the land use or water management activity for which the applicant requests incidental take authorization"—also should be retained, and noted that this information is crucial to our evaluation of the proposed agreement and plan.

Response 5: The original regulations at 50 CFR 17.22(c)(1)(ii) and 17.32(c)(1)(ii), pertaining to application requirements for permits for enhancement of survival through SHAs, specified that the application include "A description of the land use or water management activity for which the applicant requests incidental take authorization." This requirement has been mistakenly interpreted by some as an intent by us to limit use of private property after the term of the agreement and permit. This is not the intent of the regulations; we neither wish, nor have the authority, to limit such future use of property by a landowner. Therefore, we proposed to revise this provision to require the applicant to describe how incidental take may occur (*i.e.* through management activities and/or return to baseline), and to make it clearer that we are not requiring a description of future land use or water management activities that will take place after the term of the agreement and permit. We believe that our revision requires the appropriate information for evaluating the permit application and the SHA.

Issue 6: One commenter suggested that we should announce that we are eliminating the requirement to describe future land uses from the SHA policy as well as the regulations in order to achieve consistency between the regulations and the policy.

Response 6: We agree with the commenter that it would be helpful to amend the SHA policy to be consistent with these regulations. In order to amend the policy, we must publish a proposed policy amendment in the **Federal Register** and make that available for at least a 30-day comment period. Following the close of the comment period, we would analyze any comments and publish a final policy. As our budget allows, we will seek to go through this process to make this change in the SHA policy in the future.

Net Conservation Benefit (Safe Harbor Agreements Only)

Issue 7: Several commenters agreed with the proposed change at 50 CFR 17.22(c)(2)(ii) and 17.32(c)(2)(ii) to include the language "reasonably expected" with regard to net conservation benefits. Some commenters stated that the current standard is unreasonable in requiring a certain finding of future events. Two commenters stated that, since nature can be complex and unpredictable, the change in language from "will provide a net conservation benefit" to "is reasonably expected to provide a net conservation benefit" is reasonable. One commenter believes that this language change will increase the likelihood that a landowner will enter into a conservation agreement.

Response 7: We agree with the commenters who are in favor of the proposed revision. We suggested this revision to address confusion regarding the word "will" in the issuance criteria, which could have been interpreted as suggesting that we must determine with complete certainty that a net conservation benefit will occur before a permit can be issued. This unrealistic standard was not the intent of the Safe Harbor Policy or the regulation.

Notification Requirement

Issue 8: Our proposed regulation included replacing the requirement that a property owner notify us at least 30 days in advance of when he or she expects to incidentally take any species covered under a permit, with a requirement that the property owner notify us in advance of any incidental take "when appropriate." One commenter stated that the "when appropriate" language makes the regulation largely meaningless by leaving the decision to notify us entirely up to the discretion of the permittee. This commenter suggested we change the language to read, "The permittee is required to notify FWS at least 30 days before engaging in an activity that could result in the take of a listed species, unless FWS agrees to an activity with shorter notification or immediate action." Another commenter agreed with our proposed change as long as we have the authority to evaluate situations on a case-by-case basis so that emergency situations remain the exception and not the rule. Other commenters agreed with our proposed change, stating that it provides the flexibility that both we and the permit applicants need to negotiate a notification requirement that makes sense for each specific agreement. Two commenters did not agree that the mandatory 30-day advance notice requirement in the original regulation was an undue burden or a significant disincentive for landowners who are considering applying for either SHAs or CCAAs. One commenter also stated that, even if a species cannot be captured and relocated, it is both prudent and appropriate that we always be aware in advance of the impending incidental take of species covered under the permit or return of the property to baseline conditions. Another commenter suggested that if we make the proposed change, strict guidelines clearly defining the circumstances under which advance notification would not be required must be either incorporated into the regulations or into individual SHAs and CCAAs. Still another commenter believed the public should be informed 90 days before any "killing" is to take place, that any permittee should give us 120 days' notice of when the permittee expects to "take/kill" wildlife, and the general public must be given full facts on this "killing."

Response 8: The purpose of the proposed revision regarding notification was to provide flexibility for determining when a notification requirement would be appropriate. For some species and some SHAs, notification prior to take may not be necessary, while for other species and SHAs notification more than 30 days prior to take may be appropriate. By adding the term "when appropriate," the Service and applicants can determine what will work best for their individual SHA. When the notification timing is decided, it will be clearly described in the SHA and the associated permit. In addition, each permit holder is required to report to the Service, usually annually, on the activities associated with his or her SHA. This report would include a description of any take that had occurred since the last report. Therefore, the Service would still know that the take associated with bringing that property back to baseline had occurred.

We disagree with the commenter who suggested that the public should be informed prior to the occurrence of any take associated with a permit. A notification of the receipt of each proposed SHA must be published in the **Federal Register** and a public comment period, usually 30 to 60 days, is required. During this time, the public has an opportunity to read and provide comments on the terms of the SHA, and such terms include a description for how take may occur (for initial and ongoing management activities) and when it will likely occur (when the conditions of the permit have been met).

Mitigation and Conserved Habitat Areas

Issue 9: Several commenters believed that the proposed revisions at 17.22(c)(5)(ii) and 17.32(c)(5)(ii) to remove references to additional mitigation measures and to "conserved habitat areas" make SHAs completely subject to the discretion of the permittee, and that the original language was more than sufficient to set reasonable limitations on requirements for additional conservation measures. These commenters stated that the proposed change does not allow us to require additional conservation measures without the consent of the permittee, even if such additional measures are found to be necessary to avoid harming the affected endangered or threatened species. Several other commenters agreed with our proposed changes, stating that removing references to the terms "mitigation" and "conserved habitat areas" made sense, since there are no mitigation requirements or conserved habitat areas in either the SHA or CCAA policies.

Response 9: The intent of this change was solely to match the regulations for SHAs and CCAAs with the respective policies, in order to eliminate confusion. Neither policy has any mitigation requirements or makes any references to the term "conserved habitat areas;" these terms are used in conjunction with Habitat Conservation Plans (see 50 CFR 17.22(b)). As we stated in our proposed rule, establishing authority to require a landowner to carry out other measures that were not previously agreed to by the property owner is not appropriate for SHAs and CCAAs.

Other Conservation Measures

Issue 10: One commenter believed the proposed changes at 50 CFR 17.22(c)(5)(ii), 17.22(d)(5)(ii), 17.32(c)(5)(ii), and 17.32(d)(5)(ii) would undermine the basic concept of adaptive management in that, while a variety of changing circumstances can and must be reasonably foreseen, the specific responses to those changing circumstances that will be most appropriate may not be foreseeable. The commenter believes the Service should not provide regulatory assurances because we are dealing with the uncertainties of a necessarily changing biological world, and it is only reasonable to assume that some changes might occur. Another commenter stated that a conservation agreement should not be entered into if the landowner will be allowed to knowingly degrade the habitat they have agreed to protect. This commenter stated further that we should not expose ourselves to potential pressure from landowners who have knowingly and willingly degraded habitat and then expect us to modify the conservation agreement to allow for the new, degraded condition. Other commenters supported the proposed change, stating that as SHAs are voluntary agreements, it is inconsistent for one party to reserve the right to change the terms of the agreement unilaterally and to require the other party to adhere to unilaterally changed terms.

Response 10: We do not believe that the proposed changes undermine the concept of adaptive management. We actively promote this concept, recognizing the value of incorporating adaptive management into conservation agreements in dealing with changing situations and new information. Under SHAs, landowners agree to manage their lands to provide a net conservation benefit to listed species and cannot degrade the habitat below the biologically-based baseline. Likewise, under CCAAs, landowners agree to manage their lands to remove threats to at-risk species. Also, because these agreements are voluntary, and sought by landowners who are willing to provide habitat, we do not believe landowners will willingly degrade habitat in order to modify the conservation agreement to allow for the new, degraded condition. We agree that we cannot reserve the right to change the terms of the agreement unilaterally while requiring the permittee to implement the changed terms.

Revocation

Issue 11: Several commenters believed the changes to the revocation language (at 50 CFR 17.22(c)(7), 17.22(d)(7), 17.32(c)(7), and 17.32(d)(7)) would severely limit our ability to revoke a permit even when the continuation of the permitted activity would appreciably reduce the likelihood of survival and recovery of the species in the wild. These commenters believe that the proposed revision pertaining to the option of compensating a property owner to forgo an activity could result in a need for us to obtain large amounts of funding, and that this would be unreasonable and could lead to situations where permittees profit by proposing activities that would harm the species for the purpose of being paid by the Service not to engage in the activity. Other commenters thought the option of public compensation for imperiled species was highly inappropriate since they are a public trust resource. Two commenters also noted that the option of relocating the species undermines the purpose of SHAs and CCAAs, which is to secure habitat for imperiled species. Another commenter objected to the proposed change, in part, because the commenter believed we are applying the revocation standard for Habitat Conservation Plans to SHAs, which are totally voluntary agreements. This commenter believed that permits for an SHAs should not be revoked for any reason except as provided for under 50 CFR 13.28(a)(1) through (4) or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 50 CFR 17.22(c)(2)(iii) and the inconsistency has not been remedied in a timely fashion. The commenter also suggested that a permit should not be revoked for this last reason unless the permittee has declined an offer from us to purchase their property (or an interest) at fair market value or has refused our request to relocate individual animals from their property in order to avoid the inconsistency (with 50 CFR 17.22(c)(2)(iii)).

Response 11: We disagree that our proposed revocation language would severely limit our ability to revoke a permit even when the continuation of the permitted activity would appreciably reduce the likelihood of the survival and recovery of the species in the wild. The regulations authorize the Service to revoke a properly implemented SHA or CCAA enhancement of survival permit when such conditions exist. We believe that our proposed change provides an array of options to pursue in order to avoid permit revocation, but does not inappropriately limit our ability to revoke a permit in the highly unlikely event that such an action is necessary.

We disagree with those commenters who believe that the proposed changes to the revocation language would result in some applicants knowingly proposing certain activities that they actually do not intend to implement, in order to potentially profit from being paid to not engage in such activities later. Applicants enter into SHAs and CCAAs in good faith and we work diligently with them to design and then implement agreements that will have the intended outcomes. Should a lapse in permit compliance occur, we want to retain our flexibility to work with the permit holder to rapidly be back in compliance, in order to continue activities that are benefiting the covered species. However, in the highly unlikely event that this should not be possible, we are obligated to do whatever is necessary for the continued survival of the species. While we acknowledge that potentially having to purchase properties or conservation easements may be costly, we do not anticipate this need arising frequently, if at all, particularly in light of other available options for avoiding revocation of a permit.

With regard to the commenters who believe that potentially relocating species undermines the purpose of SHAs and CCAAs, we disagree with their premise that the purpose of these agreements is to secure habitat for imperiled species. While the outcome of these agreements may be to secure habitat, that is not their specific purpose. The purpose of an SHA is to provide the expectation of a "net conservation benefit" that will aid in a species" recovery, either directly or indirectly, as described in the SHA policy and associated regulations. The purpose of a CCAA is to contribute to precluding the need to list the species. If relocation of individuals of a species covered under a SHA or CCAA is deemed appropriate, such an action would not undermine those agreements or the purpose of SHAs or CCAAs.

Our proposed revision of the regulation pertaining to revocation of permits associated with SHAs and CCAAs was designed to address concerns that the regulation, as adopted in 1999, may be a disincentive to landowners considering development of such agreements. The proposed change is consistent with our goal of encouraging non-Federal property owners to engage in SHAs and CCAAs. We disagree that it would be appropriate to limit the options to pursue, as suggested by one commenter, to include only the purchase of a permittee's property (or interest) at fair market value, or the relocation of individual animals from the property. Rather, we believe it is in the best interest of a permittee, as well as being in the public interest, to have a broader range of options available for the Service and the permittee to pursue, as identified in the proposed rule. The revised text provides further clarity and assurance to landowners of the very strong commitment on the part of the Service to pursue, with the consent of the permittee, all relevant and appropriate options to avoid permit revocation.

Issue 12: One commenter stated that use of the portion of our proposed regulatory language on revocation that relies on the definition of destruction or adverse modification of critical habitat will invite legal challenges since this definition was invalidated by the 5th Circuit Court of Appeals in *Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001).

Response 12: Based on the statutory authority provided under section 7(a)(2) of the Act, the Director may revoke a permit if continuation of the permitted activity would either be likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

Issue 13: One commenter stated that it was appropriate for us to clearly include language in the regulations indicating that we would exhaust our alternatives before revoking a permit, particularly given the truly voluntary nature of SHAs and CCAAs. However, the commenter cautioned that it is extremely important that the time used in taking alternate actions not further imperil an endangered species. Another commenter supported our proposed revocation language and believed that, by indicating we would pursue all appropriate options to avoid permit revocation, the incentive for potential applicants to enter into SHAs and CCAAs would increase.

Response 13: We agree with these commenters and we try to deal with these issues in a time-sensitive manner. Also, see our response to issue 11.

Issue 14: A commenter stated that we do not offer any legal basis or meaningful explanation for the proposed revision of the revocation language other than the current revocation text "may create disincentives to landowners considering the development of a [SHA or CCAA]." The commenter believes including authority to revoke a permit if we find that the continued permitted activity would "directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species" may exceed our authority. The commenter further noted that the Service has by regulation already asserted the "jeopardy" standard as a basis for revocation. The commenter noted that they cannot, however, support the continued extension of the current regulation (which asserts the "jeopardy" standard) to reach future direct or indirect alteration of critical habitat by landowners operating under SHAs and CCAAs in the absence of a clear legal basis.

Response 14: The revocation provisions of both the 1999 regulations and the revised regulations are based on the legal premise that the Service may revoke a permit if continuation of the activities authorized by the permit would violate the substantive standards of section 7(a)(2) of the Act, which include both the "jeopardy" and "critical habitat" standards. Our issuance of an enhancement of survival permit in association with an SHA or a CCAA is a Federal action that is subject to an intra-Service consultation under section 7(a)(2) of the Act. The 1999 revocation provisions indicated that the Service may revoke a permit if continuation of the permitted activity becomes inconsistent with the no jeopardy issuance criterion. The revised regulation clarifies that the Service has the authority to revoke a permit that violates either the no jeopardy standard or the adverse modification of critical habitat standard in section 7 of the Act. The language in the revised revocation provisions is taken directly from the definitions of "jeopardize the continued existence of" and "destruction or adverse modification" in the Service's section 7 regulations (50 CFR 402.02).

Relationship to No Surprises

Issue 15: One commenter stated that we should postpone finalizing this rulemaking based on the recent court ruling in *Spirit of the Sage Council* v. *Norton* on the "no surprises rule" and "permit revocation rule." The commenter noted that the ruling vacated the "permit revocation rule" and remanded both rules to the Service for further consideration.

Response 15: The Spirit of the Sage Council v. *Norton* ruling deals only with the no surprises rule and permit revocation language for HCPs (see 50 CFR 17.22 and 17.32(b)(8)). The ruling does not apply to regulations for SHAs or CCAAs and thus, we see no need to postpone this rulemaking as a result of the ruling.

Other Issues

Issue 16: One commenter, while agreeing with the proposed regulation changes, stated that we did not address the issue of neighboring property owner vulnerability. This commenter stated that, while a participating property owner may enjoy greater certainty that their habitat conservation work will not be "punished" under the Act, the property owner may opt not to participate in an SHA for fear of placing their neighbors in "ESA jeopardy."

Response 16: We agree that the fear of increasing a neighboring property owner's potential liability under section 9 of the Act may be a disincentive for some property owners to enter into an SHA. The SHA policy offers flexibility when dealing with neighboring landowners to address this concern. Our work with property owners on an SHA includes working with them in relation to contacting neighboring landowners to see if they also are willing to voluntarily enter into an agreement. Also, designing a programmatic agreement that can cover multiple landowners, each of which may be covered through issuance of a certificate of inclusion, is one of the ways we may help resolve the concern raised by the commenter. Consequently, we do not believe that the regulations need to be revised to more directly address neighboring property owners.

Issue 17: A commenter stated that, while they support many of the proposed revisions, they have concerns over the existence of sufficient resources for us to adequately implement SHAs and CCAAs. The commenter believes the largest impediment to widespread utilization of the SHA and CCAA programs is the inherent uncertainty about the amount of time and cost of the permit application process and urges us to devote the resources necessary to fully implement the proposed revisions.

Response 17: We believe SHAs and CCAAs are very important tools that help to conserve listed and at-risk species. We will continue to seek funding for these programs in a manner that recognizes our need to balance funding for our work on SHAs and CCAAs with the other work we do as part of our Endangered Species program, such as listing, consultations, and recovery work.

Issue 18: One commenter recommended that we revise our regulations to provide more certainty with respect to the procedures we use to process SHA and CCAA applications and complete the issuance of the permits. To encourage more voluntary agreements, the commenter suggested we include a time limit of 90 days for our review of applications. The commenter also suggested that we include language that would require us to provide a copy of the proposed permit to the applicant for review prior to final issuance. The commenter believed this would allow for correction of factual data and of inconsistencies between the permit and agreement and, thus, increase the efficiency of the permit process.

Response 18: We disagree that our regulations need to be changed in the manner suggested by the commenter. We work diligently to process these agreements and their associated permits as expeditiously as possible. For a variety of reasons, some agreements take longer to develop and review than others. For example, an umbrella or programmatic SHA or CCAA that involves more than one species will usually take longer to develop and review than an agreement that involves a single landowner and a single species. We do agree with the commenter that providing the applicant with a copy of the proposed permit for review prior to final issuance helps to increase the efficiency of the permitting process, and in fact we do routinely develop and share the permit terms and conditions, along with other documents, with the applicant throughout the agreement development process.

Issue 19: One commenter urged that we use the biologically based baseline for judging whether to revise an SHA, and not use the "jeopardy" test.

Response 19: We disagree with the commenter that we should not use a "jeopardy test." We use both a biologically based baseline and a "jeopardy" analysis in developing an SHA with an applicant. A baseline, expressed in numbers of individuals of the species and/or acres of occupied habitat, is determined for each species enrolled under the applicant's SHA. If the applicant wants to add another species sometime in the future, a baseline is also established for that species. If something beyond the applicant's control happens to change the baseline (*e.g.*, a hurricane knocking down nest trees for the red-cockaded woodpecker), then a change in the baseline may be necessary.

Our issuance of an SHA permit is a Federal action that requires an intra-Service consultation under section 7 of the Act. Specifically, section 7(a)(2) of the ESA requires us to "insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species.* * *" The jeopardy analysis is based on a "biological baseline" of the species as a whole, not just the individual or populations of the species to be enrolled under the SHA. Therefore, we believe that no changes are necessary in the way we evaluate SHAs using a jeopardy analysis.

Issue 20: One commenter stated that any changes to programs affecting listed species should not be made unless the changes substantially outweigh all detriments to the species.

Response 20: We must ensure that any proposed SHAs and CCAAs will meet the issuance criteria before we can issue the permit. One of the issuance criteria for SHAs is to ensure that the proposed activities will be likely to result in a net conservation benefit for the species. What constitutes a net conservation benefit will vary depending upon the species and the proposed activities. However, it generally means that any potential negative impact to the species is outweighed by the benefits of the activities. The Service and applicant may agree to amend an existing agreement or permit for several reasons. When the amendment involves the species and or property enrolled, those changes must still meet the "net conservation benefit" standard.

Issue 21: One commenter believed that we should not utilize our limited resources to enter into CCAAs (or CCAs) because it is doubtful they could benefit the species biologically because the conservation needs of the species would be too speculative, unlike that for listed species, which are more fully understood.

Response 21: We disagree with the commenter. Candidate species are those species for which we have sufficient information on file relative to status and threats to support issuance of proposed listing rules; therefore, in general, the conservation needs of these species are no more speculative than for listed species. We do agree that for some species at-risk, we may not fully understand the biology of the species, but through CCAAs that incorporate adaptive management principles, we may gain additional information on the conservation needs of the species, while at the same time protecting habitat or reducing threats. We believe that, by spending part of our Endangered Species Program budget on the conservation of such species, we may be able to preclude the need to list them under the Act. By precluding or removing the need to list a species through early conservation efforts we increase the likelihood that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful, and at the same time, property owners have a much greater opportunity to maintain land use and development flexibility.

Issue 22: One commenter was concerned that some of the proposed revisions would result in the permitting of activities that operate to the disadvantage of endangered and threatened species, as well as candidate and proposed species, and would not be consistent or in compliance with the purpose of the Endangered Species Act.

Response 22: We will not issue enhancement of survival permits that are not consistent or in compliance with the purposes of the Act. Before we can issue a permit, we must determine that the applicant meets the issuance criteria. For SHAs, the agreement must provide the expectation of a net conservation benefit to the species. For CCAAs, the agreement must contain conservation measures that provide benefits, when combined with those benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove the need to list the species. Also, under section 7 of the Act, we must ensure that the conservation measures included in any agreement with assurances are not likely to jeopardize any listed or proposed species or result in result in the destruction or adverse modification of designated or proposed critical habitats for such species. Thus, we are operating in compliance with the purposes of the Act.

Issue 23: One commenter was concerned about a perceived inconsistency between the proposed revisions and the CCAA policy. The commenter believes the CCAA policy does not require an applicant to remove the threats to a covered species. Rather we must find that the conservation benefits of the measures implemented within a covered area, when combined with those benefits if conservation measures were also implemented elsewhere within the range of a covered species, would cumulatively preclude or remove the need to list. The commenter asked us to clarify this inconsistency in order to avoid confusion. The commenter notes that (1) a considerable amount of time, money and resources are necessary to develop plans that satisfy regulatory standards, (2) this commitment of time and resources can be a disincentive to participation in conservation planning by non-Federal parties, and (3) clarifying this regulation to expedite the processing of conservation plans and permit applications will therefore benefit the applicant, the Service, and species alike.

Response 23: We do not believe there is an inconsistency with the CCAA policy. The CCAA policy does not require that an applicant's actions remove the threats to a covered species throughout its range. Rather, the policy states: "While the Services realize that the actions of a single property owner usually will not preclude or remove any need to list a species, they also realize the collective effect of the actions of many property owners may be to preclude or remove any need to list." As called for in the CCAA policy and associated regulations, the CCAA should clearly describe how the proposed conservation measures would reduce or eliminate the threats to the covered species on the enrolled property. The types of conservation measures specified in the CCAA will depend upon the types, amounts, and condition of habitats existing on and off the enrolled property, the threats to the covered species that are being addressed, and the degree of imperilment of the covered species. In many cases, implementing only one CCAA for a species will not preclude the need to list the species, but a number of CCAAs in combination may achieve this goal.

Summary of Changes From the Proposed Rule

We have revised the proposed regulation by adding a definition of "property owner" to § 17.3. We have withdrawn the proposal to amend the first sentence of the following sections: §§ 17.22(c)(1), 17.22(d)(1), 17.32(c)(1), and 17.32(d)(1) that relates to the application requirements; we will continue to use the term "applicant" in these sections.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal or policy issues. This rule was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

(a) This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Because most of this rule deals with revisions that clarify rather than substantially alter our current regulations, we do not anticipate that this rule will cause any significant economic changes, either positive or negative. We have concluded that this rule will have some beneficial economic effect because we are rectifying inconsistencies and drafting errors; we believe these changes will increase efficiency by making Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to undertake and implement. The effect would be minimal because of the small number of permits anticipated to be issued.

(b) This rule is not expected to create inconsistencies with other agencies' actions. Although the Safe Harbor and Candidate Conservation Agreements with Assurances policies are joint policies with the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries), the implementing regulations subject to this rule apply to the Fish and Wildlife Service exclusively. NOAA Fisheries has not adopted similar regulations to the Fish and Wildlife Service regarding these policies.

(c) This rule is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule raises novel legal or policy issues and, as a result, this rule has undergone OMB review. If this regulation can help facilitate wider adoption of the Safe Harbor Agreement and Candidate Conservation Agreements with Assurances programs, it could help increase private conservation efforts on behalf of listed and unlisted species, which is a key component of successful implementation of the Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act (RFA). The rule does not establish any new application or implementation burdens. Submitting applications for enhancement of survival permits under the Act is voluntary, and participation in activities that enhance the survival or propagation of species is also voluntary on the part of the applicant. We expect that any impacts of this rule would be beneficial because they clarify the regulatory requirements for obtaining enhancement of survival permits under the Act. Therefore, we do not expect these changes to affect a substantial number of small entities. To date, we have issued 22 Safe Harbor Agreement permits and 5 Candidate Conservation Agreements with Assurances permits, for an average of approximately five Safe Harbor Agreement permits and one Candidate Conservation Agreement with Assurances permit per year. We expect to issue approximately the same number of enhancement of survival permits per year. Given the low number of enhancement of survival permits expected to be issued, and the fact that this rule provides clarifications rather than substantial changes to the regulations, we certify that this rule will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the RFA.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. We expect that this rule will not result in any significant additional expenditures.

(b) This rule will not produce a Federal mandate on State, local, or Tribal governments or the private sector of $100 million or greater in any year; as a result, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This rule imposes no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule has no provision that would take private property rights. Participation in this permitting program is strictly voluntary.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this rule is to address inconsistencies in and clarify the current regulations.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, this rule does not directly affect Tribal resources. The effect of this rule on Native American Tribes would be determined on a case-by-case basis through individual evaluations of permit applications. Under Secretarial Order 3206, we will, at a minimum, share with the entity that developed the permit application any information provided by the Tribes, through the public comment period or formal submissions, and advocate the incorporation of conservation measures that will restore or enhance Tribal trust resources. After consultation with applicable Tribes and the entity that developed the permit application, and after careful consideration of the Tribes' concerns, we must clearly state the rationale for the recommended final decision and explain how the decision relates to our trust responsibility. Accordingly:

(a) We will consult with affected Tribes during individual evaluations of permit applications.

(b) We will treat Tribes on a government-to-government basis during individual evaluations of permit applications.

(c) We will consider Tribal views during individual evaluations of permit applications.

(d) We will consult with the appropriate bureaus and offices of the Department about the identified effects of this rule on Tribes during individual evaluations of permit applications.

Paperwork Reduction Act

This rule does not impose any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB clearance number 1018–0094. This rule revises current regulations for programs permitted under 50 CFR 17.22 (c) and (d), and 17.32 (c) and (d). Our current application approval number, 1018–0094, which expires July 31, 2004, already accommodates this clarification and the changes associated with this final rule. Therefore, no change in the approved application forms is needed. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We have determined that this rule is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1.

Section 7 Consultation

Although these revisions to the regulations will make enhancement of survival permits associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances easier to obtain, understand, and implement, it will not change the issuance standards or the manner in which the Service makes its issuance determinations. In addition, the Service will continue to consult, under Section 7(a)(2), or confer, under Section 7(a)(4), as appropriate, on the issuance of each individual permit. During consultation or conference, the potential risks to listed or proposed species and designated or proposed critical habitat areas will be evaluated. Therefore, we have determined that the present action of revising existing regulations for section 10(a)(1)(A) permits will not affect listed or proposed species or designated or proposed critical habitat.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

■ For the reasons set forth in the preamble, we hereby amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations, as set forth below:

PART 13—[AMENDED]

■ 1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668(a), 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

■ 2. Amend § 13.25 by revising paragraph (b) introductory text, redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c) as set forth below:

§ 13.25 Transfer of permits and scope of permit authorization.

(b) Permits issued under § 17.22(b) or § 17.32(b) of this subchapter B may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided the Service determines that:

* * * * *

(c) In the case of the transfer of lands subject to an agreement and permit issued under § 17.22(c) or (d) or § 17.32 (c) or (d) of this subchapter B, the Service will transfer the permit to the new owner if the new owner agrees in writing to become a party to the original agreement and permit.

* * * * *

PART 17—[AMENDED]

■ 3. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 4. Amend § 17.3 as set forth below by:

■ a. Revising the definitions of "Changed circumstances" and "Unforeseen circumstances"; and

■ b.Adding in alphabetical order a definition for "Property owner"; to read as follows:

§ 17.3 Definitions.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that can reasonably be anticipated by plan or agreement developers and the Service and that can be planned for (*e.g.*, the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

* * * * *

Property owner with respect to agreements outlined under §§ 17.22(c), 17.22(d), 17.32(c), and 17.32(d) means a person with a fee simple, leasehold, or other property interest (including owners of water or other natural resources), or any other entity that may have a property interest, sufficient to carry out the proposed management activities, subject to applicable State law, on non-Federal land.

* * * * *

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan or agreement that could not reasonably have been anticipated by plan or agreement developers and the Service at the time of the conservation plan's or agreement's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

* * * * *

■ 5. Amend § 17.22 by revising paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), (d)(3)(ii), (d)(5)(i)–(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(c)(1) * * *

(ii) A description of how incidental take of the listed species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline; and

* * * * *

(2) * * *

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

(d) * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) * * *

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

■ 6. Amend § 17.32 by revising paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii), (c)(5)(ii), (c)(7), (d)(3)(ii), (d)(5)(i)–(ii), (d)(5)(iii)(B), and (d)(7) to read as follows:

§ 17.32 Permits—general.

* * * * *

(c)(1) * * *

(ii) A description of how incidental take of the covered species pursuant to the Safe Harbor Agreement is likely to occur, both as a result of management activities and as a result of the return to baseline;

* * * * *

(2) * * *

(ii) The implementation of the terms of the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit, and the Safe Harbor Agreement otherwise complies with the Safe Harbor policy available from the Service;

* * * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(ii) The Director and the permittee may agree to revise or modify the management measures set forth in a Safe Harbor Agreement if the Director determines that such revisions or modifications do not change the Director's prior determination that the Safe Harbor Agreement is reasonably expected to provide a net conservation benefit to the listed species. However, the Director may not require additional or different management activities to be undertaken by a permittee without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (c) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

(d) * * *

(3) * * *

(ii) When appropriate, a requirement for the permittee to give the Service reasonable advance notice (generally at least 30 days) of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to relocate affected individuals of the species, if possible and appropriate; and

* * * * *

(5) * * *

(i) *Changed circumstances provided for in the Agreement.* If the Director determines that additional conservation measures are necessary to respond to changed circumstances and these measures were set forth in the Agreement, the permittee will implement the measures specified in the Agreement.

(ii) *Changed circumstances not provided for in the Agreement.* If the Director determines that additional conservation measures not provided for in the Agreement are necessary to respond to changed circumstances, the Director will not require any conservation measures in addition to those provided for in the Agreement without the consent of the permittee, provided the Agreement is being properly implemented.

(iii) * * *

(B) If the Director determines additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the Agreement is being properly implemented, but only if such measures maintain the original terms of the Agreement to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the Agreement without the consent of the permittee.

* * * * *

(7) *Criteria for revocation.* The Director may not revoke a permit issued under paragraph (d) of this section except as provided in this paragraph. The Director may revoke a permit for any reason set forth in § 13.28(a)(1) through (4) of this subchapter. The Director may revoke a permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit for either of the latter two reasons, the Director, with the consent of the permittee, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the landowner to forgo the activity, purchasing an easement or fee simple interest in the property, or arranging for a third-party acquisition of an interest in the property.

* * * * *

Dated: April 12, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–9982 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 69, No. 85
Monday, May 3, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ and EMB–145XR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–135BJ and EMB–145XR series airplanes. This proposal would require installation of an additional indication device to the clear ice indication system. This action is necessary to prevent an undetected in-flight buildup of clear ice on airplane control surfaces, which could lead to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2004–NM–36–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–36–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–135BJ and EMB–145XR series airplanes. The DAC advises that a risk assessment has shown that the reliability level of the clear ice indication system is not sufficient. This condition, if not corrected, could result in undetected in-flight buildup of clear ice on airplane control surfaces, which could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletins 145–30–0035, Revision 01 (for Model EMB–145XR series airplanes), dated September 2, 2003; and 145LEG–30–0002 (for Model EMB–135BJ series airplanes), dated September 2, 2003. These service bulletins describe procedures for installation of an additional indication device to the clear ice indication system. The DAC classified these service bulletins as mandatory and issued airworthiness directive 2004–01–01, dated January 27, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

Operators should be aware that Service Bulletin 145LEG–30–0002 (for Model EMB–135BJ series airplanes), dated September 2, 2003, specifies prior or concurrent accomplishment of EMBRAER Service Bulletin 145LEG–25–0027, dated May 7, 2003, which describes procedures for removal of the Inlet Turbine Temperature (ITT)-related placard from the main panel of the cockpit.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign Airworthiness Directive

The Brazilian airworthiness directive applies to "all EMB–145XR and EMB–135BJ aircraft in operation." The service bulletins apply to certain EMB–145XR and EMB–135BJ series airplanes having certain serial numbers. As coordinated with the DAC, this proposed AD applies only to those airplanes having serial numbers listed in the service bulletins.

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD. The average labor rate is $65 per work hour. Costs per airplane are listed in Table 1 of this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $74,475.

TABLE 1.—COST ESTIMATES

Airplane model	No. of airplanes	Work hours	Parts cost	Cost per airplane
EMB–145XR	41	15	$460	$1,435
EMB–135BJ	8	23	460	1,955

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2004–NM–36–AD.

Applicability: Model EMB–135BJ and EMB–145XR series airplanes, certificated in any category, as listed in EMBRAER Service Bulletin 145–30–0035, Revision 01, dated September 2, 2003; or 145LEG–30–0002, dated September 2, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected in-flight buildup of clear ice on airplane control surfaces, which could lead to reduced controllability of the airplane, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model EMB–145XR series airplanes: EMBRAER Service Bulletin 145–30–0035, Revision 01, dated September 2, 2003; and

(2) For Model EMB–135BJ series airplanes: EMBRAER Service Bulletin 145LEG–30–0002, dated September 2, 2003.

(b) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0035, dated July 16, 2003, are considered acceptable for compliance with the corresponding actions specified in this AD.

Modification of Clear Ice Indication System

(c) Within 24 months or 5,000 flight hours after the effective date of this AD, whichever comes first, install an additional indication device to the clear ice indication system in accordance with the Accomplishment Instructions of the applicable service bulletin.

Concurrent Service Bulletin

(d) For airplanes listed in EMBRAER Service Bulletin 145LEG–30–0002, dated September 2, 2003: Prior to or concurrent with the accomplishment of paragraph (c) of this AD, remove the Inlet Turbine Temperature (ITT)-related placard from the main panel of the cockpit in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–25–0027, dated May 7, 2003.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2004–01–01, dated January 27, 2004.

Issued in Renton, Washington, on April 23, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9905 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2 and B4 series airplanes, that currently requires determining the part and amendment number of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions if necessary. For certain VLAs, this action would require repetitive inspections for damage, and replacement with a new VLA if necessary. This action would also provide an optional action to replace the VLA with a new VLA, which would constitute terminating action for the repetitive inspections. The actions specified by the proposed AD are intended to prevent failure of both spring boxes of certain VLAs due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–16–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 18, 2001, the FAA issued AD 2001–22–02, amendment 39–12481 (66 FR 54416, October 29, 2001), applicable to all Airbus Model A300 B2 and B4 series airplanes. That AD requires determining the part and amendment numbers of the variable lever arm (VLA) of the rudder control system to verify the parts were installed using the correct standard, and corrective actions if necessary. That action was prompted by reports that, during regularly scheduled maintenance, damage to the VLA of the rudder control system was found. Further investigation revealed that the VLA spring box mountings, the mounting trunnion, and a tie rod also were damaged due to corrosion of the spring boxes. The requirements of that AD are intended to prevent failure of both spring boxes of the VLA due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, a new inspection program has been developed by the manufacturer that introduces a repetitive inspection of VLAs that are equipped with spring boxes having certain part numbers.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002, which describes procedures for inspecting the VLA to determine the part number (P/N) of the spring box, and for performing repetitive detailed inspections of any VLA that does not have a particular P/N. For any airplane on which any damage is found during any inspection, the service bulletin describes procedures for replacing the VLA with a new VLA. The Direction Générale de l'Aviation Civile (DGAC) classified this service bulletin as mandatory and issued French airworthiness directive 2003–006(B), dated January 8, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–22–02 to continue to require inspection of the VLA of the rudder control system to verify the parts were installed using the correct standard; inspection for damage of the VLA tie rod if the standard is not correct; and replacement with a new VLA, if necessary. This proposed action would require repetitive inspections of VLAs equipped with spring boxes having certain P/Ns. This proposed action would also provide an optional action to replace the VLA with a new VLA, which would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between the Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin describes procedures for submitting certain information to the manufacturer, and for returning certain VLAs to the manufacturer, this proposed AD would not require those actions.

Explanation of Change to Inspection Definition

We have changed all references to a "detailed visual inspection" in the existing AD to "detailed inspection" in this proposed AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

There are approximately 24 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2001–22–02, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $1,560, or $65 per airplane.

The new actions that would be required by the proposed AD, would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new in the proposed AD on U.S. operators is estimated to be $1,560, or $65 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12481 (66 FR 55416, October 29, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2003–NM–16–AD. Supersedes AD 2001–22–02, Amendment 39–12481.

Applicability: All Model A300 B2 and B4 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both spring boxes of the variable lever arm (VLA) due to corrosion damage, which could result in loss of rudder control and consequent reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 2001–22–02:

(a) Within 10 days after November 13, 2001 (the effective date of AD 2001–22–02, amendment 39–12481): Determine the part and amendment numbers of the VLA of the rudder control system to verify the parts were installed using the correct standard, per Airbus All Operators Telex (AOT) A300–27A0196, dated September 20, 2001; or per the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

(1) If the part and amendment numbers shown are not correct, as specified in the AOT or the service bulletin, before further flight, do a detailed inspection of the VLA tie rod for damage (bent or ruptured rod) per the AOT or the service bulletin.

(i) If the tie rod is damaged, replace the VLA with a new VLA per the AOT or the service bulletin. Such replacement ends the requirements of this paragraph.

(ii) If the tie rod is not damaged, no further action is required by this paragraph.

(2) If the part and amendment numbers shown are correct, no further action is required by this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

New Requirements of this AD:

(b) For airplanes having a VLA with any part number (P/N) other than 418473–20 or 418473–200: Within 500 flight hours after the effective date of this AD, do a detailed inspection of the tie rod for damage (bent or ruptured rod), per the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

Replacement or Repair

(c) If any damage is found to the VLA or the rudder control system during any inspection required by paragraph (a)(1) or (b) of this AD, prior to further flight, replace the VLA with a new VLA (including a follow-up test) per the Accomplishment Instructions of Airbus Service Bulletin A300–27–0196, Revision 01, dated November 13, 2002.

Optional Terminating Action

(d) Replacement of the VLA with a new VLA having P/N 418473–20 or P/N 418473–200 constitutes terminating action for the repetitive inspections in paragraph (b) of this AD.

No Reporting/Parts Return Requirements

(e) Although the referenced service bulletin describes procedures for submitting certain information to the manufacturer, and for returning certain parts to the manufacturer, this AD does not require those actions.

Actions Accomplished per Previous Issue of the Service Bulletin

(f) Actions accomplished before the effective date of this AD per Airbus Service Bulletin A300–27–0196, dated September 20, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, FAA, ANM–116, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–006(B), dated January 8, 2003.

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9904 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (Collectively Called A300–600); and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes. This proposal would require an inspection to determine the part number of certain passenger/crew escape slides; and related investigative action and corrective action, if necessary. This action is necessary to prevent the failure of an escape slide to deploy during emergency evacuation, which could impede an evacuation and result in injury to flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–274–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Anthony Jopling, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2190; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–274–AD."

The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–274–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes. The DGAC advises that, after a precautionary emergency landing of an A310–200 series airplane, the left-hand passenger/crew door slide failed to deploy prior to flightcrew evacuation. Subsequent examination of the affected escape slide assembly showed that an incorrect girt had been installed during the last overhaul, which caused the malfunction. This condition, if not corrected, could result in the failure of an escape slide to deploy during emergency evacuation, which could impede and evacuation and result in injury to flightcrew and passengers.

The subject area on certain Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310–300 series airplanes is almost identical to that on the affected Model A310–200 series airplanes. Therefore, those airplanes may be subject to the same unsafe condition revealed on the Model A310–200 series airplanes.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–25A0475, dated October 3, 2003 (for Model A300 B2 and A300 B4 series airplanes); Service Bulletin A300–25A6184, dated October 3, 2003 (for Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes); and Service Bulletin A310–25A2165, dated October 3, 2003 (for Model A310 series airplanes). These service bulletins describe procedures for inspecting to determine the part number (P/N) of the evacuation slides installed on the passenger/crew doors; and related investigative and corrective actions for airplanes fitted with Goodrich slides having P/Ns 7A1296–001, 7A1296–002, 7A1298–001, or 7A1298–002. The related investigative action is inspecting the slide for installation of a girt with the correct P/N. If the slide is found to have an incorrect girt P/N, the related corrective action is returning the slide to an approved service center for modification, and re-installing an escape slide with the correct P/N and girt.

These service bulletins reference Goodrich Alert Service Bulletin 7A1296/7A1298–25A345, dated October 15, 2003, as an additional source of service information for accomplishment of the inspection and modification.

Accomplishment of the actions specified in the Airbus service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified the Airbus service bulletins as mandatory and issued French airworthiness directive F–2003–435, dated December 10, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 202 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per slide to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $195 per slide.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus: Docket 2003–NM–274–AD.

Applicability: Model A300 B2 and A300 B4; Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600); and Model A310 series airplanes; equipped with Goodrich escape slides; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of an escape slide to deploy during emergency evacuation, which could impede an evacuation and result in injury to flightcrew and passengers, accomplish the following:

Service Bulletin Reference

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model A300 B2 and A300 B4 series airplanes: Airbus Service Bulletin A300–25A0475, dated October 3, 2003;

(2) For Model A300 B4–600, B4–600R, C4–605R Variant F, and F4–600R (collectively called A300–600) series airplanes: Airbus Service Bulletin A300–25A6184, dated October 3, 2003; and

(3) For Model A310 series airplanes: Airbus Service Bulletin A310–25A2165, dated October 3, 2003.

Note 1: These service bulletins reference Goodrich Alert Service Bulletin 7A1296/7A1298–25A345, dated October 15, 2003, as an additional source of service information for accomplishment of the inspection and modification.

Inspections and Corrective Action

(b) Within 180 days after the effective date of this AD: Do an inspection to determine the part number (P/N) of the passenger/crew door escape slides. If any Goodrich P/N 7A1298–001, 7A1298–002, 7A1296–001, or 7A1296–002 is found during the inspection, prior to further flight, do the related investigative action, any applicable corrective action, and replace the slide with a new or modified slide which has a girt with the correct P/N. Do all actions per the applicable service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person may install on any airplane a Goodrich escape slide having P/N 7A1298–001, 7A1298–002, 7A1296–001, or 7A1296–002, unless the related investigative and any applicable corrective action has been done per paragraph (b) of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive F–2003–435, dated December 10, 2003.

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9903 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–106–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposal would require a general visual inspection for sealant at the interface between the diagonal brace fitting and the aft bulkhead and at the four bolts common to the interface. It would also require applying sealant if none is present or if it is not continuous. This action is necessary to prevent flammable fluid in the upper or rear pylon areas from leaking past unsealed areas and onto a hot engine nozzle, which could result in ignition of the fluid, causing an undetected and uncontrollable fire to spread into the engine struts. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 17, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2003–NM–106–AD," in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–106–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the fay sealing at the interface between the diagonal brace fitting and aft bulkhead in both engine struts and the wet installation of four bolts common to the interface may not have been completed during production of certain Boeing Model 737–600, –700, –00C, –800, and –900 series airplanes. This area is a flammable leakage zone and requires sealing of all openings that could provide a path to an ignition source. Incomplete sealing, if not corrected, could allow flammable fluid in the upper or rear pylon areas to leak past unsealed areas and onto a hot engine nozzle, which could result in ignition of the fluid, causing an undetected and uncontrollable fire to spread into the engine struts.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002, which describes procedures for the following actions:

1. A general visual inspection to determine whether the diagonal brace fitting and aft bulkhead has been fay sealed or fillet sealed to the aft bulkhead and to determine whether the four bolts have been wet installed or cap sealed.
2. Application of fillet seal, if the seal is not present or not continuous.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 946 airplanes of the affected design in the worldwide fleet. The FAA estimates that 436 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $56,680, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Boeing: Docket 2003–NM–106–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes, line numbers 1 through 946 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent flammable fluid in the upper or rear pylon areas from leaking past unsealed areas and onto a hot engine nozzle, which could result in ignition of the fluid, causing an undetected and uncontrollable fire to spread into the engine struts; accomplish the following:

Inspection of Sealant

(a) Within 18 months or 3,500 flight cycles after the effective date of this AD, whichever occurs first: Perform a general visual inspection for sealant at the interface of the diagonal brace fitting and the aft bulkhead and at the four bolts common to the interface, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002.

(1) If the findings of the general visual inspection are as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, then no further action is required by this AD.

(i) The seal is continuous or there is evidence of fay seal sqeeze out present.

(ii) The bolts have evidence of sealant squeeze out or a cap seal exists.

Application of Fillet Seal and Cap Seal

(2) If the findings of the general visual inspection are as described in paragraphs (a)(2)(i) and/or (a)(2)(ii) of this AD, before further flight: Fillet seal around the interface of the diagonal brace fitting and the aft bulkhead; and/or cap seal the four bolts common to the interface; as applicable; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–54–1039, Revision 1, dated October 10, 2002.

(i) The seal is not continuous and there is no evidence of fay seal squeeze out present.

(ii) The bolts do not have evidence of sealant squeeze out and no cap seal exists.

Credit for Actions Accomplished per Previous Service Bulletin

(b) Actions accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–54–1039, dated June 13, 2002, are acceptable for compliance with the corresponding actions of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office

(ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9902 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–204–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX and 1125 Westwind Astra Series Airplanes; and Model Gulfstream 100 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Gulfstream Aerospace LP Model Astra SPX, and 1125 Westwind Astra series airplanes; and Model Gulfstream 100 airplanes. This proposal would require a one-time inspection of the outboard doors of the main landing gear (MLG) for evidence of impact with the surrounding structure, and for damage to the door seals and seal channels; measurements for adequate gaps and clearances; and related investigative and corrective actions, if necessary. This action is necessary to prevent damage to or breakage of the MLG outboard doors, which could result in the loss of a door during flight, and consequent damage to the airplane and injury to people or damage to property on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–204–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–204–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–204–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Gulfstream Aerospace LP Model Astra SPX, and 1125 Westwind Astra series airplanes; and Model Gulfstream 100 airplanes. The CAAI advises that at least six cases of damage and/or breakage of the outboard doors of the main landing gear (MLG) have been reported, which were caused by insufficient clearance or interference with the surrounding structure. This condition, if not corrected, could result in damage to or breakage of the MLG outboard doors, which could cause the loss of a door during flight, and consequent damage to the airplane and injury to people or damage to property on the ground.

Explanation of Relevant Service Information

Gulfstream Aerospace LP has issued Service Bulletin 100–32–223, Revision 2, dated June 2, 2003, which describes procedures for accomplishing the following actions on the left and right MLG outboard doors:

- An inspection for evidence of impact with the surrounding structure (including evidence of the edge of the door hitting the wing or wing fairing when the door closes; and damage to the door seals and door seal channels, which includes tears, scratches, and rub marks).
- Measurement of the gap clearance of the forward and aft edges of the door.
- Measurement of the clearance between the hinge taper fillers and the door opening in the wing lower skin.

For doors on which evidence of impact with the surrounding structure is found, the service bulletin describes procedures for related investigative action, which includes doing an inspection for delamination or cracking at the door hinge area and at locations on the door where it hit the wing fairing. If any cracking or delamination is found, the service bulletin recommends contacting Gulfstream for evaluation of the damage and for corrective actions.

If any damage is found to the door seals or seal channels, or if any gap or clearance measurement is incorrect, the service bulletin describes procedures for corrective actions. The corrective actions include replacing damaged seals and/or seal channels; repairing cracks and/or delamination; shifting the door forward; and trimming the wheel well fairing, the hinge taper fillers, and/or the wing fairing; as applicable.

The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 32–03–03–04, R3, dated June 24, 2003, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Proposed Rule and the Israeli Airworthiness Directive

Although Israeli airworthiness directive 32–03–03–04, Revision 3, requires compliance with Part A and Part B of the Accomplishment Instructions of Gulfstream Service Bulletin 1125–32–223, Revision 1, this proposed AD would require compliance only with Part A of Revision 2 of the service bulletin. Part B contains actions for airplanes that have incorporated the original release of the service bulletin. Part A includes all of the actions from the original release as well as the actions in Part B of Revisions 1 and 2 so that all airplanes, even those that have not incorporated the original release, would be compliant at the same level. We did not previously require compliance with either the original release or with Release 1 of the service bulletin; consequently, we would require compliance only with Part A of Revision 2.

Differences Between Proposed Rule and the Service Bulletin

Although the service bulletin specifies that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the CAAI (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the CAAI would be acceptable for compliance with this proposed AD.

The service bulletin describes procedures for inspecting for delamination or cracking, but does not define the type of inspection. This proposed AD defines the inspection as a "general visual inspection." A definition of this inspection is included in Note 1 of this proposed AD.

Although the referenced service bulletin describes procedures for completion and submission of a service reply card, this proposed AD would not require that action.

Cost Impact

The FAA estimates that 125 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $130,000, or $1,040 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Docket 2003–NM–204–AD.

Applicability: Gulfstream Aerospace LP Model Astra SPX and Westwind Astra 1125 series airplanes; and Model Gulfstream 100 airplanes; as listed in Gulfstream Service Bulletin 1125–32–223, Revision 2, dated June 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to or breakage of the main landing gear (MLG) outboard doors, which could result in the loss of a door during flight, and consequent damage to the airplane and injury to people or damage to property on the ground, accomplish the following:

Inspections and Measurements

(a) Except as provided by paragraph (b) of this AD: Within 250 flight hours after the effective date of this AD, do general visual inspections of the MLG outboard doors for evidence of impact with the surrounding structure, measure door gap clearances, and do any related investigative and corrective actions, as applicable, by accomplishing all of the actions per Part A of the Accomplishment Instructions of Gulfstream Service Bulletin 100–32–223, Revision 2, dated June 2, 2003. Do the applicable related investigative and corrective actions prior to further flight following the inspections.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repair of Cracks or Delamination, if Necessary

(b) If any evidence of cracking or delamination is found on any MLG door during the inspection for delamination or cracking required by paragraph (a) of this AD: Before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (CAAI) (or its delegated agent).

No Reply Requirement

(c) Although the service bulletin describes procedures for completion and submission of a service reply card, this AD would not require those actions.

Actions Accomplished per a Previous Release of the Service Bulletin

(d) Actions accomplished before the effective date of this AD per Gulfstream Service Bulletin 100–32–223, Revision 1, dated May 22, 2003, are considered acceptable for compliance with the corresponding actions specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Israeli airworthiness directive 32–03–03–04 R3, dated June 24, 2003.

Issued in Renton, Washington, on April 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9901 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes, that currently requires measuring the gap between the bellcrank and the body of the rotary variable inductive transducers (RVITs) of the aileron and elevator, performing corrective action if necessary, and torquing the bolt that attaches the bellcrank to the RVIT shaft. This action would require replacing the aileron and elevator RVIT bellcranks with new, improved bellcranks. The actions specified by the proposed AD are intended to prevent restricted movement of the aileron or elevator, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2003–NM–81–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–81–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 10, 2001, the FAA issued AD 2001–17–01, amendment 39–12392 (66 FR 43076, August 17, 2001), applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 series airplanes, to require measuring the gap between the bellcrank and the body of the rotary variable inductive transducer (RVITs) of the aileron and elevator, performing corrective action if necessary, and torquing the bolt that attaches the bellcrank to the RVIT shaft. That action was prompted by a report of interference between the bell crank of the aileron RVIT and the head of the hinge pin that attaches the RVIT suppport. The design of the elevator and aileron RVIT bellcranks are similar in their potential for interference with flight control. Therefore, both the elevator and aileron RVITS were addressed in that AD. The requirements of that AD are intended to prevent restricted movement of the aileron or elevator, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

The preamble to AD 2001–17–01 explains that we considered the requirements "interim action" and were considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin (SB) 120–31–0046, Revision 01, dated December 27, 2002, which describes procedures for measuring the gap between the bellcrank and the body of the elevator/aileron RVITs; torquing the bolt that attaches the bellcrank to the RVIT shaft; and replacing the bellcranks with new, improved bellcranks. The measurement and torquing action procedures described in Revision 01 of the service bulletin are identical to those described in EMBRAER Alert Service Bulletin (ASB) 120–31–A046, dated July 13, 2001 (which was referenced in AD 2001–17–01 as the appropriate source of service information for the required actions). However, Revision 01 of Service Bulletin 120–31–0046 adds procedures for replacing the bellcrank. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued 2001–07–01R1, dated February 10, 2003, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001–17–01 to continue to require measuring the gap between the bellcrank and the body of the elevator/aileron RVITs, and torquing the bolt that attaches the bellcrank to the RVIT shaft. The proposed AD also would require replacing the aileron and elevator RVIT bellcranks with new, improved bellcranks. The actions would be required to be accomplished in accordance with Revision 01 of the service bulletin described previously.

Cost Impact

There are approximately 201 Model EMB–120 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2001–17–01 take approximately 1 or 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $13,065 or $26,130; or $65 or $130 per airplane.

The new actions that are proposed in this AD action would take approximately 1 or 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $810 per airplane. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $175,875 or $188,940; or $875 or $940 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12392 (66 FR 43076, August 17, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2003–NM–81–AD. Supersedes AD 2001–17–01, Amendment 39–12392.

Applicability: Model EMB–120 series airplanes, certificated in any category; with serial numbers 120004 and 120006 through 120355 inclusive; that have been modified in accordance with EMBRAER Service Bulletin 120–31–0039, 120–31–0040, 120–31–0041, or 120–31–0042.

Compliance: Required as indicated, unless accomplished previously.

To prevent restricted movement of the aileron or elevator, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 2001–17–01

Inspection and Corrective Action, if Necessary

(a) Within 50 flight hours after August 27, 2001 (the effective date of AD 2001–17–01, amendment 39–12392), measure the gap between the bellcrank and the body of the rotary variable inductive transducers (RVITs) of the elevator and aileron, in accordance with EMBRAER Alert Service Bulletin 120–31–A046, dated July 13, 2001.

(1) If the gap is within the limits specified by the alert service bulletin: Prior to further flight, tighten the bolt that attaches the bellcrank to the RVIT shaft to a torque of 40–45 inch pounds, in accordance with the alert service bulletin.

(2) If the gap is not within the limits specified by the alert service bulletin: Prior to further flight, accomplish all applicable corrective actions (including inspecting to detect damage of the connecting rod, replacing any damaged rod with a new rod having the same part number, and adjusting the gap between the bellcrank and the RVIT body), and tighten the bolt that attaches the bellcrank to the RVIT shaft to a torque of 40–45 inch pounds; in accordance with the alert service bulletin.

New Actions Required by This AD

Corrective Action

(b) Within 4,000 flight hours after the effective date of this AD: Replace the aileron and elevator RVIT bellcranks having part number (P/N) 123–82549–007 or P/N 123–82549–009, as applicable, with new, improved bellcranks having P/N 145–51146–001 or P/N 145–51147–001, respectively, in accordance with Paragraph 2.8 of the Accomplishment Instructions of EMBRAER Service Bulletin 120–31–0046, Revision 01, dated December 27, 2002.

(c) Replacement of the bellcranks accomplished before the effective date of this AD per EMBRAER Service Bulletin 120–31–0046, dated February 20, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Note 1: The subject of this AD is addressed in Brazilian airworthiness directive 2001–07–01R1, dated February 10, 2003.

Issued in Renton, Washington, on April 22, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9900 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116564–03]

RIN 1545–BC05

Determination of Basis of Stock or Securities Received In Exchange for, or With Respect to, Stock or Securities in Certain Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 358 that provide guidance regarding the determination of the basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions. These proposed regulations affect shareholders of corporations.

DATES: Written or electronic comments must be received by August 2, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–116564–03), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–116564–03), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–116564–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Kolish, Emidio J. Forlini, Jr. or Reginald Mombrun, (202) 622–7930, concerning submissions of comments, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 1012 of the Internal Revenue Code (Code) provides that the basis of property is generally the cost of such property. Section 1.1012–1(c) provides that, if shares of stock are sold or transferred by a taxpayer who purchased or acquired lots of stock on different dates or at different prices, and the lot from which the stock was sold or transferred cannot be adequately identified, the stock sold or transferred is charged against the earliest of such lots purchased or acquired in order to determine the basis of such stock.

Under this rule, a shareholder has greater flexibility in planning the tax consequences of the sale by specifically identifying the shares sold. The rules for adequate identification operate differently depending on the manner in which the shares are held and actions taken by the shareholder. For example, when shares are held through a broker, an adequate identification is effected by giving the proper instructions to the broker. This rule allows identification without regard to the particular shares physically transferred by the broker. The rule also allows identification when several lots are represented by a single share certificate. However, if a shareholder holds a different share certificate for each lot, the identity of the shares is determined by the specific certificate sold.

Section 358(a)(1) generally provides that the basis of property received pursuant to an exchange to which section 351, 354, 355, 356, or 361 applies is the same as that of the property exchanged, decreased by the fair market value of any other property (except money) received by the taxpayer, the amount of any money received by the taxpayer, and the amount of loss to the taxpayer which was recognized on such exchange, and increased by the amount which was treated as a dividend, and the amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend). Section 358(b)(1) provides that, under regulations prescribed by the Secretary, the basis determined under section 358(a)(1) must be allocated among the properties received in the exchange or distribution.

Section 1.358–2(a)(2) provides that, if as the result of an exchange or distribution under section 354, 355, 356, or former 371(b) a shareholder who owned stock of only one class before the transaction owns stock of two or more classes after the transaction, then the basis of all the stock held before the transaction (as adjusted under § 1.358–1) must be allocated among the stock of all classes (whether or not received in the transaction) held immediately after the transaction in proportion to the fair market values of the stock of each class. In addition, § 1.358–2(a)(3) provides that, if as the result of an exchange under section 354, 355, 356, or former 371(b) a security holder who owned only securities, all of one class, before the transaction, owns securities or stock of more than one class, or owns both stock and securities, then the basis of all the securities held before the transaction (as adjusted under § 1.358–1) must be allocated among all the stock and securities (whether or not received in the transaction) held immediately after the transaction in proportion to the fair market values of the stock of each class and the securities of each class.

Section 1.358–2(a)(4) provides that, in every case in which, before the transactions, a person owned stock of more than one class or securities of more than one class or owned both stock and securities, a determination must be made, upon the basis of all the facts, of the stock or securities received with respect to stock and securities of each class held (whether or not surrendered). The allocation described in § 1.358–2(a)(2) is separately made as to the stock of each class with respect to which there is an exchange or distribution and the allocation described in § 1.358–2(a)(3) is separately made with respect to the securities of each class, part or all of which are surrendered in the exchange.

Section 1.358–2(a)(5) provides a special rule that applies in cases in which a shareholder retains stock or securities pursuant to a plan of recapitalization under section 368(a)(1)(E). In those cases, the basis of the stock retained remains unchanged.

When all of the taxpayer's stock in a target corporation is transferred in a reorganization in exchange for stock of the acquiring corporation or the issuing corporation, it may be difficult to identify physically which share of stock of the target corporation was surrendered for which share of stock of the acquiring or issuing corporation. Questions have arisen regarding whether, for purposes of section 1012 and the regulations thereunder, a shareholder that sells or transfers shares of stock received in an exchange or distribution to which section 354, 355, or 356 applies can identify that share as being traceable to a particular lot of exchanged shares and, if so, how such an identification can be effected.

A number of authorities have addressed this issue but have reached inconsistent results. For example, in *Arrott* v. *Commissioner*, 136 F.2d 449 (3d Cir. 1943), the court reasoned that the shares surrendered in an acquisitive reorganization lost their identity when traded for new shares in the reorganization and held that the basis of the shares acquired was determined by averaging the basis of the shares exchanged. Accord *Commissioner* v. *Bolender*, 82 F.2d 591 (7th Cir. 1936); *Helvering* v. *Stifel*, 75 F.2d 583 (4th Cir. 1935); *Commissioner* v. *Von Gunten*, 76 F.2d 670 (6th Cir. 1935); *see also* Revenue Ruling 55–355 (1955–1 C.B. 418).

On the other hand, other courts have rejected the average basis method for determining the basis of stock received in a reorganization. For example, in *Bloch* v. *Commissioner*, 148 F.2d 452 (9th Cir. 1945), the court permitted the basis of blocks of stock received in an acquisitive reorganization to be traced to the basis of the surrendered stock. The court reasoned that where the shareholder can trace the "transmigrations" of shares of stock, there is no reason the shareholder should not be entitled to identify which shares are sold. In *Kraus* v. *Commissioner*, 88 F.2d 616 (2d Cir. 1937), the court held that if a taxpayer acquires a corporation's stock at different times and at different prices and exchanges that stock in a recapitalization, the bases of that stock are not blended or averaged in computing the basis of the acquired stock. *See also Osrow* v. *Commissioner*, 49 T.C. 333 (1968).

The IRS and Treasury Department have considered whether tracing or averaging is the more appropriate method for determining the basis of stock received in a reorganization described in section 368 or a distribution to which section 355 applies. In view of the carryover basis rule of section 358, the IRS and Treasury are not convinced that a reorganization is an event that justifies averaging the bases of the exchanged blocks of stock. Moreover, the IRS and Treasury Department are concerned that averaging the bases of the exchanged blocks of stock may inappropriately limit the ability of taxpayers to arrange their affairs or may afford opportunities for the avoidance of certain provisions of the Code.

The authorities holding that the basis of shares received in a reorganization is determined by the average basis method have reached that conclusion on the basis that it is not possible to match shares received with shares surrendered. The IRS and Treasury Department do not believe that this inability requires the use of the average basis method. When stock of one corporation is surrendered in exchange for stock of another corporation in a reorganization, the documents governing the reorganization will typically identify how many, and what class of, shares of the target corporation are being exchanged for how many, and what class of, shares of the acquiring or issuing corporation. That is, the exchanging shareholder will know that one or more shares of the acquiring or issuing corporation are being received in exchange for one or more shares of the target corporation. However, when the shareholder sells or transfers stock of the acquiring or issuing corporation, it may not know which share of stock of the target corporation corresponds to a particular share of the acquiring or issuing corporation. Although, in some cases, the exchange may present obstacles to physical tracing, these obstacles are not materially different from those that exist in the absence of a reorganization where shares are held through a broker or consolidated in a single certificate. Thus, the IRS and Treasury Department believe that it is appropriate to permit shareholders to identify the shares of the acquiring corporation sold or transferred by reference to the shares surrendered in exchange therefor.

These proposed regulations remove § 1.358–2(a)(2) through (5) and (c) and replace these provisions with a more complete set of rules for determining the basis of each share or security received in a reorganization described in section 368 and a distribution to which section 355 applies. These proposed regulations generally provide that the basis of each share of stock or security received in an exchange to which section 354, 355, or 356 applies will be the same as the basis of the share or shares of stock or security or securities exchanged therefor. The determination of which share of stock or security is received in exchange for, or with respect to, a particular share of stock or security will be made in accordance with the terms of the exchange or distribution.

If more than one share of stock or security (or a combination of shares of stock and securities) is received in exchange for one share of stock or security, the basis of the share of stock or security surrendered will be allocated to the shares and/or securities received based on the fair market value of the shares and/or securities received. In addition, if one share of stock or security is received in respect of more than one share of stock or security or a fraction of a share of stock or security is received, the basis of the shares of stock or securities surrendered must be allocated to the shares of stock or securities received in a manner that, to the greatest extent possible, reflects that a share of stock or security received is received in respect of shares of stock or securities acquired on the same date and at the same price. Therefore, if a shareholder that acquired 2 shares of stock of a target corporation on Date 1 for $2 each and 2 shares of stock of the target corporation on Date 2 for $3 each and the shareholder exchanges such shares for 2 shares of the acquiring corporation, one share of the acquiring corporation will be treated as acquired for the shares of the target corporation acquired on Date 1 and the other share will be treated as acquired for the shares of the target corporation on Date 2. Accordingly, one share will have a basis of $4 and the other share will have a basis of $6. This rule avoids, to the greatest extent possible, creating shares or securities with split holding periods.

In the case of an exchange to which both section 351 and section 354 or section 356 applies, however, these rules do not apply if, in connection with the exchange, the shareholder or security holder also exchanges property for stock or securities in an exchange to which neither section 354 nor 356 applies or liabilities of the shareholder or security holder are assumed. This limitation on the application of these rules is intended to prevent a conflict between, on the one hand, those rules that apply to determine the basis of stock received in an exchange to which section 351 applies (including the effect of the application of section 357(c)) and, on the other hand, these proposed rules.

In the case of a distribution to which section 355 applies in connection with which there is no exchange of shares of stock or securities but only the receipt of additional shares of stock or securities, these proposed regulations provide that the basis of each share of stock or security of the distributing corporation is allocated between the share of stock or security of the distributing corporation and the share of stock or security received with respect to such share of stock or security of the distributing corporation in proportion to their fair market values. If one share of stock or security is received in respect of more than one share of stock or security or a fraction of a share of stock or security is received, the basis of each share of stock or security of the distributing corporation must be allocated to the shares of stock or securities received in a manner that reflects that, to the greatest extent possible, a share of stock or security received is received in respect of shares of stock or securities acquired on the same date and at the same price.

The IRS and Treasury Department recognize that, in certain cases, the shareholder will not be able to identify which particular share (or portion of a share) of stock or security was exchanged for, or received with respect to, a particular share (or portion of a share) of stock or security. In these cases, the proposed regulations permit the shareholder or security holder to designate which share or security was received in exchange for, or in respect of, which share or security. Such designation, however, must be consistent with the terms of the exchange or distribution.

The designation must be made on or before the first date on which the basis of a share or security received is relevant, for example, the date on which a share or security received is sold or is transferred in an exchange described in section 351 or section 721 or a reorganization described in section 368. The designation is binding for purposes of determining the Federal tax consequences of subsequent transactions involving any share or security received or property received with respect to such share or security. If the shareholder fails to make a designation, then the shareholder will not be able to identify which shares are sold or transferred for purposes of determining the basis of property sold or transferred under section 1012 and § 1.1012–1(c) and, instead, will be treated as selling or transferring the share received in respect of the earliest share purchased or acquired.

The current regulations under section 358 include references to transactions described in former sections 371(b) and 374, which were repealed by section 11801(a)(19) of Public Law 101–508 (104 Stat. 1388) effective November 5, 1990. To reflect the repeal of these sections, these proposed regulations remove the references to sections 371(b) and 374 as they currently appear in the regulations under section 358.

Effective Date

These regulations are proposed to apply to exchanges and distributions of stock or securities occurring after the date these regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

These proposed regulations would obsolete Revenue Ruling 55–355 (1955–1 C.B. 418) for transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov*. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Reginald Mombrun, Theresa Kolish, and Emidio J. Forlini, Jr. of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.358–2 also issued under 26 U.S.C. 358. * * *

2. Section 1.358–1 is amended by:

1. Revising paragraph (a).

2. Adding paragraph (c).

The revision and addition read as follows:

§ 1.358–1 Basis to distributees.

(a) In the case of an exchange or distribution to which section 354 or 355 applies in which, under the law applicable to the year in which the exchange is made, only nonrecognition property is received, the sum of the basis of all of the stock and securities in the corporation whose stock and securities are exchanged or with respect to which the distribution is made, held immediately after the transaction, plus the basis of all stock and securities received in the transaction shall be the same as the basis of all the stock and securities in such corporation held immediately before the transaction allocated in the manner described in § 1.358–2. In the case of an exchange to which section 351 or 361 applies in which, under the law applicable to the year in which the exchange was made, only nonrecognition property is received, the basis of all the stock and securities received in the exchange shall be the same as the basis of all property exchanged therefor. If in an exchange or distribution to which section 351, 356, or 361 applies both nonrecognition property and "other property" are received, the basis of all the property except "other property" held after the transaction shall be determined as described in the preceding two sentences decreased by the sum of the money and the fair market value of the "other property" (as of the date of the transaction) and increased by the sum of the amount treated as a dividend (if any) and the amount of the gain recognized on the exchange, but the term gain as here used does not include any portion of the recognized gain that was treated as a dividend. In any case in which a taxpayer transfers property with respect to which loss is recognized, such loss shall be reflected in determining the basis of the property received in the exchange. The basis of the "other property" is its fair market value as of the date of the transaction. See § 1.460–4(k)(3)(iv)(A) for rules relating to stock basis adjustments required where a contract accounted for using a long-term contract method of accounting is transferred in a transaction described in section 351 or a reorganization described in section 368(a)(1)(D) with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met.

* * * * *

(c) *Effective date.* Paragraph (a) of this section applies to exchanges or distributions of stock and securities after the date these regulations are published as final regulations in the **Federal Register**. Paragraph (b) of this section applies to exchanges or distributions of stock and securities after December 31, 1953.

3. Section 1.358–2 is amended by:

1. Revising paragraphs (a)(1) and (a)(2).

2. Removing paragraphs (a)(3), (a)(4), and (a)(5).

3. Revising paragraphs (b)(1) and (c).

4. Adding paragraph (d).

The revisions and addition read as follows:

§ 1.358–2 Allocation of basis among nonrecognition property.

(a) *Allocation of basis in exchanges or distributions to which section 354, 355, or 356 applies.* (1) As used in this paragraph the term *stock* means stock which is not "other property" under section 356. The term *securities* means securities (including, where appropriate, fractional parts of securities) which are not "other property" under section 356.

(2)(i) If a shareholder or security holder surrenders a share of stock or a security in an exchange under the terms of section 354, 355, or 356, the basis of each share of stock or security received in the exchange shall be the same as the basis of the allocable portion of the share or shares of stock or security or securities exchanged therefor (as adjusted under § 1.358–1). If more than one share of stock or security is received in exchange for one share of stock or one security, the basis of the share of stock or security surrendered shall be allocated to the shares of stock or securities received in the exchange in proportion to the fair market value of the shares of stock or securities received. If one share of stock or security is received in respect of more than one share of stock or security or a fraction of a share of stock or security is received, the basis of the shares of stock or securities surrendered must be allocated to the shares of stock or securities received in a manner that reflects, to the greatest extent possible, that a share of stock or security received is received in respect of shares of stock or securities acquired on the same date and at the same price.

(ii) If a shareholder or security holder receives one or more shares of stock or one or more securities in a distribution under the terms of section 355 (or so much of section 356 as relates to section 355) and does not surrender any shares of stock or securities in connection with the distribution, the basis of each share of stock or security of the distributing corporation (as defined in § 1.355–1(b)), as adjusted under § 1.358–1, shall be allocated between the share of stock or security of the distributing corporation with respect to which the distribution is made and the share or shares of stock or security or securities (or allocable portions thereof) received with respect to the share of stock or security of the distributing corporation in proportion to their fair market values. If one share of stock or security is received in respect of more than one share of stock or security or a fraction of a share of stock or security is received, the basis of each share of stock or security of the distributing corporation must be allocated to the shares of stock or securities received in a manner that reflects that, to the greatest extent possible, a share of stock or security received is received in respect of shares of stock or securities acquired on the same date and at the same price.

(iii) If a shareholder or security holder that purchased or acquired shares of stock or securities in a corporation on different dates or at different prices exchanges such shares of stock or securities under the terms of section 354, 355, or 356, or receives a distribution of shares of stock or securities under the terms of section 355, and the shareholder or security holder is not able to identify which particular share of stock or security (or portion of a share of stock or security) is received in exchange for, or with respect to, a particular share of stock or security, the shareholder or security holder may designate which share of stock or security is received in exchange for, or with respect to, a particular share of stock or security, provided that such designation is consistent with the terms of the exchange or distribution. The designation must be made on or before the first date on which the basis of a share of stock or security received is relevant. The basis of the shares or securities received, for example, is relevant when such shares or securities are sold or otherwise transferred. The designation will be binding for purposes of determining the Federal tax consequences of any sale or transfer of, or distribution with respect to, the shares or securities received. If the shareholder fails to make a designation, then the shareholder will not be able to identify which shares are sold or transferred for purposes of determining the basis of property sold or transferred under section 1012 and § 1.1012–1(c) and, instead, will be treated as selling or transferring the share received in respect of the earliest share purchased or acquired.

(iv) Paragraphs (a)(2)(i) through (iii) of this section shall not apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and section 354 or section 356, if, in connection with the exchange, the shareholder or security holder exchanges property for stock or securities in an exchange to which neither section 354 nor 356 applies or liabilities of the shareholder or security holder are assumed.

(b) *Allocation of basis in exchanges to which section 351 or 361 applies.* (1) As used in this paragraph (b), the term *stock* refers only to stock which is not "other property" under section 351 or 361 and the term *securities* refers only to securities which are not "other property" under section 351 or 361.

* * * * *

(c) *Examples.* The application of paragraphs (a) and (b) of this section is illustrated by the following examples:

Example 1. (i) *Facts.* F, an individual, acquired 20 shares of Corporation N stock on Date 1 for $3 each and 10 shares of Corporation N stock on Date 2 for $6 each. On Date 3, Corporation O acquires the assets of Corporation N in a reorganization under section 368(a)(1)(A). Pursuant to the terms of the plan of reorganization, F receives 2 shares of Corporation O stock for each share of Corporation N stock. Therefore, F receives 60 shares of Corporation O stock. Pursuant to section 354, F recognizes no gain or loss on the exchange. F is not able to identify which shares of Corporation O stock are received in exchange for each share of Corporation N stock.

(ii) *Analysis.* Under paragraph (a)(2) of this section, F has 40 shares of Corporation O each of which has a basis of $1.50 and is treated as having been acquired on Date 1 and 20 shares of Corporation O each of which has a basis of $3 and is treated as having been acquired on Date 2. On or before the date on which the basis of a share of Corporation O stock received becomes relevant, F may designate which of the shares of Corporation O have a basis of $1.50 and which have a basis of $3.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that instead of receiving 2 shares of Corporation O stock for each share of Corporation N stock, F receives 1½ shares of Corporation O stock for each share of Corporation N stock. Therefore, F receives 45 shares of Corporation O stock. Again, F is not able to identify which shares (or portions of shares) of Corporation O stock are received in exchange for each share of Corporation N stock.

(ii) *Analysis.* Under paragraph (a)(2) of this section, F has 30 shares of Corporation O each of which has a basis of $2 and is treated as having been acquired on Date 1 and 15 shares of Corporation O each of which has a basis of $4 and is treated as having been acquired on Date 2. On or before the date on which the basis of a share of Corporation O stock received becomes relevant, F may designate which of the shares of Corporation O have a basis of $2 and which have a basis of $4.

Example 3. (i) *Facts.* E, an individual, purchased 20 shares of Class A stock of Corporation P on Date 1 for $3 per share and 10 shares of Class B stock of Corporation P on Date 2 for $3 per share. On Date 3, E exchanges each share of Class A stock for one share of new Class C stock and one share of new Class D stock in a reorganization under section 368(a)(1)(E). Pursuant to section 354, E recognizes no gain or loss on the exchange. On the date of the exchange, the fair market value of each share of Class A stock is $6, the fair market value of each share of Class C stock is $2, and the fair market value of each share of Class D stock is $4. E is not able to identify which shares of Class C and Class D stock of Corporation P are received in exchange for each share of Class A stock of Corporation P.

(ii) *Analysis.* Under paragraph (a)(2) of this section, because E receives one share of Class C stock and one share of Class D stock for each share of Class A stock, the basis of each share of Class A stock surrendered is allocated to one share of Class C stock and one share of Class D stock in proportion to their fair market values. Therefore, $1 of the basis of each share of Class A stock is allocated to each share of Class C stock and $2 of the basis of each share of Class A stock is allocated to each share of Class D stock. E's basis in each share of Class B stock remains $3.

Example 4. (i) *Facts.* G, an individual, purchased 10 shares of Corporation Q stock on Date 1 for $2 per share and 10 shares of Corporation Q stock on Date 2 for $5 per share. On Date 3, Corporation R acquires the stock of Corporation Q in a reorganization under section 368(a)(1)(B). Pursuant to the terms of the reorganization, G receives one share of Corporation R stock for every 2 shares of Corporation Q stock. Pursuant to section 354, G recognizes no gain or loss on the exchange. G is not able to identify which portion of each share of Corporation R stock is received in exchange for each share of Corporation Q stock.

(ii) *Analysis.* Under paragraph (a)(2) of this section, G has 5 shares of Corporation R each of which has a basis of $4 and is treated as having been acquired on Date 1 and 5 shares of Corporation R each of which has a basis of $10 and is treated as having been acquired on Date 2. On or before the date on which the basis of a share of Corporation R stock received becomes relevant, G may designate which of the shares of Corporation R have a basis of $4 and which have a basis of $10.

Example 5. (i) *Facts.* The facts are the same as in Example 4, except that, in addition to transferring the stock of Corporation Q to Corporation R, G transfers land to Corporation R. In addition, after the transaction, G owns stock of Corporation R satisfying the requirements of section 368(c). G's transfer of the Corporation Q stock to Corporation R is an exchange described in sections 351 and 354. G's transfer of land to Corporation R is an exchange described in section 351.

(ii) *Analysis.* Pursuant to paragraph (a)(2)(iv) of this section, because neither section 354 nor section 356 applies to the transfer of land to Corporation R, the rules of paragraphs (a)(2)(i) through (iii) of this section do not apply to determine G's basis in the Corporation R stock received in the transaction.

Example 6. (i) *Facts.* H, an individual, purchased 10 shares of Corporation T stock on Date 1 for $3 per share and 10 shares of Corporation T stock on Date 2 for $6 per share. On Date 3, Corporation V, a newly formed, wholly owned subsidiary of Corporation U, merges with and into Corporation T with Corporation T surviving. As part of the plan of merger, H receives one share of Corporation U stock for each share of Corporation T stock. In connection with the transaction, Corporation U assumes a liability of H. In addition, after the transaction, H owns stock of Corporation U satisfying the requirements of section 368(c). H's transfer of the Corporation T stock to Corporation U is an exchange described in sections 351 and 354.

(ii) *Analysis.* Pursuant to paragraph (a)(2)(iv) of this section, because, in connection with the transfer of the Corporation T stock to Corporation U, Corporation U assumed a liability of H, the rules of paragraphs (a)(2)(i) through (iii) of this section do not apply to determine H's basis in the Corporation U stock received in the transaction.

Example 7. (i) *Facts.* J, an individual, purchased 5 shares of Corporation X stock for $4 per share on Date 1 and 5 shares of Corporation X stock for $8 per share on Date 2. Corporation X owns all of the outstanding stock of Corporation Y. The fair market value of the stock of Corporation X, excluding the stock of Corporation Y, is $900. The fair market value of the stock of Corporation Y is $900. In a distribution to which section 355 applies, Corporation X distributes all of the stock of Corporation Y pro rata to its shareholders. No stock of Corporation X is surrendered in connection with the distribution. In the distribution, J receives 2 shares of Corporation Y stock with respect to each share of Corporation X stock. Pursuant to section 355, J recognizes no gain or loss on the receipt of the shares of Corporation Y stock. J is not able to identify which share of Corporation Y stock is received in respect of each share of Corporation X stock.

(ii) *Analysis.* Under paragraph (a)(2) of this section, because J receives 2 shares of

Corporation Y stock with respect to each share of Corporation X stock, the basis of each share of Corporation X stock is allocated between such share of Corporation X stock and two shares of Corporation Y stock in proportion to the fair market value of those shares. Therefore, each of the 5 shares of Corporation X stock acquired on Date 1 will have a basis of $2 and each of the 10 shares of Corporation Y stock received with respect to those shares will have a basis of $1. In addition, each of the 5 shares of Corporation X stock acquired on Date 2 will have a basis of $4 and each of the 10 shares of Corporation Y stock received with respect to those shares will have a basis of $2. On or before the date on which the basis of a share of Corporation Y stock received becomes relevant, H may designate which of the shares of Corporation Y have a basis of $1 and which have a basis of $2.

(d) *Effective date*. This section applies to exchanges or distributions of stock and securities after the date these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–10009 Filed 4–30–04; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–02–009]

RIN 1625–AA00

Safety Zones; Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On May 10, 2002, the Coast Guard published a notice of proposed rulemaking requesting comments on the proposed establishment of safety zones for annual fireworks displays located in the Captain of the Port Buffalo Zone. This supplemental notice of proposed rulemaking proposes to remove twelve events, add four additional events, and alters the location and time of two events. The proposed changes reflect the inability of several events to provide exact dates for the annual fireworks.

DATES: Comments must be received on or before June 17, 2004.

ADDRESSES: Comments may be mailed or delivered to: Commanding Officer, U.S. Coast Guard Marine Safety Office (MSO) Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. MSO Buffalo maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Buffalo between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Craig A. Wyatt, U.S. Coast Guard MSO Buffalo, (716) 843–9570.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number on this rulemaking (CGD09–02–009), indicate the specific section of this proposal to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know your comments have reached us, please enclose a stamped, self-addressed envelope or postcard. This unit will mail the envelope or postcard by the following workday.

The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may request a public meeting by writing to MSO Buffalo at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On May 10, 2002, the Coast Guard published an NPRM in the **Federal Register** proposing 14 safety zones for annual firework displays in the Captain of the Port Buffalo zone (67 FR 31747). We proposed these safety zones to control vessel traffic within the immediate location of the fireworks launching area during annual fireworks displays. The Coast Guard received no comments in response to this NPRM.

This supplement to the proposed regulation removes twelve events that were proposed in the NPRM, adds four new events (Ontario Memorial Day Fireworks, Ontario, NY; Olcott Fireworks, Olcott, NY; Harbor Sound and Light Festival, Sackets Harbor, NY; Village of Sackets Harbor 4th of July Display, Sackets Harbor, NY), and revises the location and time of two events (Oswego Independence Day Fireworks, and Oswego Harborfest Fireworks Display). This supplemental notice of proposed rulemaking proposes to establish 6 permanent safety zones that will be activated for marine events occurring annually at the same location.

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launched in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement in the vicinity of these marine event locations will help ensure the safety of persons and property at these events and help minimize the associated risk.

Establishing permanent safety zones by notice and comment rulemaking gives the public the opportunity to comment on the proposed zones, provides better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by safety zones created for these events in the past.

Discussion of Proposed Rule

The proposed size of these safety zones was determined using National Fire Protection Association Pamphlet 1123, Code for Fireworks Displays, and local area fire department standards, combined with the Coast Guard's knowledge of waterway conditions in these areas.

The Coast Guard believes this proposed regulation will not pose any new problems for commercial vessels transiting the area. In the event that shipping would be affected by this proposed regulation, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone.

The Coast Guard will announce the exact times and dates for these events by publishing a notice of implementation of regulation in the **Federal Register**, as well as announcing the date(s) in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from Marine Safety Office Buffalo, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this proposed rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zones are only enforced for a few hours on the day of the event on an annual basis. Vessel traffic can safely pass outside the proposed safety zones during the events.

In cases where traffic congestion is greater than expected and/or blocks shipping channels, with the permission of the Captain of the Port Buffalo, traffic may be allowed to pass through the safety zones under Coast Guard or assisting agency escort. Before the annual enforcement period, the Coast Guard will publish a notice of implementation of regulation in the **Federal Register**, and will issue maritime advisories in the Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts and facsimile broadcasts—forums widely available to users who might be in the affected area. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

Small businesses may send comments on actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation no. 0170.1.

2. Add § 165.914 to read as follows:

§ 165.914 Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) Oswego Independence Day Fireworks, Oswego, NY:

(i) *Location.* All waters of Oswego Harbor, in Lake Ontario, within a 1,000-foot radius of the fireworks barge moored or anchored in approximate position 43°28′05″ N, 076°31′01″ W (NAD 1983).

(ii) *Enforcement date.* The first Sunday in July.

(2) Oswego Harborfest Fireworks Display, Oswego, NY:

(i) *Location.* (A) All waters of Oswego Harbor within a 300-yard radius around the fireworks barge located at 43°28′08″ N, 076°31′07″ W (NAD 1983)

(B) All waters surrounding the fireworks display on the western break wall; 43°27′55″ N, 076°31′30″ W then to 43°28′03″ N, 076°31′12″ W then to 43°27′54″ N, 076°31′06″ then to 43°27′48″ N, 076°31′26″ W then back to the point of origin (NAD 1983).

(ii) *Enforcement date.* The last Saturday during the last full week of July.

(3) Ontario Memorial Day Fireworks, Ontario, NY:

(i) *Location.* All waters of Lake Ontario within a 200-yard radius of the fireworks display at Bear Creek Harbor located in position 43°16′39″ N, 077°16′35″ W (NAD 1983).

(ii) *Enforcement date.* Memorial Day, the last Monday in May.

(4) Olcott Fireworks, Olcott, NY:

(i) *Location.* All waters of Lake Ontario within a 300-yard radius of the fireworks display on the west break wall of the Olcott Harbor entrance located in position 43°20′25″ N, 078°43′09″ W (NAD 1983).

(ii) *Enforcement date.* July 3.

(5) Harbor Sound and Light Festival, Sackets Harbor, NY:

(i) *Location.* All waters of Lake Ontario within a 300-yard radius of the fireworks display on the beach just southwest of Mill Creek located in position 43°57′18″ N, 076°06′35″ W (NAD 1983).

(ii) *Enforcement date.* The second Saturday in June.

(6) Village of Sackets Harbor 4th of July Display, Sackets Harbor, NY:

(i) *Location.* All waters of Lake Ontario within a 200-yard radius of the fireworks display on the beach of Battlefield State Park located in position 43°56′56″ N, 076°07′43″ W (NAD 1983).

(ii) *Enforcement date.* July 4.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed

(3) Commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Buffalo on Channel 16, VHF–FM.

(4) Marine Event Permits (CG–4423) will still need to be sent to U.S. Coast Guard Group Buffalo, NY.

(c) *Notice of annual enforcement period.* The Captain of the Port Buffalo will publish, at least 10 days in advance of each annual event, a notice of implementation of regulation in the **Federal Register**. The COTP may also issue notices in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section will be enforced each year.

Dated: April 22, 2004.

P. M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 04–9906 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 17 and 21

RIN 1660–AA13

Governmentwide Debarment and Suspension (Nonprocurement); Withdrawal

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security (DHS).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: On January 23, 2002, FEMA and other agencies published a common rule notice entitled "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," (67 FR 3265). FEMA is now an agency under DHS, which will publish its own rule governing these matters; therefore, FEMA is withdrawing this notice of proposed rulemaking for this common rule.

DATES: *Effective Date:* Effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Edward Broyles, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (phone) 202–646–3961, (facsimile) 202–646–4536, or (e-mail) *Edward.Broyles@dhs.gov.*

SUPPLEMENTARY INFORMATION: On January 23, 2002, FEMA and other agencies published a common rule notice for proposed rulemaking entitled "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)," (67 FR 3265). FEMA is now an agency under DHS, which will publish its own rule governing these matters; therefore, FEMA is withdrawing this notice of proposed rulemaking for this common rule.

Authority: 41 U.S.C. 701 *et seq.*; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

Dated: April 27, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–9984 Filed 4–30–04; 8:45 am]

BILLING CODE 9110–10–P

Notices

Federal Register
Vol. 69, No. 85
Monday, May 3, 2004

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development, One Hundred and Fortieth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and forty-first meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on May 27, 2004 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The BIFAD will hear a status report regarding priority recommendations from the Sherper Report on USAID-university relationships, the progress of programs to emphasize long-term training, RFAs for Collaborative Research Support Programs (CRSPs) using the Leader with Associate mechanism, and other items of current interest.

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact John Swanson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–06, Washington DC, 20523–2110 or telephone him at (202) 712–5602 or fax (202) 216–3010.

John Swanson,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Bureau for Economic Growth, Agriculture & Trade.

[FR Doc. 04–9938 Filed 4–30–04; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Georgetown Lake Vegetation Management, Philipsburg Ranger District, Beaverhead Deerlodge National Forest, Granite and Deer Lodge Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service is canceling a notice of intent previously published on December 9, 2002: Volume 67, Number 236; pages 72902–72903; Georgetown Lake Vegetation Management environmental impact statement (EIS).

DATES: April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Giacoletto, Fire Management Officer, Philipsburg Ranger District, 88 10A Business Loop, Philipsburg, MT 59858, or phone: (406) 859–3211.

Dated: April 26, 2004.

Thomas K. Reilly,

Forest Supervisor, Beaverhead Deerlodge National Forest.

[FR Doc. 04–9954 Filed 4–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on April 4, 2004 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on May 24, 2004 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Andersen, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. E-mail: *jandersen@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting will include reports from the fuels and restoration subcommittees, and a discussion of proposed projects for Fiscal Year 2005. The meeting is open to the public. Opportunity for public input will be provided and individuals will have the opportunity to address the committee at that time.

Dated: April 4, 2004.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 04–9945 Filed 4–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Kamiah, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Friday, May 21, 2004 in Grangeville, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 21, at the Super 8 Motel, Grangeville, ID, begins at 10 a.m. (PST). Agenda topics will include discussion of potential projects. A public forum will begin at 2:30 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 935–2513.

Dated: April 27, 2004.

Ihor Mereszczak,

Acting Forest Supervisor.

[FR Doc. 04–10056 Filed 4–30–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042704B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Applications and Reporting Requirements for Incidental Taking of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0151.

Type of Request: Regular submission.

Burden Hours: 12,376.

Number of Respondents: 56.

Average Hours Per Response: 229.

Needs and Uses: The taking by harassment, injury, or mortality of marine mammals is prohibited by the Marine Mammal Protection Act (MMPA) unless exempted or authorized by permit. The incidental take program authorizes the taking of marine mammals incidental to maritime activities (military, industry, scientific research). It is the responsibility of the activity to determine if it might have a "taking" and, if it does, to apply for an authorization. Applications are necessary in order for NOAA Fisheries to know that an authorization is needed and to determine that the harassment, injury, or mortality can be authorized under the MMPA. The reporting requirements are mandated by the MMPA and are necessary to ensure that the determinations made by NOAA Fisheries in regard to the impact on marine mammals are valid. The public and other Federal, state and local agencies also review and comment on applications and reports.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via e-mail at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, fax 202–395–7285, or e-mail *David_Rostker@omb.eop.gov*.

Dated: April 23, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10005 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of May 2004, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing A–357–802	5/1/03–4/30/04
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/03–4/30/04
Brazil:.	
Iron Construction Castings, A–351–503	5/1/03–4/30/04
Frozen Concentrated Orange Juice, A–351–605	5/1/03–4/30/04
Canada:.	
Softwood Lumber, A–122–838	5/1/03–4/30/04
Stainless Steel Plate in Coils, A–122–830	5/1/03–4/30/04
France: Antifriction Bearings, Ball and Spherical Plain, A–427–801	5/1/03–4/30/04
Germany: Antifriction Bearings, Ball, A–428–801	5/1/03–4/30/04
India: Silicomanganese, A–533–823	5/1/03–4/30/04
Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/03–4/30/04
Indonesia: Extruded Rubber Thread, A–560–803	5/1/03–4/30/04
Italy: Antifriction Bearings, Ball, A–475–801	5/1/03–4/30/04
Stainless Steel Plate in Coils, A–475–822	5/1/03–4/30/04
Japan: Antifriction Bearings, Ball, A–588–804	5/1/03–4/30/04
Gray Portland Cement and Clinker, A–588–81	5/1/03–4/30/04
Stainless Steel Angle, A–588–856	5/1/03–4/30/04
Kazakhstan: Silicomanganese, A–834–807	5/1/03–4/30/04
Republic of Korea:.	
Malleable Cast Iron Pipe Fittings, A–580–507, Other than Grooved	5/1/03–4/30/04
Polyester Staple Fiber, A–580–812	5/1/03–4/30/04
Stainless Steel Angle, A–580–846	5/1/03–4/30/04
Stainless Steel Plate in Coils, A–580–831	5/1/03–4/30/04
Singapore: Antifriction Bearings, Ball, A–559–801	5/1/03–4/30/04

	Period
Spain: Stainless Steel Angle, A–469–810	5/1/03–4/30/04
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/03–4/30/04
Taiwan:.	
Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/03–4/30/04
Polyester Staple Fiber, A–583–833	5/1/03–4/30/04
Stainless Steel Plate in Coils, A–583–830	5/1/03–4/30/04
The People's Republic of China:.	
Iron Construction Castings, A–570–502	5/1/03–4/30/04
Pure Magnesium, A–570–832	5/1/03–4/30/04
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/03–4/30/04
Turkey: Welded Carbon Steel Pipe and Tube, A–489–501	5/1/03–4/30/04
Venezuela: Silicomanganese, A–307–820	5/1/03–4/30/04
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/03–12/31/03
Brazil: Iron Construction Castings, C–351–504	1/1/03–12/31/03
Canada: Softwood Lumber, C–122–839	4/1/03–3/31/04
Italy: Stainless Steel Plate in Coils, C–475–823	1/1/03–12/31/03
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/03–12/31/03
Suspension Agreements	
None.	

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2004. If the Department does not receive, by the last day of May 2004, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 28, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 04–10093 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of Five-Year ("Sunset") Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders and of the suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review,* which covers these same orders and suspended investigations.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce at (202) 482–4340, or Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-*

Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping and countervailing duty orders and suspended investigations. The suspended investigations are denoted by an asterisk ("*").

DOC case No.	ITC case No.	Country	Product
A–351–828	731–TA–806	Brazil	Hot-rolled Flat-rolled Carbon Quality Steel Products (AD).
C–351–829	701–TA–384	Brazil	Hot-rolled Flat-rolled Carbon Quality Steel Products (CVD)*.
A–588–846	731–TA–807	Japan	Hot-rolled Flat-rolled Carbon Quality Steel Products (AD).
A–821–809	731–TA–809	Russia	Hot-rolled Flat-rolled Carbon Quality Steel Products (AD)*.
A–570–501	731–TA–244	China	Natural Bristle Paint Brushes (2nd sunset review) (AD).

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset Web site for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset Web site based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771(9)(C), (D), (E), (F), and (G) of the Act) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Dated: April 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9990 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comments.

SUMMARY: The Department of Commerce has a long-standing policy in antidumping proceedings of presuming that all firms within a non-market economy country ("NME") are subject to government control and thus should all be assigned a single, country-wide rate unless a respondent can demonstrate an absence of both *de jure* and *de facto* control over its export activities. In that case, the Department assigns the respondent its own individually calculated rate or, in the case of a non-investigated or non-reviewed firm, a weighted-average of the rates of the fully analyzed companies, excluding any rates that were zero, *de minimis*, or based entirely on facts available. The Department is considering options to change certain aspects of its current separate rates policy and practice. This notice describes various options for such changes, in order to provide the public with an opportunity to comment on whether those changes would be consistent with the statute and would appropriately redress problems that have been identified concerning separate rates. The Department intends to consider additional modifications to its NME practice and may solicit additional public comment on other potential changes, as appropriate.

DATES: Comments must be submitted by June 1, 2004.

ADDRESSES: Written comments (original and six copies) should be sent to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Policy Analyst, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230, (202) 482–1579 or (202) 482–1843.

SUPPLEMENTARY INFORMATION:

Background

In an NME antidumping proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). The Department's separate rates test is not concerned, in general, with macroeconomic border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent the dumping of merchandise in the United States. Rather, the test focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 60 FR 14725, 14727 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control in its export activities to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). In order to request and qualify for a separate rate, a company must have exported the subject merchandise to the United States during the period of investigation or review, and provide information responsive to the following considerations:

1. *Absence of De Jure Control:* The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

2. *Absence of De Facto Control:* Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In an antidumping investigation or review, we assign a weighted-average of the individually calculated rates, excluding any rates that were zero, *de minimis*, or based entirely on facts available, to exporters fulfilling two requirements. Firstly, they must submit a request for separate rates treatment, along with a timely response to section A of the Department's questionnaire, but not have been selected as mandatory respondents. Secondly, the Department must determine, after reviewing the requesting companies' submissions, that separate rates treatment is warranted. *See Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002).

The Department is considering changes to the practice detailed above, in particular with respect to the treatment of exporters submitting only section A responses and requesting separate rate treatment, but that are not individually investigated or reviewed (hereafter referred to as "Section A respondents"). The Department has received increasing numbers of requests for separate rates from section A respondents in recent years and is facing an exceptionally large number of such requests in two ongoing investigations. *See Initiation of Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China, and the Socialist Republic of Vietnam* 69 FR 3876 (January 27, 2004) and *Initiation of Wooden Bedroom Furniture from the People's Republic of China* 68 FR 70228 (December 17, 2003). These developments have led parties to raise two concerns. The first is that the Department lacks the resources to evaluate the typically large number of section A respondents which request a separate rate. The second concern parties now have raised is that, independent of the number of separate rate requests the Department receives in any given case, current implementation of the separate rates test may not offer the most effective means of determining whether exporters act, *de facto*, independently of the government in their export activities.

In order to address these concerns, the Department is considering changes to its practice in these areas. Therefore, we are providing an opportunity for the public to participate through comments which should be submitted by the date specified above. The Department is particularly interested in comments relating to the possible approaches set forth in the Appendix to this notice, including comments on their consistency with the statute.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov*.

Dated: April 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

(1) Is Section A of the NME questionnaire sufficiently detailed to allow the Department to make complete, accurate, and informed determinations regarding exporters' eligibility for separate rates? If not, what would you recommend that the Department change with respect to its section A questionnaire? For example, should the Department request further information pertaining to *de jure* control, or lack of control, by the NME entity?

(2) What new procedures or approaches should be followed at verification to ensure a rigorous examination of whether a respondent qualifies for a separate rate?

(3) Due to the number of possible section A respondents in many cases and the Department's resource constraints, should the Department establish a process whereby exporters seeking a separate rate must prepare a request and satisfy established requirements before the Department seeks additional information through the questionnaire process? What requirements would you recommend the Department establish?

(4) Should the Department institute an earlier deadline for parties filing section A submissions who are requesting only a separate rate (as opposed to a full review), in relation to the deadline for mandatory respondents? When should this deadline be?

(5) In light of the Department's limited resources, should the number of section A respondents be limited and, if so, upon what basis should the Department limit its examination? For example, should the Department limit the examination to a specific number of parties, base this decision upon a percentage of the number of overall respondents requesting separate rates treatment, or develop an entirely different test to limit its examination?

(6) Under current practice, the Department maintains three rate categories: country-wide, individually calculated, and the average of the non-zero, non-*de minimis*, non-adverse rates. Does the Department have the authority to eliminate entirely the rate category that is based on the average of the calculated non-zero, non-adverse, and non-*de minimis* margins? This rate category is currently applicable to section A respondents, as well as to non-investigated respondents providing full questionnaire responses. If the Department has authority, should it eliminate this category and upon what basis?

(7) Should the Department develop an additional rate category beyond country-wide, individually calculated, and the average of the non-zero, non-*de minimis*, non-adverse rates? This additional rate category could be assigned to cooperative firms denied a separate rate under options (5) or (6) above, as an alternative to assigning them the country-wide rate. How should the duty rate for this fourth rate category be calculated?

(8) Once a separate rate has been awarded, should the Department apply it only to merchandise from producers that supplied the exporter when the rate was granted? In that case, should merchandise from all other suppliers shipped through an exporter with a separate rate receive the country-wide rate, the average of the non-zero, non-*de minimis*, non-adverse reviewed respondents' margins, or another duty rate altogether?

(9) Should the Department extend its separate-rates analysis to exporter-producer combinations, *i.e.*, should the Department consider any government control exercised on an exporter through a producer?

(10) Please provide any additional views on any other matter pertaining to the Department's practice pertaining to separate rates.

[FR Doc. 04–9999 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]

Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Extension of Time Limit for Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The final results of these reviews are now due August 9, 2004.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Sochieta Moth, (202) 482–0168, or Richard Rimlinger, (202) 482–4477, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department initiated administrative reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom for the period May 1, 2002, through April 30, 2003. *See, Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 39055, (July 1, 2003), and *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 68 FR 44524, (July 29, 2003). On February 9, 2004, the Department published its preliminary findings. *See Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, Notice of Intent to Rescind Administrative Reviews, and Notice of Intent to Revoke Order in Part*, 69 FR 5950, (February 9, 2004). The final results of reviews were originally scheduled for June 8, 2040.

Extension of Time Limit for Final Results of Antidumping Duty Administrative Reviews

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an antidumping duty annual review within 120 days of the date on which the preliminary results are published. If the Department concludes that it is not practicable to issue the results by the original deadline, it may extend the 120-day period to 180 days. Completion of the final results of these reviews within this 120-day period is not practicable because of the large number of respondents and the complexity of the issues raised in these reviews. Therefore, we are extending the time period for issuing the final results of the review by 60 days, until August 9, 2004.

This notice is published in accordance with section 751(a)(3)(A) of the Act and § 351.213(h)(2) of the Department's regulations.

Dated: April 27, 2004.

Jeffrey May,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 04–9997 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–830]

Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Order: Coumarin from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On January 26, 2004, the Department of Commerce published a notice of preliminary results of changed circumstances review and intent to revoke the antidumping duty order (69 FR 3543). We are now revoking this order effective February 1, 2003. The basis of the revocation is that Rhodia, Inc., which is the current name of Rhone–Poulenc, the petitioner in original investigation and the sole U.S. producer of coumarin, ceased production during 2002.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Addilyn Chams–Eddine at (202) 482–0780 or (202) 482–0648, respectively; Office of AD/CVD Enforcement Group VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1995, the Department published in the **Federal Register** the antidumping duty order on coumarin from the PRC. *See Notice of Antidumping Order: Coumarin from the People's Republic of China*, 60 FR 7751. On June 23, 2003, Berjé Incorporated (Berjé), a U.S. importer of subject merchandise and an interested party in this proceeding, requested that the Department conduct a changed circumstances review for the purpose of revoking the antidumping duty order on coumarin from the PRC. According to Berjé, Rhone–Poulenc Specialty Chemicals Company (Rhone–Poulenc), the petitioner, was the only domestic coumarin producer at the time of the original investigation. Berjé also indicated that since the original investigation, Rhone–Poulenc had changed its company name and now does business under the name Rhodia, Inc. (Rhodia) and that Rhodia remained the only producer of coumarin in the United States. Berjé informed the Department that Rhodia, in a press release dated November 28, 2001, announced its intent to cease production of coumarin in 2002. Berjé provided further information obtained from Rhodia indicating that Rhodia no longer produces coumarin in the United States.

Based on Berjé's June 23, 2003 submission, the Department initiated this changed circumstances review on July 31, 2003. *See Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order: Coumarin From the Peoples's Republic of China*, 68 FR 46579 (*Initiation*). On August 26, 2003, Rhodia submitted comments on the initiation of this changed circumstances review. Also on August 26, 2003, H. Reynaud & Fils USA Co. (H. Reynaud), an importer of the subject merchandise, submitted comments regarding the effective date of the revocation of the order. No other parties commented on our Initiation.

On January 26, 2004, we published *Coumarin From the People's Republic of China: Preliminary Results of Changed Circumstances Review and Intent to Revoke the Antidumping Order*, 69 FR 3543 (*Preliminary Results*). In the *Preliminary Results* we announced our intent to revoke the antidumping order on Coumarin from the PRC, effective February 1, 2003. Both Berjé and H. Reynaud submitted comments on the *Preliminary Results* on February 25, 2004. H. Reynaud submitted rebuttal comments on March 1, 2004. We have addressed the comments of the parties in the *Issues and Decision Memo*, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Issues and Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Issues and Decision Memo* are identical in content.

Scope of the Antidumping Duty Order

The product covered by this order is coumarin. Coumarin is an aroma chemical with the chemical formula ($C_9H_6O_2$) that is also known by other names, including 2H–1–benzopyran–2–one, 1, 2–benzopyrone, cis–o-coumaric acid lactone, coumarinic anhydride, 2–Oxo–1, 2–benzopyran, 5, 6–benzo–alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis–ortho-coumaric acid anhydride, and tonka bean camphor.

All forms and variations of coumarin are included within the scope of the order, such as coumarin in crystal, flake, or powder form, and "crude" or unrefined coumarin (*i.e.*, prior to purification or crystallization). Excluded from the scope of this order are ethylcoumarins ($C_{11}H_{10}O_2$) and methylcoumarins ($C_{10}H_8O_2$). Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order

In the Preliminary Results, we indicated our intent to revoke the antidumping order on coumarin from the PRC, effective February 1, 2003. We have considered the comments of the parties and we determine that February 1, 2003, is still the appropriate date on which to make the revocation of the antidumping order on coumarin effective. *See Issues and Decision Memo.*

Instructions to the Customs Service

In accordance with section 351.222 of the Department's regulations, the Department will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of coumarin from the PRC, entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, the effective date of the revocation of the order. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of coumarin from the PRC entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of final results of changed circumstances review and revocation of the antidumping duty order is in accordance with sections 751(b) and (d), and 777(i)(1) of the Act and 351.216(d) and 351.222(g)of the Department's regulations.

Dated: April 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9993 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty new shipper reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. The period of review is November 1, 2002, through April 30, 2003. The reviews cover six manufacturers/exporters.

We preliminarily determine that Shanghai Ever Rich Trade Company, Linshu Dading Private Agricultural Products Co., Ltd., Sunny Imp & Exp Limited, and Taian Ziyang Food Co., Ltd., have not made sales in the United States at prices below normal value. We preliminarily determine that Jinxiang Dong Yun Freezing Storage Co., Ltd., has made sales in the United States at prices below normal value. We have also preliminarily determined that, based on the use of adverse facts available, Linyi Sanshan Import & Export Trading Co., Ltd., sold subject merchandise to the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1690 or (202) 482–4794, respectively.

Background

On July 7, 2003, we published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews* (68 FR 40242) in which we initiated new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China for Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun), Shanghai Ever Rich Trade Company (Ever Rich), Linshu Dading Private Agricultural Products Co., Ltd. (Linshu Dading), Linyi Sanshan Import & Export Trading Co., Ltd. (Linyi Sanshan), Sunny Imp & Exp Limited (Sunny), Tancheng County Dexing Foods Co., Ltd. (Tancheng), and Taian Ziyang Food Co., Ltd. (Ziyang). On April 20, 2004, we issued a notice rescinding the new shipper review of Tancheng.

On December 19, 2003, we extended the deadline for the issuance of the preliminary results of the new shipper reviews by 120 days until April 25, 2004 (68 FR 70764).

Scope of the Order

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CPB) to that effect.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we verified information provided by respondents using standard verification procedures, including on-site inspection of the producers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results for Linshu Dading and Linyi Sanshan are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. With respect to Dong Yun, Ever Rich, Sunny, and Ziyang, the verifications took place recently and, therefore, the reports are still pending completion and are not yet on file. We will issue the reports shortly after the issuance of these preliminary results of review and interested parties can comment on the applicability of the verification findings to our calculations.

Separate Rates

The Department of Commerce (the Department) has treated the PRC as a non-market-economy (NME) country in all past antidumping investigations (*see, e.g., Bulk Aspirin From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 65 FR 33805 (May 25, 2000), and *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 19873 (April 13, 2000)) and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law *(de jure)* and in fact *(de facto)*, with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 56 FR 20588 (May 6, 1991) *(Sparklers)*, as amplified in *Silicon Carbide from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 22585 (May 2, 1994) *(Silicon Carbide)*.

For the reasons discussed in the section below titled "The PRC-Wide Rate and Use of Facts Otherwise Available", we have determined that Linyi Sanshan did not qualify for a separate rate and is deemed to be covered by the PRC-wide rate.

Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed separate-rates analyses to determine whether each exporter is independent from government control of its export activities (*see Bicycles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 61 FR 56570 (April 30, 1996)).

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.

Each respondent has placed on the record a number of documents to demonstrate absence of *de jure* control including the "Foreign Trade Law of the People's Republic of China" and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations." The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. See, *e.g., Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of New Shipper Review*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination.

2. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang reported that each is a limited-liability company owned by private investors. Each has asserted the following: (1) There is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to bind sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; (5) each is responsible for financing its own losses. Dong Yun's, Ever Rich's, Linshu Dading's, Sunny's, and Ziyang's questionnaire responses do not suggest that pricing is coordinated among exporters. During our analysis of the information on the record we found no information indicating the existence of government control. Consequently, we preliminarily determine that Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang have met the criteria for the application of a separate rate.

The PRC-Wide Rate and Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to sections 782(d) and (e) of the Act, use the facts otherwise available in reaching the applicable determination.

As discussed further below, pursuant to section 776(a)(2)(D) of the Act, the Department determines that the application of adverse facts available is warranted for respondent Linyi Sanshan. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided by a respondent but that information cannot be verified. Linyi Sanshan's questionnaire responses cannot be verified.

On March 5, 2004, we received a letter from Linyi Sanshan's counsel notifying us that it was withdrawing as counsel to Linyi Sanshan in the November 1, 2002, through April 30, 2003, new shipper review of the antidumping duty order on fresh garlic from the PRC. On March 8, 2004, we faxed a letter to Linyi Sanshan referring to counsel's March 5, 2004, letter. We informed Linyi Sanshan that, as it should be aware, we had made plans to visit the company during the week of April 12, 2004, to verify the information it had submitted for the new shipper review. We stated that, "{g}iven the advanced stage of the segment of the proceeding, we have minimal flexibility with the verification dates." We asked the company to "confirm with us by close of business on Thursday, March 11, 2004, whether the verification can proceed as scheduled." We also stated that, "{i}f we do not receive a response from you by March 11, 2004, we will assume that you are not allowing us to conduct the verification as scheduled." On March 11, 2004, we received a letter from Linyi Sanshan informing us that it was preparing for verification. On April 1, 2004, the Department issued a verification outline to Linyi Sanshan. As indicated therein, the Department informed Linyi Sanshan that the verification of its questionnaire responses was scheduled for the week of April 12, 2004.

On April 12, 2004, the verification team contacted Linyi Sanshan by telephone and told company officials that they planned to visit the company that morning. Company officials stated that they were that they were expecting the verification team. When the verification team arrived at the company after a one-hour drive from their hotel, Linyi Sanshan's general manager informed the verification team that Linyi Sanshan could not participate in the verification. *See Verfication of the Responses of Linyi Sanshan Import & Export Trading Company, Ltd., in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China* from Analyst to the File dated April 26, 2004.

As explained above, the information Linyi Sanshan submitted for this new shipper review cannot be verified because the company chose not to participate in the verification. As such, we find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted.

When we determine that the use of facts available is warranted, section 776(b) of the Act permits us to apply an adverse inference if we make the additional finding that "{a respondent} has failed to cooperate by not acting to the best of its ability to comply with a request for information." To examine whether a respondent cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, inter alia, the accuracy and completeness of the submitted information and whether the respondent has hindered the calculation of an accurate dumping margin. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission of Review, in Part,* 69 FR 7193, 7196 (February 13, 2004). Linyi Sanshan's decision not to participate in the verification prevented the Department from checking the accuracy of the information that it submitted; therefore, the Department considers Linyi Shanshan to have hindered the calculation of an accurate dumping margin and impeded the proceeding within the meaning of section 776(a)(2)(C) of the Act. Consequently, we have determined that the application of adverse facts available is warranted for respondent Linyi Sanshan.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use as adverse facts-available information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Since Linyi Sanshan chose not to participate in the verification of its questionnaire responses, the Department was unable to examine the company's eligibility for a separate rate. In the absence of verifiable information establishing Linyi Sanshan's eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As adverse facts available and reflecting the determination that it is not eligible for a separate rate, we have assigned the PRC-wide rate of 376.67 percent to Linyi Sanshan.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, a figure which it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Fresh Garlic from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review,* 61 FR 68229, 68230 (December 27. 1996). Further, it was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) *(TRBs),* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." See *TRBs,* 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to Linyi Sanshan and all exporters subject to the PRC-wide rate. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate to use as adverse facts available, we determine that this rate has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Therefore, for all sales of subject merchandise exported by Linyi Sanshan, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Export Price

In accordance with section 772(a) of the Act, for responsive companies we have used the export-price methodology when the first sale to an unaffiliated purchaser was made outside the United States before importation of the merchandise into the United States. We calculated the export price based on prices from Dong Yun, Ever Rich, Linshu Dading, Sunny, and Ziyang to unaffiliated U.S. customers. We made deductions, where appropriate, from the gross unit price to account for movement expenses such as foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See "Memorandum to the File" regarding the factors valuation for the preliminary results of the new shipper reviews (April 26, 2004) *(FOP Memorandum)*.

For a more detailed explanation of the company-specific adjustments that we made in the calculation of the dumping margins for these preliminary results, see the company-specific preliminary results analysis memoranda dated April 26, 2004.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See "Memorandum to Laurie Parkhill" regarding the request for a list of surrogate countries (August 25, 2003). In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We have used India as the surrogate country and, accordingly, have calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. We have obtained and relied upon publicly available information. See the April 26, 2004, "Memorandum to the File" regarding the selection of a surrogate country.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of these new shipper reviews, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the normal value using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) Hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondents for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by the respondents for the period of review. To calculate normal value, we multiplied the reported per-unit factor quantities by publicly available surrogate values from India. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We calculated these freight costs based on the shortest reported distance from the domestic supplier to the factory and Indian surrogate values. This adjustment is in accordance with the decision in *Sigma Corporation* v. *United States,* 117 F. 3d 1401, 1407–08 (CAFC 1997). For a detailed description of all the surrogate values used, see the *FOP Memorandum.*

For those Indian rupee values not contemporaneous with the period of review, we adjusted for inflation using wholesale price indices for India published in the International Monetary Fund's *International Financial Statistics.*

Surrogate-value data or sources to obtain such data were obtained from the petitioners, the respondents, and Departmental research.

Except as specified below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas Trade Information System (Internet Version 4.3e) (*World Trade Atlas*). The source of these values, contemporaneous with the period of review, was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. We valued garlic seed based on pricing data from the *NHRDF News Letter,* published by India's National Horticultural Research and Development Foundation. We valued diesel fuel and electricity based on data from the International Energy Agency's *Energy Prices & Taxes: Quarterly Statistics* (Third Quarter, 2003). We valued water using the averages of municipal water rates from Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (October 1997).

The respondents reported packing inputs consisting of mesh bags, cartons, plastic bands, and tape. All of these inputs were valued using import data from the *World Trade Atlas* that covered the period of review.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate that appears on the website for Import Administration (*http://ia.ita.doc.gov/wages/01wages/01wages.htm*). The source of the wage-rate data for the Import Administration's website is the International Labor Organization's *Yearbook of Labour Statistics 2002* (Geneva, 2002), chapter 5B: Wages in Manufacturing.

The respondents claimed an adjustment for revenue earned on the sale of garlic sprouts. We find that sprouts are a by-product of garlic and deducted an offset amount from normal value. As a surrogate value for the sale of sprouts in the PRC, we used an average of Indian wholesale prices for green onions published by the Azadpur Agricultural Produce Marketing Committee.

We valued the truck rate based on an average of truck rates that were published in the Indian publication *Chemical Weekly* during the period of review. We valued cold storage at a facility away from the production facility prior to shipment using a rate published in an article from Dawn Wire Service. We valued foreign brokerage and handling charges based on a value calculated for the LTFV investigation of certain hot-rolled carbon steel flat products from India. For ocean freight, we used a ranged price from the public version of a respondent's submission.

As discussed in the *FOP Memorandum*, the respondents and the petitioners submitted the publicly available financial information of six companies. We concluded that the financial information of four of the companies reflected costs incurred for highly processed food products and that this processing was not comparable with the operations of the respondent garlic companies. We concluded that the financial information for a fifth company was not representative of the financial experiences of the respondent companies because this company did not grow the agricultural products that it sold and, in some cases, performed no processing on these products. We found that the financial information of a tea company was most representative of the financial experiences of the respondent companies because it produced and processed a product that was not highly processed or preserved prior to its sale. Thus, to value factory overhead, selling, general and administrative expenses, and profit, we used rates based on data taken from the 2001/2002 financial statements of Parry Agro Industries Limited.

Preliminary Results of the New Shipper Reviews

We preliminarily determine that the following dumping margins exist for the period November 1, 2002, through April 30, 2003:

Grower and exporter combinations	Weighted-average percentage margin
Grown by Pizhou Guangda Import and Export Co., Ltd. and Exported by Ever Rich Trade Company	0.00
Grown by Jinxing Jinda Agriculture Industrial & Trading Company Ltd. and Exported by Linshu Dading Private Agricultural Products Co., Ltd	0.00
Grown and Exported by Linyi Sanshan Import & Export Trading Co., Ltd	376.67
Grown and Exported by Sunny Import and Export Ltd	0.00
Grown and Exported by Taian Ziyang Food Company, Ltd	0.00
Grown and Exported by Jinxiang Dong Yun Freezing Storage Co., Ltd	26.29

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's last verification report in these reviews. The Department will notify all parties of the applicable briefing schedule. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of the preliminary results of these reviews in the **Federal Register**. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

The Department will publish the final results of these new shipper reviews, including the results of its analysis of issues raised in any case or rebuttal briefs, within 90 days of publication of this notice. *See* 19 CFR 351.214(h)(i)(1).

Assessment Rates

Upon completion of these new shipper reviews, the Department will determine, and CBP will assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP upon completion of these reviews. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the antidumping duties applicable to sales of the subject merchandise on each of the entries of each exporters' importer/customer during the period of review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of the new shipper reviews for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise grown by Pizhou Guangda Import and Export Co., Ltd., and exported by Ever Rich Trade Company, grown by Jinxing Jinda Agriculture Industrial & Trading Company Ltd., and exported by Linshu Dading Private Agricultural Products Co., Ltd., or grown and exported by Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import and Export, Ltd., Taian Ziyang Food Company, Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd., the cash-deposit rate will be that established in the final results of these reviews; (2) for all other subject merchandise exported by Ever Rich Trade Company, Linshu Dading Private Agricultural Products Co., Ltd., Linyi Sanshan Import & Export Trading Co., Ltd., Sunny Import and Export, Ltd., Taian Ziyang Food Company, Ltd., and Jinxiang Dong Yun Freezing Storage Co., Ltd., the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC-wide rate of 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the period of these reviews. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of reviews in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: April 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–9998 Filed 4–30–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On December 4, 2003, the Department published the preliminary results of the new shipper review of the antidumping duty order on honey from the People's Republic of China (68 FR 67832). The review covers one producer/exporter, Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Dubao"), and one exporter, Shanghai Xiuwei International Trade Co., Ltd. ("Shanghai Xiuwei"), of subject merchandise to the United States during the period February 10, 2001 through November 30, 2002.

Based on our analysis of the record, including factual information obtained since the preliminary results, we have made changes to Dubao's margin calculations and are now using a more contemporaneous labor rate, which was revised in September 2003 and was recently posted to IA's web site. Also, we have found Dubao's second sale to not be a *bona fide* transaction and are therefore only calculating an antidumping margin based on its first sale. For Shanghai Xiuwei, we are applying adverse facts available ("AFA"), which is 183.80 percent. Therefore, the final results differ from the preliminary results. *See* "Final Results of Review" section below.

EFFECTIVE DATE: May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander (Shanghai Xiuwei), Dena Aliadinov (Dubao), and Abdelali Elouaradia, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182, (202) 482–3362, or (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published in the **Federal Register** the preliminary results of this new shipper review on December 4, 2003. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China*, 68 FR 67832 (December 4, 2003) (*Preliminary Results*). On February 25, 2004, the Department extended the final results of this new shipper review by 30 days until March 25, 2004. *See Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China*, 69 FR 8625 (February 25, 2004). On March 31, 2004, the Department extended the final results of this new shipper review by 14 days until April 8, 2004. *See Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China*, 69 FR 16892 (March 31, 2004). On April 14, 2004, the Department extended the final results of this new shipper review by 16 days until April 26, 2004. See Notice of Extension of Time Limit on Final Results of New Shipper Review: Honey From the People's Republic of China, 69 FR 19814 (April 14, 2004).

The period of review (POR) is February 10, 2001 through November 30, 2002. We invited parties to comment on our *Preliminary Results.* We received case briefs from petitioners (the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners)), on January 21, 2004. We received rebuttal briefs from Dubao and Shanghai Xiuwei on January 27, 2004. On February 27, 2004, we invited petitioners to comment on the new information in Shanghai Xiuwei's rebuttal brief, but we did not receive any comments.

Scope of Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and the U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia/ita/doc/gov.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for Shanghai Xiuwei and for Dubao. For Shanghai Xiuwei, we are now applying an AFA rate. *See* the AFA rate section below for details. For Dubao, we are calculating an antidumping margin based only on its first sale and not its second sale because we have determined that its second sale was not a *bona fide* transaction. For this second sale, we are applying an adverse facts available rate of 183.80 percent for assessment purposes because the U.S. importer is an interested party, according to 771(9)(A) of the Act, and failed to cooperate with the Department's numerous requests for it to respond to the Department's importer questionnaire. *See* the discussion below on the specifics of this U.S. importer's failure to cooperate. Also, with respect to Dubao's other sale, we are changing the labor wage rate. *See* the discussion below for specifics on the labor wage rate change. For a detailed discussion of the Shanghai Xiuwei AFA rate and an analysis of the *bona fides* of Dubao's second sale, *see* Issues and Decision Memorandum. For business proprietary details of our analysis of the change described below to Dubao's preliminary margin calculation, *see* Memo to the File regarding Analysis of the Data Submitted by Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (April 26, 2004) ("Dubao Final Analysis Memo"). For details on the proprietary information for Shanghai Xiuwei, *see* Memo to the File regarding Analysis of the Data Submitted by Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei Final Analysis Memo") (April 26, 2004).

For labor, during the *Preliminary Results,* we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002 and corrected in February 2003. On February 10, 2004, the Expected Wages of Selected NME Countries was updated. For these *Final Results*, we are using the PRC regression-based wage rate in the Expected Wages of Selected NME Countries, revised in September 2003.

Application of Facts Available

Dubao

The Department has determined that the application of adverse facts available is warranted with respect to Dubao's U.S. importer for its second sale.

Dubao's importer for its second sale failed to respond to the Department's questionnaires or participate in any way in this proceeding. Indeed, the Department made numerous attempts to contact the U.S. importer for Dubao's second U.S. sale, yet found the importer to be unavailable and/or unwilling to assist in the conduct of this administrative review. *See* the Department's bona fide memorandum from Brandon Farlander and Dena Aliadinov through Abdelali Elouaradia to the File regarding the New Shipper Review on Honey from the People's Republic of China ("PRC") ("Bona Fide Memo"), dated November 26, 2003. On June 13, 2003, the Department issued an importer questionnaire to White & Case, the legal counsel for Dubao, and instructed that it be forwarded to Dubao's importers. On June 30, 2003, the Department received an importer questionnaire response for Dubao's U.S. customer, but this entity was not the U.S. importer for the second sale. In Dubao's second supplemental questionnaire, Dubao stated that its U.S. customer was not the importer of record for its second sale and provided a Customs Form 7501, which listed the importer of record and an address for this importer. The Department sent an importer questionnaire twice to the 7501 Form address but did not get a response. In addition, the Department sent an importer questionnaire to the address for this U.S. importer listed with the California Secretary of State's office and it was returned, with FedEx indicating that no business existed at that location. The Department located the owner of the 7501 Form address, via the Los Angeles Office of the Assessor's property ownership records and called this owner and he stated that he had lived at that address for two years and had never heard of the U.S. importer, nor was he employed by or an owner of the U.S. importer. At Dubao's verification, the Department informed Dubao that we were unable to locate the U.S. importer and we requested Dubao's contact names and numbers for this U.S. importer. The Department called this person provided by Dubao and she stated that the U.S. importer's address was the address listed on the Customs Form 7501, except for a slight address difference. We sent the importer questionnaire a second time to the Customs Form 7501 address and, again, did not get a response. Also, we left a message with this contact person and asked her to provide another address if necessary. The Department did not hear from this contact, nor did the U.S. importer respond to the Department's importer questionnaire.

The Department was successful in locating a website for this U.S. importer and called the phone number appearing on that website, but discovered that the number had been disconnected. Furthermore, the Department e-mailed the company but no one responded. Finally, the Department called information for the greater Los Angeles area and the operator could not locate the U.S. importer in its phone directory.

Section 771(9) of the Act defines an "interested party" under the antidumping duty law as including producers, exporters, or "United States importer of subject merchandise." The U.S. importer for Dubao's second sale was an interested party. Section 776(a)(2) of the Act, provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use facts otherwise available in reaching the applicable determination.

Further, section 776(b) of the Act provides that the Department may use in inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103–316 at 870 (1994).

Clearly, Dubao's importer for its second transaction failed to participate in any way in this review and did not act to the best of its ability. Accordingly, we are applying the adverse facts available rate of 183.80 percent as an assessment rate for the U.S. importer for Dubao's second sale, which we have determined is not a *bona fide* sale.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent rails to cooperate to the best of its ability. (*See e.g., Certain Forged Stainless Steel Flanges From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 10358 (March 7, 2002) ("Because we were unable to calculate margins for these respondents, we have assigned them the highest margin from any segment of this proceeding, in accordance with our practice."); *Stainless Steel Plate in Coils From Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002) ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from this or any prior segment of the proceeding.")

In keeping with Department precedent, for this new shipper review, we have determined that is appropriate to assign Dubao's U.S. importer for the second sale the rate of 183.80 percent—the highest rate determined in any segment of this proceeding. This rate was established in the LTFV investigation based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the PRC*, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decisions

Memorandum (Final Determination). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

We note that information from a prior segment of this proceeding constitutes "secondary information", and section 776(c) of the Act provides that, when the Department relies on such secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. (Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA* at 870.) The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. The SAA also clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996) ("TRBs"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

As noted above, we are applying as AFA the highest rate from any segment of this administrative proceeding, which is the petition rate from the LTFV investigation. We note that in the LTFV investigation, the Department corroborated the information in the petition that formed the basis of the 183.80 percent PRC-wide entity rate. *See Final Determination.* Specifically, in the LTFV investigation, the Department compared the prices in the petition to the prices submitted by individual respondents for comparable merchandise. Moreover, the information upon which the AFA rate we are applying for the current review was corroborated again during the 2001–2002 administrative review, and found to be both reasonable and reliable. *See Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review,* 68 FR 69988, 69992 (December 16, 2003) ("01–02 Preliminary Results"). No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in TRBs that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See TRBs* at 61 FR 57392. *See also Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on information from the petition, which was deemed reliable as compared to the selling prices of actual PRC exporters of the subject merchandise. This rate is also currently applicable to all exporters subject to the PRC-wide rate. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available, we determine that this rate has relevance.

As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding) *i.e.,* the petition rate of 193.80 percent, which is the current PRC-wide rate) is in accordance with section 776(c)'s requirement that secondary information be corroborated (*i.e.,* that it have probative value).

Shanghai Xiuwei

For Shanghai Xiuwei, we conducted verification of its questionnaire responses on August 4–7, 2003. *See* Verification of U.S. Sale for respondent Shanghai Xiuwei International Trading Co., Ltd. ("Shanghai Xiuwei") and Factors of Production Information Submitted by Henan Oriental Bee Products Co., Ltd. ("Henan Oriental") ("Shanghai Xiuwei verification report"). Despite certain inconsistencies on the record, for the preliminary determination, the Department calculated a margin for Shanghai Xiuwei's U.S. sale. *See Preliminary Results.* However, upon further review of the record and, in particular CBP information on the record, Commerce has revisited its findings. *See* Bona Fide Memo for the CBP data. Commerce now has determined for these final results that Shanghai Xiuwei failed to provide at verification complete and accurate information about its total shipments of honey to the United States. Moreover, we have determined that Shanghai Xiuwei failed to report in its questionnaire responses and at verification that one of its owners also owned a U.S. importer of subject merchandise and that these two companies are affiliates based on this common ownership. For these reasons, we believe that the application of facts available is warranted.

Shanghai Xiuwei withheld information that was specifically requested by the Department. It is extremely important that an exporter provide all requested information to the agency at verification and in questionnaire responses, and that includes information pertaining to all U.S. affiliates. In particular, this is very important when the U.S. affiliate or affiliates are involved in the production, distribution or sales of subject merchandise. Shanghai Xiuwei did not provide the Department with the identity of its affiliate and did not report its shipments of subject merchandise to that affiliate. Therefore, by withholding this important data from the Department, Shanghai Xiuwei significantly impeded this proceeding, and other information which it provided at verification was called into question, pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Act. Accordingly, for the reasons discussed in detail in the attached Issues and Decision memorandum, we find that the application of facts available is necessary in this case to determine the antidumping duty rate for Shanghai Xiuwei.

Furthermore, as provided above, the Department has determined, pursuant to section 776(b) of the Act, that an adverse inference is warranted in this case because Shanghai Xiuwei failed to cooperate to the best of its ability to provide the information requested by the Department in this new shipper review. As discussed in detail in the attached Issues and Decision Memorandum, we determine that Shanghai Xiuwei could have complied with the Department's request to respond accurately to the Department's initial questionnaire, requests for supplemental information, and questions asked at verification, but failed to do so. Moreover, at no point in the administrative review, prior to or during verification, did Shanghai Xiuwei notify the Department of the existence of any inaccuracies in information it reported to the Department, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. Furthermore, Shanghai Xiuwei was the only party which had access to this information and, therefore, the only party that could have complied with the Department's request for information on Shanghai Xiuwei's affiliate and additional U.S. sales. For all of the aforementioned reasons, the Department finds that Shanghai Xiuwei failed to cooperate to the best of its ability. *See* Issues and Decision Memorandum.

In keeping with Department precedent, for this administrative review, we have determined that it is appropriate to assign Shanghai Xiuwei the rate of 183.80 percent—the highest rate determined in any segment of this proceeding. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China,* 64 FR 61581, 61584 (November 12, 1999). This rate was established in the LTFV investigation based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the PRC,* 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum (Final Determination). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

For complete details of the Department's application of adverse facts available and its corroboration of the rate selected, *see* the Issues and Decision Memorandum, dated April 26, 2004. For business proprietary information related to Shanghai Xiuwei, *see* Shanghai Xiuwei Final Analysis Memo.

Final Results of Review

We determine that the following antidumping margin percentage exists for Shanghai Xiuwei and Dubao during the period February 10, 2001 through November 30, 2002:

Manufacturer and exporter	Margin (percent)
Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. ("Dubao")	21.61
Shanghi Xiuwei International Trading Co., Ltd.	183.80

Assessment of Antidumping Duties

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. We will direct CBP to assess the resulting assessment rates against the CBP entered values for the subject merchandise on each of the importer's/customer's entries during the review period. For assessment purposes for Dubao's second sale, which we have determined is not a *bona fide* transaction, we are applying an adverse facts available rate of 183.80 percent.

Cash Deposits Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Shanghai Xiuwei and Dubao of honey from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register.**

The following cash deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results for this new shipper review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Dubao (*i.e.*, for subject merchandise both manufactured and exported by Dubao only) and Shanghai Xiuwei (*i.e.*, for subject merchandise manufactured by Henan Oriental Bee Products Co., Ltd. and exported by Shanghai Xiuwei) will be the rates indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by Dubao and Shanghai Xiuwei but not manufactured by Dubao and Henan Oriental, respectively, will continue to be the PRC-wide rate (*i.e.*, 183.80 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise form the PRC will be the rate applicable to the PRC exporter that supplied that exporter. In addition, for all honey imported by the U.S. importer (company A) for Dubao's second sale, the cash deposit rate is the PRC-wide rate of 183.80 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. There are no changes to the rates applicable to any other company under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with these final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: April 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—Comments Discussed in Issues and Decision Memorandum

1. *Bona Fides* of Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. U.S. Sales and Application of Adverse Facts Available for Dubao's Importer in the Second Sale.

2. Application of Adverse Facts Available for Shanghai Xiuwei.

[FR Doc. 04–9994 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of extension of the time limit for the final results in the administrative review and new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China.

SUMMARY: The United States Department of Commerce ("the Department") is extending the time limit for the final results of the administrative review and new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"). These reviews cover the period February 1, 2002, through January 31, 2003, and are being conducted concurrently.

DATES: *Effective Date:* May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2004, the Department of Commerce ("the Department") published the preliminary results of the administrative review and new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review,* 69 FR 10410. The current deadline for the final results in these reviews is July 3, 2004.[1] These reviews have been aligned. *See* 68 FR 15152.

Statutory Time Limits

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 120-day period to 180 days. Furthermore, pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a final determination in a new shipper review within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 90-day period to 150 days.

Extension of Time Limit

The Department finds that it is not practicable to complete the final results in the administrative review of certain preserved mushrooms from the PRC within the current time frame due to the fact that a sales and factors-of-production verification has been re-scheduled to take place in early June, which will set back the briefing schedule in this review until a period after the issuance of the verification report. Furthermore, the Department finds that it would be extraordinarily complicated to complete the final results of the new shipper review within this time frame because, to retain alignment of these reviews, the briefing schedule in this review will have to be set back as well.

Therefore, in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, the Department is extending the time for completion of the final results of these reviews until September 1, 2004, which is 180 days after the date on which notice of the preliminary results was published in the **Federal Register**.

Dated: April 27, 2004.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 04–9996 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Since July 3, 2003, is a Saturday, the preliminary results are due on the next business day, July 6, 2003.

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of hearing and request for comment.

SUMMARY: The governments of the United States and China have agreed to establish a working group to discuss a range of issues relevant to China's aspiration to be recognized as a market economy for purposes of the U.S. antidumping law. These issues pertain to characteristics of the Chinese economy that appear to be inconsistent with the normal experience of a market economy, as well as Chinese government policies and practices that have the potential to distort the market and U.S.-China trade. The Department is therefore requesting public comment, in advance of a public hearing that will be held on June 3, 2004, for the purpose of identifying relevant topics and issues for discussion in the working group.

DATES: Comments (including any written notification of intent to testify) must be submitted by May 19, 2004.

ADDRESSES: Written comments (original and six copies) should be sent to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Albert Hsu, Senior Economist, or Michael Rollin, Acting Director for Trade Remedy Compliance, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230, 202–482–4491 or 202–482–3415.

SUPPLEMENTARY INFORMATION: At the April 21, 2004 meeting of the U.S.-China Joint Commission on Commerce and Trade, representatives of the governments of the United States and the People's Republic of China agreed to establish a working group to hold a dialogue on the range of issues that are relevant to considering China's desire to no longer be treated as a non-market economy country ("NME") under U.S. antidumping law. Among the more specific issues that would be taken up under this agenda would be structural characteristics of the Chinese economy that appear to be inconsistent with the normal experience of a market economy, as well as Chinese government policies and practices which have the potential to distort the market and U.S.-China trade. Examples of the types of structural issues envisioned for these discussions include China's banking sector and state-owned enterprises, as well as central, provincial, and regional governmental policies such as tax incentives and other export promotion instruments. The Department is requesting public comment in advance of a public hearing that will be held on June 3, 2004, for the purpose of identifying relevant topics and issues for discussion in the working group. We encourage parties to limit their comments to factual information that supports the issue or topic raised.

Persons wishing to comment should file a signed original and six copies of each set of comments by May 19, 2004. Comments should be limited to twenty pages. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will not be considered. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form, but also recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the import administration web site at the following address: *http://ia.ita.doc.gov/*. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster-support@ita.doc.gov*.

The public hearing on June 3, 2004, will be begin at 9 a.m. in the auditorium at the Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230. Individual hearing presentations will be limited to five minutes, to allow for possible questions from the Chair and the panel. Additional time for oral presentations may be granted as time and the number of participants permit. Parties wishing to testify orally at the hearing must provide written comments (subject to the requirements described above) on which their testimony will be based, and must include with their comments a written notification of their intent to testify.

All comments and submissions (including written notification of intent to testify) should be mailed to James J. Jochum, Assistant Secretary for Import Administration; Subject: Public Hearings on U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, by no later than 5 p.m., May 19, 2004. The notification should include (1) the name of the person presenting the testimony, their address and telephone number; (2) the organization or company they are representing, if appropriate; and (3) if applicable, any request for an extension of the time limitation on the oral presentation. In addition, please send a copy of this notification via facsimile to Lawrence Norton and Anthony Hill at (202) 482–501–1377.

Dated: April 28, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–10053 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042704A]

Proposed Information Collection; Comment Request; Southeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via e-mail at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jim Waters, Department of Commerce, NOAA, National Marine Fisheries Service, 101 Pivers Island Road, Beaufort, NC 28516–9722, (252–728–8710).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) proposes to collect information about vessel expenses and earnings in the Gulf of Mexico reef fish and coastal pelagic (mackerel) fisheries with which to conduct economic analyses that will improve fishery management in those fisheries; will satisfy NMFS' legal mandates under Executive Order 12866, the Magnuson-Steven Fishery Conservation and Management Act (U.S.C. 1801 *et seq.*), the Regulatory Flexibility Act, the Endangered Species Act, and the National Environmental Policy Act; and will quantify achievement of the performances measures in the NMFS Strategic Operating Plans. These data will be collected in conjunction with catch and effort data already being collected in this fishery as part of its logbook program, and will be used to assess how fishermen will be impacted by and respond to regulations likely to be considered by fishery managers.

II. Method of Collection

Owners of selected vessels with Federal commercial permits in the Gulf of Mexico reef fish and coastal pelagics fisheries will be required to report information about trip costs, input usage, input prices, and dockside prices as part of the logbook reporting requirements in this fishery. In addition, these vessel owners will be required to complete and submit by mail a separate form about annual fixed cost information such as expenditures for repair and maintenance, gear purchase and repair, fishing licenses and permits, insurance, dock fees, repayment on boat and business loans, office expenses and so forth.

III. Data

OMB Number: 0648–0016.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 350.

Estimated Time Per Response: 10 minutes per trip report; and 30 minutes for the annual fixed-cost survey.

Estimated Total Annual Burden Hours: 1,400.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the collection of information burden on respondents through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 23, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10004 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042704C]

Proposed Information Collection; Comment Request; Small-Craft Facility Questionnaire

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via e-mail at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lyn Preston, N/CS26, Station 7350, 1315 East West Highway, Silver Spring, MD 20910–3282 (301.713.2737 x123).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's National Ocean Service produces nautical charts to ensure safe navigation. Small-craft charts are designed for recreational boaters and include information on local marina facilities and the services they provide (fuel, repairs, etc.). NOAA must collect information to update the charts.

II. Method of Collection

A web-based utility has been created that facilitates the voluntary submission of user (facility owner/operator) data for available marina services.

III. Data

OMB Number: 0648–0021.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses and other for-profit organizations (small-craft facilities or marinas).

Estimated Number of Respondents: 1,600.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 230.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the collection of information burden on respondents through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 23, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–10006 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042704F]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and

objectives of the Black Sea Bass Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow three vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the black sea bass minimum fish size requirement so that undersized fish may be retained for data collection purposes. The EFP would allow this exemption for approximately 350 lb (159 kg) of undersized (juvenile) black sea bass (*Centropristis striata*) for the remainder of the 2004 fishing year.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before May 18, 2004.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA515@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on VIMS Black Sea Bass Population Biology EFP Proposal." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on VIMS Black Sea Bass Population Biology EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The Virginia Institute of Marine Science (VIMS) submitted an application for an EFP on April 12, 2004, with final revisions received April 21, 2004. This is the second year of a 2–year study. A summary report of the 2003 study was received on April 21, 2004. The experimental fishing application requests authorization to allow the collection of undersized (juvenile) black sea bass for research into the reproductive biology and population dynamics of black sea bass. The VIMS researchers propose to enlist three fishing vessels to retain 25–50 lb (12–23 kg) of undersized black sea bass each month during the participation period (June 1–December 31, 2004). This would result in a maximum retention of 350 lb (159 kg) of undersized black sea bass for the 2004 fishing year. The collections would take place using handline and fish pot fishing gear during the normal fishing operations of the participating vessels. The collections would take place off the coasts of Virginia and North Carolina in 30–minute squares 11, 12, 15, 16, 19, 20, 25, and 26. The participating vessels would be required to comply with applicable state landing laws and report all landings on the Federal Fishing Vessel Trip Report.

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

Dated: April 28, 2004.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–989 Filed 4–30–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Buildings and Land at the Former Military Installation, U.S. Naval Station (NAVSTA) Roosevelt Roads, Ceiba, Puerto Rico

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This notice provides information regarding surplus property at the former NAVSTA Roosevelt Roads, Ceiba, PR.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Anderson, Deputy, Base Development, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Dr, North Charleston, SC 29419, telephone 843–820–5795. For information regarding real estate, contact Ms. Sandy Frantz, Realty Specialist, Integrated Product Team, Caribbean, Atlantic Division, Naval Facilities Engineering Command, 6506 Hampton Blvd, Norfolk, VA 23508–1278, telephone 757–322–4926. For information regarding facilities infrastructure, contact Mr. Bob Bush, Deputy Ops Officer, Integrated Product Team, Caribbean, Atlantic Division, Naval Facilities Engineering Command, 6506 Hampton Blvd, Norfolk, VA 23508–1278, telephone 757–322–8350.

SUPPLEMENTARY INFORMATION: On March 31, 2004, NAVSTA Roosevelt Roads closed pursuant to the Department of Defense Appropriations Act of FY04, Public Law 108–87, Section 8132 (a). The closure provided for in Section 8132(a), and subsequent disposal, shall be carried out in accordance with the procedures and authorities contained in the Defense Base Closure and Realignment Act of 1990 (DBCRA), as amended. On April 16, 2004, approximately 8,422.5 acres were determined surplus to the Federal government. It was made available for use by (a) non-Federal public agencies pursuant to various statutes which authorize conveyance of property for public projects, and (b) homeless assistance providers pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

Redevelopment Authority: The Local Redevelopment Authority (LRA) for the former NAVSTA Roosevelt Roads, Ceiba, PR, for purposes of implementing the provisions of the DBCRA is the Puerto Rico Department of Economic Development and Commerce. The LRA point of contact is Ms. Lilly A. Oronoz Rodriguez, Assistant Secretary, Federal and International Affairs, Department of Economic Development and Commerce, 355 Ave F. D. Roosevelt, Hato Rey, PR 00918, telephone 787–765–2900 X4752.

Surplus Property Descriptions: The following is a listing of the land and facilities at former NAVSTA Roosevelt Roads, Ceiba, PR, that were declared surplus to the Federal government on April 16, 2004.

Land: Approximately 8,422.5 acres of improved and unimproved land at the former NAVSTA Roosevelt Roads, Ceiba, PR.

Buildings and Structures: The following is a summary of the facilities located on the above-described land. There are approximately 1,617 buildings and structures. This includes public works buildings, housing, visitor lodging, recreational areas, commissary and exchange, hospital, schools, fire stations, airfield with an 11,000-foot runway and hangars, warehouses, marina, cargo and fuel piers, pistol ranges, fuel tanks, wastewater treatment plants, water filtration plant, water reservoir, sanitary landfill, and electric utility systems.

Expressions of Interest: Pursuant to Section 2905(b)(7)(C) of the DBCRA, state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the former NAVSTA Roosevelt Roads, Ceiba, PR, shall submit to the said local redevelopment authority a notice of interest, if any, of such governments, representatives, and parties in the above-described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to Section

2905(b)(7)(C) and (D) of DBCRA, the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in PR, the date by which expressions of interest must be submitted. In accordance with Section 2905(b)(7)(D)(ii) of said act, the submission date established by the LRA shall be no earlier than three months and not later than six months after the date of publication by the Department of Defense of the notice of surplus property at the former NAVSTA Roosevelt Roads in a newspaper of general circulation in PR.

Dated: April 29, 2004.

S. A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–10058 Filed 4–30–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 2, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: ED Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 27, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Teacher Quality Enhancement Grants for Partnerships Program (TQE-P): Application Guide for the TQE Grants Competition.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 275; Burden Hours: 25,800.

Abstract: This application is for use by partnerships to apply for new awards under the Teacher Quality Enhancement Grants for Partnerships Program.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2248. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–9939 Filed 4–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 2, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 28, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Guaranty Agency Financial Report.

Frequency: Monthly; Quarterly; Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 612.

Burden Hours: 33,660.

Abstract: The Guaranty Agency Financial Report is used to request payments from and make payments to the Department of Education under the FFEL program authorized by Title IV, Part B of the HEA of 1965, as amended. The report is also used to monitor the agency's financial activities, including activities concerning its federal fund; operating fund and the agency's restricted account.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2439. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, 9th Floor, Washington, DC 20202. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–9957 Filed 4–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—Technology and Standards-Based Reform; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327B.

Dates:

Applications Available: May 4, 2004.

Deadline for Transmittal of Applications: June 7, 2004.

Deadline for Intergovernmental Review: August 6, 2004.

Eligible Applicants: State educational agencies (SEAs); and local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $200,000–$300,000 per year.

Estimated Average Size of Awards: $300,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 687 of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—Technology and Standards-Based Reform.

Background: Current Federal and State educational initiatives (including the No Child Left Behind Act of 2001 (NCLB)) apply principles of standards-based reform as a means for improving student achievement. Standards-based reform is premised on a "theory of action" in which standards, assessments, and accountability lead to improved curriculum and clear expectations for students and schools, which in turn lead to professional development and improved teaching, which ultimately lead to higher levels of student learning (Elmore and Rothman, Eds., 1999, available at *http://www.nap.edu/catalog/9609.html*). This theory suggests that, certain areas should be addressed in order to maximize benefits for students with disabilities. Among these are the following—(1) Assessments must be accessible and valid for the widest possible range of students with disabilities (with valid and reliable alternate assessments available for students with disabilities who cannot participate in general assessments even with accommodations); (2) information on assessment results must be available to all appropriate parties in a timely fashion and must be applicable to instruction as well as to accountability; (3) students should receive coherent standards-based instruction, and progress toward meeting standards must be monitored; (4) principles of universal design should be applied to standards, assessments, curriculum, and instruction; and (5) connections must be maintained between the components of the system, including standards, assessments, reporting, instructional planning, professional development, and instruction. Technology can play a vital role in improving the academic achievement of students with disabilities.

Priority: This priority supports research projects to determine how technology can best be used to maximize the benefits of standards-based reform for children with disabilities. Technologies may include, but are not limited to, technology-based assessments, computerized curriculum-based measurement aligned with State academic content standards, technology-based instruction aligned with State content standards, and technology-based systems for managing and analyzing information. The research must address one or more of the areas identified above in order to improve the achievement of students with disabilities as discussed in the Background section of this priority.

Projects must:

(a) Conduct (1) rigorous research on existing products and approaches to determine their effectiveness, feasibility, and sustainability, or (2) research-based development and evaluation of approaches for using technology to maximize the benefits of standards-based reform for students with disabilities.

(b) Conduct the majority of research and development activities in actual school settings.

(c) Apply sound research methods.

(d) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(e) Budget for one additional trip annually to Washington, DC to attend the Technology Project Directors' meeting.

(f) If the project maintains a Web site, it must include relevant information and documents in an accessible form.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C.), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1487.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,200,000.

Estimated Range of Awards: $200,000—$300,000 per year.

Estimated Average Size of Awards: $300,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* May 4, 2004.

Deadline for Transmittal of Applications: June 7, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 6, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technology and Media Services for Individuals with Disabilities Program—Technology and Standards Based Reform competition—CFDA Number 84.327B is one of the competitions included in this project. If you are an applicant under the Special Education—

Technology and Media Services for Individuals with Disabilities Program—Technology and Standards Based Reform competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Technology and Media Services for Individuals with Disabilities Program—Technology and Standards Based Reform competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technology and Media Services for Individuals with Disabilities Program—Technology and Standards Based Reform competition at: *http://www.grants.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dave Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 4624, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8111.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: April 27, 2004.

Andrew J. Pepin,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–10003 Filed 4–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, June 3, 2004, 9 a.m.–5 p.m.; Friday, June 4, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA. Phone: (509) 946–7611, fax: (509) 943–8564.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; phone: (509) 376–6216; fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, June 3, 2004

- Office of River Protection Mass Balance.
- Milestone-45 Change Package.
- Risk Based End States.
- New Occupational Medicine Contract.
- Advice on Technical Assistance (from River & Plateau Committee).
- Advice on Minority Outreach (from the Public Involvement Committee).

Friday, June 4, 2004.

- Hanford Solid Waste-EIS Record of Decision.
- Risk Assessment Tutorial.
- Committee Updates.
- Agency Updates.
- Adoption of Board Advice.
- Identification of Topics for September Board Meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC on April 28, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–9968 Filed 4–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, May 24, 2004, 1 p.m.–6:15 p.m. Tuesday, May 25, 2004, 8:30 a.m.–4 p.m.

ADDRESSES: Radisson Hotel, 411 West Bay Street, Savannah, GA 31401.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–7886.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agendas

Monday, May 24, 2004

1 p.m.—Combined Committee Meeting
5:15 p.m.—Executive Committee Meeting
6:15 p.m.—Adjourn

Tuesday, May 25, 2004

8:30 a.m.—Approval of Minutes; Agency Updates; Public Comment Session
9 a.m.—Chair and Facilitator Update
9:45 a.m.—Strategic & Legacy Management Committee Report
11:15 a.m.—Administrative Committee Report Bylaws Amendment Proposal
11:45 a.m.—Public Comment Session
12 noon—Lunch Break
1 p.m.—Waste Management Committee Report
2:30 p.m.—Facility Disposition & Site Remediation Committee Report
3:45 p.m.—Public Comment Session
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, May 24, 2004.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral state-ments pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802, or by calling her at (803) 952–7886.

Issued at Washington, DC, on April 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–9969 Filed 4–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–264–000]

ANR Pipeline Company; Notice Of Tariff Filing

April 27, 2004.

Take notice that on April 22, 2004, ANR Pipeline Company (ANR) tendered for filing and approval the following revised tariff sheets to include provisions regarding the reservation of capacity for future expansions on its pipeline system.

First Revised Sheet No. 101B
Original Sheet No. 101C
Original Sheet No. 101D
Sixth Revised Sheet No. 102
Second Revised Sheet No. 162.01

ANR requests that the Commission accept and approve the revised tariff sheets to be effective June 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–987 Filed 4–30–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–101–000]

Columbia Natural Resources, LLC; Notice of Petition for a Declaratory Order

April 23, 2004.

Take notice that on April 5, 2004, Columbia Natural Resources, LLC (Columbia) filed in Docket No. CP04–101–000, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), a petition for a declaratory order with respect to natural gas gathering facilities recently acquired from NiSource, Inc. Specifically, Columbia requests that the Commission declare and find that it has all necessary authorizations to enable it to receive and transport gas to delivery points on such facilities in the same manner as the authorization in *Gatherco, Inc.*, 90 FERC ¶ 61,211 (2000).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–980 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–114–000 and CP04–115–000]

Compass Pass Pipeline LLC; Notice of Application

April 27, 2004.

Take notice that on April 16, 2004, Compass Pass Pipeline LLC (Compass Pass), 600 North Dairy Ashford, Houston, Texas 77079, filed in Docket Nos. CP04–114–000 and CP04–115–000 an application, pursuant to Section 7(c) of the Natural Gas Act and Part 157, Subpart A of the Commission's regulations, for: (1) A certificate of public convenience and necessity to construct, own, and operate a single-use natural gas pipeline facility, the onshore Compass Pass Pipeline, to transport natural gas from Compass Port LLC's [1] (Compass Port) offshore deepwater liquefied natural gas (LNG) port to

[1] Compass Pass Pipeline LLC and Compass Port LLC are both wholly-owned affiliates of the ConocoPhillips Company.

interconnections with interstate natural gas pipelines near Coden, Mobile County, Alabama; and (2) a blanket certificate of public convenience and necessity in Docket No. CP04–115–000 under Subpart F of Part 157. The application is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Compass Pass proposes to construct, own, and operate the Compass Pass Pipeline, a 5-mile, 36-inch diameter, single-use pipeline with a capacity of 1,000,000 dekatherms equivalent of natural gas per day. Compass Pass states that the sole purpose of these pipeline facilities would be to transport natural gas owned by Compass Pass from Compass Port's proposed Compass Port offshore deepwater port for the importation and vaporization of LNG, and processing, storage and transportation of natural gas and natural gas liquids, which would be located off the Alabama coast. Compass Port states that it will operate the Compass Port LNG facilities as a proprietary deepwater LNG port pursuant to the Deepwater Port Act of 1974. Compass Port also states that it filed an application to construct and operate the Compass Port offshore facilities with the U.S. Coast Guard on March 29, 2004.

Compass Pass asserts that, inasmuch as it plans to use the proposed Compass Pass Pipeline solely to deliver natural gas owned by Compass on a proprietary basis, it requests waiver of the open access requirements of Part 284 of the Commission's regulations, including, but not limited to, certain accounting and reporting requirements.

Any questions regarding this application should be directed to Bruce A. Connell, Regulatory Counsel & Director of Regulatory Affairs, ConocoPhillips Company, 600 North Dairy Ashford, CH–1022, Houston, Texas, 77079, phone (281) 293–1736, or, in the alternative, Douglas F. John, JOHN & HENGERER, 1200 17th Street, NW., Suite 600, Washington, DC 20036–3013, phone (202) 429–8801.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 18, 2004, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 18, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–988 Filed 4–30–04; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–260–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

April 23, 2004.

Take notice that on April 20, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets identified at Appendix A to the filing, with an effective date of May 20, 2004.

Dauphin Island states that these tariff sheets are being filed to reflect a reference to the incremental charge associated with the lease of Texas Eastern Transmission, LP by Dauphin Island.

Dauphin Island states that copies of the filing are being served on all participants listed on the service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–979 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–258–000]

Eastern Shore Natural Gas Company; Notice of Interruptible Revenue Sharing Report

April 23, 2004.

Take notice that on April 19, 2004, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to Section 37 of the General Terms and Conditions of its FERC Tariff and Article V, Paragraph 6 of the Stipulation and Agreement in Docket No. RP02–34–000.

Eastern Shore states that it intends to give a credit to its firm transportation customers on July 1, 2004. Eastern Shore further states that the credit amount represents 90 percent of the net revenues received by Eastern Shore under Rate Schedule IT in excess of the cost of service allocated to such rate schedule for the period April 2003 through March 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: April 30, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–977 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–024]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

April 27, 2004.

Take notice that on April 23, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8V, reflecting an effective date of May 1, 2004.

Gulfstream states that this filing is being made to implement a negotiated rate transaction, under Rate Schedule PALS, pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original Sheet No. 8V identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity. Gulfstream also states that Sheet 8V includes footnotes where necessary to provide further details on the transaction listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–986 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–29–000]

ISO New England Inc.; Notice of Application

April 23, 2004.

Take notice that on April 19, 2004, ISO New England Inc (ISO NE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of unsecured promissory notes for: (1) A $15 million revolving line of credit for working capital needs; and (2) a $4 million line of credit supporting the Payment Default Shortfall Fund.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–973 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–26–000]

Kansas Gas and Electric Company; Notice of Application

April 23, 2004.

Take notice that on April 16, 2004, Kansas Gas and Electric Company (KGE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million; and (2) authorize the issuance of one or more guaranties to secure in each case up to an aggregate of $500 million of short-term debt securities of KGE's sole shareholder, Westar Energy, Inc.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–970 Filed 04–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–27–000]

Kansas Gas and Electric Company; Notice of Application

April 23, 2004.

Take notice that on April 16, 2004, Kansas Gas and Electric Company (KGE) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the issuance of short-term debt securities in an amount not to exceed $500 million; and (2) authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million to secure such short-term debt.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 12, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–971 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–265–000]

Northern Natural Gas Company; Notice of Tariff Filing

April 27, 2004.

Take notice that on April 23, 2004, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of May 24, 2004:

Third Revised Sheet No. 136
First Revised Sheet No. 142A
Fifth Revised Sheet No. 145
Original Sheet No. 442B
Original Sheet No. 442C

Northern states that it is filing the above-referenced tariff sheets to provide for an FDD Consolidation Agreement and to clarify the applicability of storage and transport fees related to the transfer of FDD, PDD and IDD account balances of a single shipper or between multiple shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,
Secretary.
[FR Doc. E4–981 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–118–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

April 27, 2004.

Take notice that on April 19, 2004, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP04–118–000 an application pursuant to Northern's blanket authority granted on September 1, 1982, at Docket No. CP82–401–000 and sections 157.205, 157.208, and 157.216 of the Commission's Regulations for authorization to replace, modify, and operate various pipeline facilities in Iowa, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to (1) replace and operate approximately 331 feet of 16-inch diameter pipe on the existing Des Moines B-Line (B-Line) with like-for-like 16-inch diameter pipe located in Dallas and Polk Counties; (2) install and operate overpressure protection facilities on the 16-inch diameter B-Line at Northern's existing Royal Estates Town Border Station in Polk County; and (3) up-rate the maximum allowable operating pressure (MAOP) on approximately 23 miles of the B-Line in Boone, Dallas and Polk Counties, and to operate this segment of pipeline at the higher MAOP (Northern previously received authority to upgrade the MAOP on its B-Line in Docket No. CP04–28–000 for 30 miles, but will now only upgrade 23 miles).

Northern estimates that it will spend $150,000 of internally generated funds to construct the new pipeline facilities, collectively known as the Pleasant Hill II project. Northern states that it needs to construct and operate the proposed Pleasant Hill facilities in order to meet its firm contractual obligations of 96,000 MMBtu equivalent of natural gas per day to MidAmerican Energy Company (MidAmerican).[1]

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Reporting for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.fed.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 855.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Comment Date: June 11, 2004.

Magalie R. Salas,
Secretary.
[FR Doc. E4–982 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

[1] *Northern Natural Gas Company,* 103 FERC ¶ 62,028 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–82–000]

NRG Power Marketing, Inc., Connecticut Jet Power LLC, Middletown Power LLC, Montville Power LLC , and Norwalk Power, LLC, Complainants; v. ISO New England, Respondent; Notice of Amended Complaint

April 27, 2004.

Take notice that on April 2, 2004, the NRG Companies filed an Amended Complaint against ISO New England, Inc. (ISO–NE). The Amended Complaint amends the February 10, 2004, Complaint filed by the NRG Companies against ISO–NE. Specifically, the Amended Complaint adds Norwalk Power, LLC, as a complainant. The NRG Companies further state that they are amending their complaint by supplementing it to include all known instances where the ISO violated its Market Rules and Commission Orders by denying Operating Reserve Payments when the ISO directed the NRG Companies' generating units to provide operating reserves as pool-scheduled resources for several operating days, after the operating day in which the units self-scheduled. The NRG Companies' amended claim totals $1,532,564.35.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 7, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–984 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–261–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 23, 2004.

Take notice that on April 20, 2004, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Third Revised Sheet No. 212G, to become effective May 20, 2004.

Southern states that the tariff sheet filed by Southern revises section 39 of the General Terms and Conditions of Southern's Tariff which sets forth the terms and conditions under which local distribution companies or Hinshaw pipelines may reduce their firm contract quantities in the event they are ordered to make a reduction by their applicable state public service commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–969 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–259–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

April 23, 2004.

Take notice that on April 16, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of May 19, 2004:

Eleventh Revised Sheet No. 316;
Eighth Revised Sheet No. 321;
Ninth Revised Sheet No. 322.

Transco states that the purpose of the instant filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19.1(f) of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–978 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–28–000]

Westar Energy, Inc.; Notice of Application

April 23, 2004.

Take notice that on April 16, 2004, Westar Energy, Inc. (Westar) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission: (1) Authorize the issuance of short-term debt securities in an amount not to exceed $500 million; and (2) authorize the pledge of mortgage bonds in an aggregate amount not to exceed $500 million to secure such short-term debt.

KGE also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 12, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4–972 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF04–5101–000]

United States Department of Energy—Western Area Power Administration; Notice of Filing

April 27, 2004.

Take notice that on April 23, 2004, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–111, did confirm and approve on an interim basis, to be effective on June 8, 2004, the Western Area Power Administration's (Western) firm power rate formula contained in Contract No. 7–07–50–P0890 (Contract) for Amistad and Falcon Projects.

The rate formula will be in effect on an interim basis pending the Federal Energy Regulatory Commission's (Commission) approval of it or a substitute rate on a final basis ending June 7, 2009.

Any person wanting to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and to the extent applicable, must be served on the applicant and on any other person designated on the official service list. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.gov/docs-filing/elibrary.asp*. For assistance contact the Commission Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* section 18 CFR 385.2001(a)(1)(iii) and the instruction on the Commission's Web site under the "e-filing" link.

Comment Date: May 24, 2004.

Magalie R. Salas,
Secretary.

[FR Doc. E4–983 Filed 4–30–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–67–000, et al.]

Astoria Energy, LLC, et al.; Electric Rate and Corporate Filings

April 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Astoria Energy, LLC and Caisse de depot et placement Du Quebec

[Docket No. EC04–67–001]

Take notice that on April 19, 2004, Astoria Energy, LLC (Astoria) and Caisse de depot et placement due Quebec (CDP) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization for CDP to invest a portion of its financial interest in Astoria in the form of debt. The application seeks privileged treatment of one exhibit.

Comment Date: May 3, 2004.

2. Advantage Energy, Inc. and WPS Energy Services, Inc.

[Docket No. EC04–97–000]

Take notice that on April 19, 2004, WPS Energy Services, Inc. (WPS–ESI) and Advantage Energy, Inc. (Advantage) (jointly, Applicants) tendered for filing pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, an Application in which they request authorization to transfer the common equity of Advantage through a series of steps, referred to as the "Transaction" to WPS–ESI or its designee. Applicants state that the Transaction will result in no change in ownership of or control over generation, including generation subject to long-term contracts and will have no adverse effect on competition, rates or regulation, and that it should be approved by the Commission as in the public interest. Applicants request that such approval be issued within 60 days.

Comment Date: May 10, 2004.

3. Meiya Sanjiang Hydropower Limited

[Docket No. EG04–53–000]

On April 20, 2004, Meiya Sanjiang Hydropower Limited (MSH), with its principal office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission(s regulations.

MSH states that it is a company organized under the laws of Cayman Islands. MSH further states it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning, operating, or both owning and operating, a hydropower electric generating facility with a total output of approximately 45 megawatts consisting of three turbines and generators and certain additional incidental facilities, located in Mianyang, Sichuan province, People's Republic of China. MSH will through an affiliate sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: May 11, 2004.

4. Central Maine Power Company

[Docket No. ER04–425–001]

Please take notice that on April 19, 2004, Central Maine Power Company (CMP) submitted Unexecuted

Continuing Site/Interconnection Agreements (CSIAs') between CMP and the following entities: FPL Energy Maine, Inc., Kezar Falls Hydro, LLC, Ledgemere Hydro, LLC, and Messalonskee Stream Hydro, LLC. CMP requests the Commission an effective date of December 23, 2003.

Comment Date: May 10, 2004.

5. Southwest Power Pool, Inc.

[Docket No. ER04–434–001]

Take notice that on April 19, 2004, Southwest Power Pool, Inc. (SPP) submitted to the Commission a compliance filing providing for changes to its currently effective Open Access Transmission Tariff (OATT) pursuant to the Commission's order issued March 19, 2004, 106 FERC ¶ 61, 254. SPP states that it filed proposed revisions to its standard Large Generator Interconnection Agreement (LGIA) and Large Generator Interconnection Procedures (LGIP), in accordance with Order No. 2003. In addition, SPP also states that it submitted an Agreement for the Allocation of Responsibilities with Regard to Generator Procedures and Interconnections as an addendum to its compliance filing. SPP requested the Commission to accept its filing and make it effective as of April 26, 2004 in order to accommodate the modifications made to the *pro forma* LGIP and LGIA by Order No. 2003–A.

SPP states that it has served a copy of its transmittal letter on each of its Members and Customers, as well as on all generators in existing generation queue. A complete copy of this filing will be posted on the SPP Web site *www.spp.org*, and is also being served on all affected State commissions.

Comment Date: May 10, 2004.

6. PJM Interconnection, L.L.C.

[Docket No. ER04–521–003]

Take notice that on April 19, 2004, PJM Interconnection, L.L.C. (PJM) submitted in compliance with the Commission's March 18, 2004, order, revisions to Schedule 17 of the PJM West Reliability Assurance Agreement Among Load-Serving Entities in the PJM West Region to apportion capacity obligations of load-serving entities in the Commonwealth Edison Company (ComEd) transmission zone for each seasonal interval based on each LSE's load ratio share of the summer peak in that zone. PJM states that the submitted sheets reflect an effective date of May 1, 2004, consistent with the date for ComEd's integration previously requested in this proceeding.

PJM states that copies of the filing were served on all PJM members, the utility regulatory commissions in the PJM region, and all persons on the Commission's service list for this proceeding.

Comment Date: May 10, 2004.

7. EnergyWindow, Inc.

[Docket No. ER04–584–001]

Take notice that on April 19, 2004, PJM Energy Window, Inc. (EnergyWindow) tendered for filing an amendment to its petition filed February 19, 2004, in response to the Commission's deficiency letter dated March 23, 2004.

Comment Date: May 10, 2004.

8. BP West Coast Products LLC—Wilmington Calciner

[Docket No. ER04–611–001]

Take notice that on April 19, 2004, BP West Coast Products LLC—Wilmington Calciner (BP West Coast Products LLC) submitted Second Revised Volume No. 1 of its Market-Based Rate Power Sales Tariff to reflect a change of name from Arco CQC Kiln, Inc. to BP West Coast Products LLC—Wilmington Calciner and to incorporate the Market Behavior rules adopted by the Commission in the order issued November 17, 2003, in Docket No. EL01–118–000, 105 FERC 61,218.

Comment Date: April 29, 2004.

9. PPL Electric Utilities Corporation

[Docket No. ER04–612–002]

Take notice that on April 19, 2004, PPL Electric Utilities Corporation (PPL Electric) filed an executed Coordination Agreement between PPL Electric and the Borough of Ephrata, Pennsylvania. PPL Electric states that the terms and conditions of the executed Coordination Agreement do not differ from the unexecuted version of the Coordination Agreement that was filed Docket No. ER04–612–001 on March 25, 2004.

PPL Electric states that it has served a copy of this filing on the Borough of Ephrata.

Comment Date: May 10, 2004.

10. PJM Interconnection, L.L.C.

[Docket No. ER04–653–001]

Take notice that on April 22, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing an update on recent developments concerning financial transmission rights for customers using transmission facilities in the zone of Commonwealth Edison Company (ComEd).

Comment Date: April 27, 2004.

11. Pacific Gas and Electric Company

[Docket Nos. ER04–743–000 and ER04–377–001]

On March 22, 2004, Pacific Gas and Electric Company (PG&E) submitted a filing concerning a Generator Special Facilities Agreement and a Generator Interconnection Agreement between PG&E and Sunrise Power Company, LLC. The filing was docketed as ER04–377–001.

Examination of PG&E's filing shows that it was submitted under section 205 of the Federal Power Act and, in accordance with the Commission's business practice, it should have been assigned a new docket number. Accordingly, by this notice, we are redocketing all records filed in ER04–377–001 to a new docket number, ER04–743–000, as indicated in the caption of this notice. All pleadings filed in Docket No. ER04–377–001 will now be docketed in the new docket number, ER04–743–000. No further interventions or protests need be filed, and Docket No. ER04–377–001 is hereby terminated.

Comments on this notice are not necessary.

12. Southern California Edison Company

[Docket No. ER04–747–000]

Take notice, that on April 19, 2004, Southern California Edison Company (SCE) tendered for filing a new rate sheet for the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and The Wind Turbine Company (WTC). SCE states that the new rate sheet, identified as Exhibit C, reflects removal costs for the equipment associated with the Interconnection Agreement. SCE also submitted a Notice of Cancellation of the Interconnection Agreement and the associated Service Agreement For Wholesale Distribution Service between SCE and WTC. SCE requests waiver of the 60-day prior notice requirements specified in section 35.3 and requests the Commission to assign an effective date of May 12, 2004, to the New Sheet and the revised rate sheets reflecting the Notice of Cancellation.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WTC.

Comment Date: May 10, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and

214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,
Acting Secretary.
[FR Doc. E4–996 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6564–002 Oregon]

Jane A. Horning; Notice of Availability of Environmental Assessment

April 23, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for surrender of exemption for the constructed Brunswick Creek Project. Jane A. Horning is the exemptee. The project is located on Brunswick Creek, near North Plains, Washington County, Oregon. The Commission staff has prepared an Environmental Assessment (EA) on the exemption surrender.

The EA contains the staff's analysis of the potential environmental impacts of the surrender of the exemption, and has concluded that surrendering the exemption, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is attached to the Commission order titled "Order Accepting Surrender of Exemption", which was issued on April 23, 2004. The EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http:/www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

FOR FURTHER INFORMATION CONTACT: Mr. Blake Condo at (202) 502–8914.

Magalie R. Salas,
Secretary.
[FR Doc. E4–975 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

April 27, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption (5 MW or Less).

b. *Project No.:* 6338–003.

c. *Date Filed:* March 29, 2004.

d. *Applicant:* Suncook Leathers, Inc.

e. *Name of Project:* Pittsfield.

f. *Location:* Located on the Suncook River in Merrimack County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* David Ossoff, Pittsfield Hydropower Co., Inc., P.O. Box 248, 5 Main St., Pittsfield, New Hampshire 03263, (603) 435–6678.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, and recommendations for terms and conditions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, and recommendations for terms and conditions concerning the application be filed with the Commission by May 28, 2004. All reply comments must be filed with the Commission by June 14, 2004.

Comments, protests, and interventions may be filed electronically via the Internet CFR in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Proposed Action:* The existing project consists of: (1) A 21-foot-high, 421-foot-long concrete and stone gravity dam; (2) a 20-acre reservoir; (3) an intake structure; (4) a 9-foot-diameter, 200-foot-long steel penstock; (5) a powerhouse containing a 420–kW turbine-generator; (6) a 65-foot-long tailrace; and (7) appurtenant facilities. The applicant seeks to surrender the exemption because the project is no longer economically feasible.

m. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–6338, in the docket number field to access the document. For assistance, call toll-free (866) 208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.
[FR Doc. E4–985 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Ferc Staff Attendance at Meetings of Southwest Power Pool Regional State Committee, Board Of Directors and Members

April 23, 2004.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the April 26 and 27, 2004 meetings of the Southwest Power Pool (SPP) Regional State Committee, SPP Board of Directors and SPP Members. The staff's attendance is part of the Commission's ongoing outreach efforts.

The discussions may address matters at issue in the following proceedings:

Docket Nos. RT04–1–000 and ER04–48–000, *Southwest Power Pool, Inc.;*

Docket No. ER04–434–000, *Southwest Power Pool, Inc.;*

Docket No. ER04–658–000, *Southwest Power Pool, Inc.*

The April 26, 2004 SPP Regional State Committee meeting is expected to begin at approximately 2 p.m. The meeting will take place at the Westin Hotel Oklahoma City, One North Broadway, Oklahoma City, OK 73102. The meeting is open to the public.

The April 27, 2004 SPP Board of Directors and SPP Members meetings are expected to begin at approximately 10 a.m. These meetings will take place at the Westin Hotel Oklahoma City, One North Broadway, Oklahoma City, OK 73102. These meetings are open to the public.

For more information, contact Tony Ingram, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–8938 or *tony.ingram@ferc.gov.*

Magalie R. Salas,
Secretary.
[FR Doc. E4–974 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

April 26, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Prohibited:

Docket number	Date filed	Presenter or requester
1. CP04–58–000.	4–22–04	Grieten Sebastien, *et al.* [1]

Docket number	Date filed	Presenter or requester
2. Project No. 2082–027.	4–22–04	Jeanne Riha.
3. Project No. 2574–032.	4–22–04	Ann Beverage.

[1] This communication is one among numerous form letters sent to the Commission by the Greenpeace, USA organization. Only representative samples of these prohibited nondecisional documents are posted in this docket on the Commission's eLibrary system *http://www.ferc.gov*).

Exempt:

Docket number	Date Filed	Presenter or Requester
1. Project Nos. 2576–022 and 2597–019.	4–16–04	Hon. Nancy L. Johnson.

Magalie R. Salas,
Secretary.
[FR Doc. E4–976 Filed 4–30–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Amistad and Falcon Projects Rate Order No. WAPA–111

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning a power rate formula.

SUMMARY: The Deputy Secretary of the Department of Energy (DOE) confirmed and approved Rate Order No. WAPA–111 placing a power rate formula for the Amistad and Falcon Projects of the Western Area Power Administration (Western) into effect on an interim basis. The provisional power rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places it into effect on a final basis, or until the power rate formula is replaced by another power rate formula.

DATES: The provisional rate formula extension will be placed into effect on an interim basis on June 8, 2004, and will be in effect until the Commission confirms, approves, and places the provisional rate formula extension into effect on a final basis for a 5-year period ending June 7, 2009, or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493, e-mail *warren@wapa.gov*, or Ms. Carol Loftin, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6380, e-mail *loftinc@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Amistad and Falcon Dams are features of international water storage projects located on the Rio Grande River between Texas and Mexico. Western markets the power from these dams under the terms of Contract No. 7–07–50–P0890 (Contract) dated August 9, 1977, and amended on April 10, 1986. The rate formula of that Contract was approved by the Federal Power Commission (FPC), predecessor to the Commission, for a 5-year period beginning with the date of initial operation of Amistad Power Plant, in Docket No. E–9566 on August 12, 1977. A 5-year rate extension approving this same rate formula through June 7, 1993, was ordered by the Commission on July 20, 1988, in 44 FERC 62,058. Subsequent 5-year renewals of the rate formula have been approved by the Commission. The most recent approval was on January 21, 2000, in Docket No. EF–99–5101–000, which approved the same power rate formula through June 7, 2004.

According to article 9(a) of the Contract, Western calculates the annual installment to be paid by the South Texas Electric Cooperative, Inc. (STEC), and the Medina Electric Cooperative, Inc. (MEC), for the power generated at the Amistad and Falcon power plants on or before August 31 of the year preceding the fiscal year to which it pertains. Each annual installment pays the annual amortized portion of the United States' investment in the Amistad and Falcon hydroelectric facilities with interest, and the associated operation, maintenance, and administrative costs. This repayment schedule is not dependent upon the power and energy made available for sale or the rate of generation each year. Western will continue to provide STEC/MEC with a revised Exhibit A by August 31 of each year using the same methodology.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

Pursuant to Delegation Order Nos. 00–037.00 and 00–001.00A, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–111 into effect on an interim basis. The extension of the rate formula will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: April 20, 2004.

Kyle E. McSlarrow,
Deputy Secretary.

Order Confirming, Approving, and Placing a Rate Formula Extension for Amistad and Falcon Projects Into Effect on an Interim Basis

The Western Area Power Administration (Western) developed this power rate formula under the Department of Energy Organization Act (42 U.S.C. 7152). This Act transferred the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat.388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, (43 U.S.C. 485h(c)), and other Acts specifically applicable to the Amistad Project and the Falcon Project, to the Secretary.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Commission: Federal Energy Regulatory Commission.

Contract: Contract No. 7–07–50-P0890 dated August 9, 1977, and amended on

April 10, 1986, between Western, STEC, and MEC, for firm power.

Customers: STEC and MEC.

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting used in determining revenue requirements for rate development.

FPC: Federal Power Commission.

FY: Fiscal year; October 1 to September 30.

kWh: Kilowatthour.

MEC: Medina Electric Cooperative, Inc.

Mills/kWh: Mills per kilowatthour.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

O&M: Operation and maintenance.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

Secretary: Secretary of Energy.

STEC: South Texas Electric Cooperative, Inc.

U.S. Section: U.S. Section of the International Boundary and Water Commission.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

This power rate formula will become effective on an interim basis on June 8, 2004, and will be in effect pending the Commission's approval of this or a substitute rate formula on a final basis for a 5-year period through June 7, 2009, or until superseded.

Public Notice and Comment

Paragraph 903.23(a) of 10 CFR 903 does not require either a consultation and comment period, or public information or comment forums for rate extensions. The Customers have expressed their desire to continue using the rate formula through correspondence and letters of concurrence dated December 9, 2003. In addition, on March 17, 2004, Western met with the Customers in San Antonio, Texas, where Western notified them of its intent to continue the power rate formula. Western also discussed the number of years covered in the annual installments, operation and maintenance funding, answered questions, and received comments and suggestions. The customers expressed support to continue the power rate formula.

Project Description

The Amistad and Falcon Dams are features of international water storage projects located on the Rio Grande River between Texas and Mexico. Western markets the power from these dams under the terms of the Contract.

On August 12, 1977, in Docket No. E–9566, the FPC approved for a 5-year period the rate formula contained in the Contract between Reclamation and the two electric cooperatives, to become effective on the date of initial operation of Amistad Power Plant (June 8, 1983). The Customers agreed to purchase the output of the Amistad and Falcon Power Plants for a 50-year period, beginning when initial electric service became available from Amistad. The cooperatives agreed to take all Amistad and Falcon power and to pay the United States an annual installment as discussed in the Contract.

The power marketing functions of Reclamation were transferred to Western on October 1, 1977, and Western became responsible for the administration of the above Contract.

Western and the Customers executed Supplement No. 1 to the Contract on April 10, 1986, to clarify the method for determining the annual installment consistent with DOE Order No. RA 6120.2. Those clarifications address repayment of Falcon hydroelectric facilities within the remaining period, establish interest during construction at 7 percent, capitalize major replacements and additions at current interest rates, and specify the actual date of initial service as June 8, 1983.

Supplement No. 1 requires the amount of each annual installment be established in advance by the contracting officer in consultation with the U.S. Section and submitted to the cooperatives as Exhibit A on or before August 31 of the year preceding the appropriate fiscal year in accordance with the following:

The amount of each annual installment shall be the sum of:

(1) An annual repayment installment including interest, to amortize within the remaining period, the unpaid United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam; plus

(2) An annual installment to amortize over a 50-year period, the United States actual total investment costs with interest, for hydroelectric power facilities, not including penstocks, at Amistad Dam to be under the jurisdiction of the U.S. Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * * and

(3) The annual operation, maintenance, replacement, and administration costs of the U.S. Section and the administration costs of Western related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices * * *.

The billing procedures contained in Supplement No. 1 require Western to submit bills to the cooperatives for each monthly payment on the annual installment on or before the tenth day of the month for which such payment is due. Payments are due and payable by the cooperatives on the first day of the following month. Western divides the calculated annual installment by 12 and bills the customer monthly for this amount.

The rate formula of that Contract was approved by the FPC, for a 5-year period beginning with the date of initial operations of Amistad Power Plant, and subsequent 5-year renewals of the rate formula have been approved by the Commission through June 2004.

Consequently, Commission approval is now sought for an additional 5-year period. The effective date is scheduled to be June 8, 2004, through June 7, 2009.

Power Repayment Studies

The Contract requires that Western calculate the annual installment to be paid by the customers for the power generated at the Amistad and Falcon Power Plants, in consultation with the U.S. Section, and submit it to STEC and MEC in the form of a contract exhibit on or before August 31 of the year preceding the FY to which it pertains.

Western calculates the annual installment based on 2 years of data. The calculation includes the projected costs of the rate installment year (future fiscal year) and an adjustment from the last historic fiscal year. The adjustment is the surplus or deficit that occurs in the last historic year when actual costs and repayment obligations are subtracted from actual revenues. This surplus or deficit is combined with the projected rate installment year costs to arrive at the rate installment.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the current 6-year rate formula and the actual revenues and expenses for the same period.

AMISTAD/FALCON.—COMPARISON OF 6-YEAR REVENUES AND EXPENSES, FY 1999–2004 ($1,000)

Item	Projected from FY 1998 PRS	Actual from FY 2003 PRS [1]	Difference
Total Revenues	20,550	26,057	5,507
Revenues Distribution:			
O&M	4,912	11,839	6,927
Interest	13,022	10,558	(2,464)
Repayment	2,616	4,268	1,652
(Deficit)/Surplus		(608)	(608)
Total Revenue Distribution	20,550	26,057	5,507

[1] FY 2004 is estimated but still included in this chart as actual data, since it is the basis of the FY04 installment.

The following table provides a summary of the projected revenues and expenses during the provisional rate formula period.

AMISTAD/FALCON.—6-YEAR PROJECTIONS [1] REVENUES AND EXPENSES ($1,000)

	FY 2004–2009
Total Revenues	28,825
Revenue Distribution:	
O&M	14,479
Interest	11,629
Investment Repayment	2,717
Total	28,825

[1] Although this rate process seeks approval for a 5-year period (FY 2005–2009), 6 years of data are shown in the above table because FY 2004 data is estimated.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR 1500–1508); and DOE NEPA Regulations (10 CFR 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Availability of Information

Information regarding this rate formula extension is available for public review in the Colorado River Storage Project Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111. Some of these documents are also available at *http://www.wapa.gov/crsp/rateanal.htm* under CRSP Rate Adjustment documents for the Amistad and Falcon Projects section.

Submission to Federal Energy Regulatory Commission

The rate formula extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to the Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me, I confirm and approve and place into effect on an interim basis a renewal of the rate formula provisions contained in the Contract and supplemented. The rate formula has been in effect since June 8, 1999. The rate formula provisions shall remain in effect on an interim basis, pending the Commission's confirmation and approval of this or a substitute rate formula on a final basis through June 7, 2009.

Dated: April 20, 2004.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 04–9967 Filed 4–30–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0143; FRL–7656–2]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Stationary Gas Turbines (40 CFR Part 60, Subpart GG) (Renewal), ICR Number 1071.08, OMB Number 2060–0028

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0143, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2003, (68 FR 62289), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0143, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Stationary Gas Turbines (40 CFR Part 60, Subpart GG) (Renewal).

Abstract: Owners and operators of stationary gas turbines subject to New Source Performance Standard (NSPS) subpart GG must submit a one-time-only notification of construction/reconstruction, modification, and startup date, initial performance test date, physical or operational changes, and demonstration of a continuous monitoring system. They also must provide a report on initial performance test results, monitoring results and any excess emissions. Records must be maintained of startups, shutdowns, malfunctions; periods when the continuous monitoring system is inoperative; sulfur and nitrogen content of the fuel; fuel to water ratio; rate of fuel consumption; and ambient conditions. Records must be maintained for two years. Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. This information is being collected to assure compliance with 40 CFR part 60, subpart GG.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 56 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules per hour.

Estimated Number of Respondents: 535.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 59,519 hours.

Estimated Total Annual Costs: $3,837,190, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $3,837,190 annual labor costs.

Changes in the Estimates: There is a decrease of 33,920 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of existing sources resulting from a more accurate estimate of the average number of existing and anticipated new sources.

Dated: April 13, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–9963 Filed 4–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0213; FRL–7656–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Regulation of Fuel and Fuel Additives (Renewal), EPA ICR Number 1591.15, OMB Control Number 2060–0277

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 2, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0213, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jose M. Solar, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9027; fax number: (202) 343–2801; e-mail address: *solar.jose@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On Wednesday, November 19, 2003 (68 FR 65276), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0213, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Regulation of Fuel and Fuel Additives (Renewal).

Abstract: Gasoline combustion is the major source of air pollution in most urban areas. In the 1990 amendments to the Clean Air Act (Act), section 211(k), Congress required that gasoline dispensed in nine areas with severe air quality problems, and areas that opt in, be reformulated to reduce toxic and ozone-forming emissions. (Ozone is also known as smog.) Congress also required that, in the process of producing reformulated gasoline (RFG), dirty components removed in the reformulation process not be "dumped" into the remainder of the country's gasoline, known as conventional gasoline (CG). The Environmental Protection Agency promulgated regulations at 40 CFR part 80, subpart D—Reformulated Gasoline, subpart E—Anti-Dumping, and subpart F—Attest Engagements, implementing the statutory requirements, which include standards for RFG (80.41) and CG (80.101). The regulations also contain reporting and recordkeeping requirements for the production, importation, transport and storage of gasoline, in order to demonstrate compliance and facilitate compliance and enforcement. The program is run by the Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation. Enforcement is done by the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance. This program excludes California, which has separate requirements for gasoline.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities that produce, import or distribute gasoline.

Estimated Number of Respondents: 1,190.

Frequency of Response: Annually, quarterly, on occasion.

Estimated Total Annual Hour Burden: 96,625.

Estimated Total Annual Cost: $29,266,307 includes $4,800,000 annualized capital costs, $18,184,357 O&M costs, and $6,281,950 Respondent Labor costs.

Changes in the Estimates: There is a decrease of 4,946 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to adjustments, primarily in that the date for filing petitions had passed, so no burden for those activities could be expected.

Dated: April 13, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–9965 Filed 4–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7656–3]

Proposed CERCLA Administrative Order on Consent: Robert Canterbury and Sandra Canterbury, Gem Park Complex/Old Vermiculite Mine Site, Fremont County, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed settlement for access for a period of one year and recovery of response costs concerning the Gem Park Complex/Old Vermiculite Mine Site, Fremont County, Colorado with Robert Canterbury and Sandra Canterbury. This settlement requires the settling parties to pay $2,500 to the Hazardous Substance Superfund and to allow access. The settlement includes a covenant not to sue the settling parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before June 2, 2004.

ADDRESSES: Written comments may be mailed to Dawn Tesorero, Technical Enforcement Program, 8ENF–RC, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Comments should reference the Gem Park Complex/Old Vermiculite Mine Site, Fremont County, Colorado. Copies of the documents relevant to this settlement are available for public inspection at the Superfund Records Center, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Dawn Tesorero, EPA, Technical Enforcement Program, (303) 312–6883 at the aforementioned address.

Dated: April 23, 2004.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice.

[FR Doc. 04–9964 Filed 4–30–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Wednesday, May 19, 2004, from 9:30 a.m. to 12:30 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: Agenda items include a discussion of marketing strategies for reaching middle market exporters and an update on Ex-Im Bank related legislative issues.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 13, 2004, Sheila Saunders, Room 1243, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3760 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Peter Saba,

General Counsel.

[FR Doc. 04–9890 Filed 4–30–04; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 2, 2004.

ADDRESSES: You may submit comments, identified by FR 4014, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Michelle Long, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision of the following report:

1. *Report title:* Investment in Bank Premises Notification.

Agency form number: FR 4014.

OMB control number: 7100–0139.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 3.

Estimated average hours per response: 5 minutes.

Number of respondents: 6.

General description of report: This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to make an investment in bank premises that results in its total bank premises investment exceeding its capital stock and surplus or, if the bank is well capitalized and in good condition, exceeding 150 percent of its capital stock and surplus. There is no formal reporting form; banks notify the Federal Reserve by letter fifteen days prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

Board of Governors of the Federal Reserve System, April 27, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–9958 Filed 4–30–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

Summary

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060.

OMB control number: 7100–0232.

Frequency: On occasion.

Reporters: Small businesses and consumers.

Annual reporting hours: 18.

Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers.

Number of respondents: 25 small businesses and 50 consumers per survey.

General description of report: This information collection is voluntary (12 U.S.C. 1817(j), 1828(c), and 1841 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The Federal Reserve uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions.

2. *Report title:* Written Security Program for State Member Banks.

Agency form number: FR 4004.

OMB control number: 7100–0112.

Frequency: On occasion.

Reporters: State member banks.

Annual reporting hours: 27.

Estimated average hours per response: 30 minutes.

Number of respondents: 54.

General description of report: This recordkeeping requirement is mandatory [12 U.S.C. 1882], 12 U.S.C. 248(a)(1) and 325, and Regulation H [12 CFR 208.61] authorize the Board to require the recordkeeping of this information. Because written security programs are maintained at state member banks, no issue of confidentiality under the Freedom of Information Act normally arises. However, copies of such documents included in examination work papers would, in such form, be confidential pursuant to exemption 8 of the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract: Each state member bank must develop and implement a written security program and maintain it in the bank's records. There is no formal reporting form and the information is not submitted to the Federal Reserve.

3. *Report title:* Transfer Agent Registration and Amendment Form.

Agency form number: FR TA–1.

OMB control number: 7100–0099.

Frequency: On occasion.

Reporters: State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies.

Annual reporting hours: 8.

Estimated average hours per response: 1 hour and 15 minutes for registrations; 10 minutes for amendments.

Number of respondents: 5 registrations and 11 amendments.

General description of report: This information collection is mandatory (sections 17A(c), 17(a), and 23(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q–1(c)(1) and (2), 78q(a)(3), and 78w(a)(1)) and is not given confidential treatment.

Abstract: The Securities Exchange Act of 1934 requires any person acting as a transfer agent to register as such and to amend registration information when it changes. State member banks and their subsidiaries, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies register with the Federal Reserve by submitting Form TA–1. The information collected includes the company name, all business addresses, and several questions about the registrant's proposed activities as a transfer agent. The Federal Reserve uses the information to act upon registration applications and to aid in performing its supervisory duties.

Board of Governors of the Federal Reserve System, April 27, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–9960 Filed 4–30–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Southern Heritage Bancshares, Inc., Cleveland, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Southern Heritage Bank, Cleveland, Tennessee.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. MCB Bankshares, Inc., Middleton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Middleton Community Bank, Middleton, Wisconsin.

Board of Governors of the Federal Reserve System, April 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–990 Filed 4–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Upson Bankshares, Inc., Thomaston, Georgia; to merge with First Polk Bankshares, Inc., and thereby indirectly acquire voting shares of First National Bank of Polk County, both of Cedartown, Georgia.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska; to acquire 100 percent of the voting shares of North Park Bancshares, and thereby indirectly acquire North Park State Bank, both of Walden, Colorado. In addition, North Park Bancshares, Walden, Colorado, will merge with and into Platte Valley Financial Service Companies, Inc., Scottsbluff, Nebraska.

Board of Governors of the Federal Reserve System, April 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–992 Filed 4–30–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; through its subsidiary, Metavante Corporation, certain assets of The Kirchman Corporation, Altamonte Springs, Florida, and thereby engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–991 Filed 4–30–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–50]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project:

Evaluation of the Poison Help Campaign to Enhance Public Awareness of the National Poison Toll-Free Number, Poison Center Access, and Poison Prevention—New—National Center for Injury Control and Prevention (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Every day more than 6,000 calls about poison emergencies are placed to poison control centers (PCCs) throughout the United States. Although PCCs clearly save lives and reduce healthcare costs, the system that delivers care and prevents poisoning is comprised of more than 131 telephone numbers and thousands of disjointed local prevention efforts. As a result public and professional access to an essential emergency service has been hampered by a confusing array of telephone numbers and by an inability to mount a full-fledged national poison center awareness campaign.

The Poison Control Center Enhancement and Awareness Act of 2000 (Pub. L. 106–174) was signed into legislation in February 2000 with the intent to provide assistance for poison prevention and to stabilize funding of regional PCCs. In October 1999, in response to the impending passage of this legislation, CDC and the Health Services Resource Administration (HRSA) began funding and administering a cooperative agreement with the American Association of Poison Control Centers (AAPCC). The agreement called for the establishment of a National Poison Prevention and Control Program. The purpose of this program is to support an integrated system of poison prevention and control services including: Coordination of all PCCs through development, implementation, and evaluation of standardized public education; development of a plan to improve national toxicosurveillance and data systems; and support of a national public service media campaign.

The purpose of the national media campaign is to launch a national toll-free helpline entitled Poison Help (1–800–222–1222) that the general public, health professionals, and others can use to access poison emergency services and prevention information 24 hours a day, seven days a week. The campaign was launched nationally in January 2002 with a special interest in targeting high-risk populations such as parents of children under age 6, older adults between 60–80 years of age, and underserved groups who are often not reached effectively through public health communication efforts.

Two telephone surveys will be conducted to assess the reach and impact of campaign activities and the overall effectiveness of the awareness campaign. The High-Risk Survey will be conducted with parents of children under age 6 and older adults ages 60–80 to assess their awareness of the national toll-free number, awareness of PCCs and the services they provide, and poison prevention knowledge. The Helpline Caller Survey will be conducted with persons who have contacted a PCC to ascertain whether callers have seen or heard Poison Help prevention messages, their awareness of the 1–800–222–1222 number and how they learned of it, and how they rate the ease of accessing poison emergency services or prevention information. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/ respondents	Average burden/ respondents (in hours)	Total burden hours
Callers to the Poison Help helpline	300	1	10/60	50
Parents of children under age 6	600	1	8/60	80

Respondents	Number of respondents	Number of responses/ respondents	Average burden/ respondents (in hours)	Total burden hours
Adults (ages 60–80)	600	1	8/60	80
Total				210

Dated: April 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9934 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–48]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The Minority HIV/AIDS Research Initiative: Access to HIV Care and Testing in the Rural South—New—The National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background

CDC is requesting from Office of Management and Budget (OMB) a 3 year approval to administer a survey to local health departments and testing sites. As part of the Minority HIV/AIDS Research Initiative (MARI), CDC is funding a study that examines access to HIV care and testing in the rural South. The objectives of the study are twofold: (1) Determine the local availability of HIV counseling and testing, and identify HIV treatment venues (HIV doctor or clinic) in non-urban counties in the South, and (2) provide information to improve the availability of testing and treatment in the South.

Identifying barriers to accessing care in the South is relevant to selected goals and objectives in the CDC's "HIV Prevention Strategic Plan Through 2005". This plan identifies the goal to increase from the current estimated 70% to 95% the proportion of HIV-infected people in the United States who know they are infected through voluntary counseling and testing. CDC plans to meet this goal by: (1) Increasing the motivation of at-risk individuals to know their infection status and decrease real and perceived barriers to HIV testing; and (2) improve access to voluntary, client-centered counseling and testing (VCT) in high seroprevalence communities and populations at risk, focusing particularly on populations with high rates of undiagnosed infection. This study is relevant to the goals of CDC's Strategic Plan for 2005 and the Advancing HIV Prevention Initiative (AHP) to reduce barriers to HIV testing that impede those at risk from receiving HIV prevention services. Moreover, this study compliments the AHP by providing the local service systems with a current visual depiction of HIV testing barriers in rural counties that will help address programming concerns to ultimately improve access to HIV testing and prevention services.

A sample from 325 counties will be selected from ten U.S. Southern states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia). Census Bureau Statistical Area data was used to identify 325 rural counties within the 10 Southern states that meet the definition of a non-metropolitan statistical area and/or cluster with a population of less than 50,000. There will be two phases to the survey of the rural counties. The first phase will be based on quantitative survey design, while the second will use qualitative face-to-face, one-on-one interviewing techniques.

During the initial phase, the following will be contacted and surveyed from each county: (a) Local Health Department; (b) two HIV testing & counseling venues; and (c) two HIV treatment sites. This will result in a total of 1,000 contacts on a one time basis. To help reduce burden, respondents will be interviewed by survey over the telephone using a Computer Assisted Telephone Interview (CATI) technology. Telephone surveys will take approximately fifteen minutes to complete, and will be limited to the absolute minimum number of questions required for the intended use of the data.

Using purposive sampling techniques in which respondents will be selected because of some county characteristic, 20 county representatives will be selected for a one time in-depth qualitative interview. These in-person audio-taped interviews will explore HIV testing and treatment issues using open-ended questions to help provide important details for clarifying, or illustrating survey results. No personal identifiers will be collected for these interviews. Audio-tapes and resulting transcripts will be treated in a confidential manner, unless otherwise compelled by the law. It will take approximately two hours to complete the interview. Therefore, the total burden hours for collecting this data will be 290 hours.

CDC has contracted this study to an Alliance Quality Education organization to provide support costs for data collection and analysis. There is no cost to respondents except for their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden response (in hrs.)	Total burden hours
Telephone Survey	2275	1	15/60	569
Qualitative Interviews	20	1	2	40
Total				609

Dated: April 23, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9935 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–49]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The 2005–2006 National Health and Nutrition Examination Survey (NHANES), OMB No. 0920–0237—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. CDC uses NHANES to monitor the prevalence of chronic conditions and risk factors related to health such as asthma, osteoporosis, infectious diseases, diabetes, eye disease, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to establish reference data for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include: Congress; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and/or evaluate dietary guidelines, food fortification policies, environmental exposures, immunization guidelines and health education and disease prevention programs. The current submission requests approval through March 2007.

CDC, National Center for Health Statistics has conducted the National Health and Nutrition Examination Survey (NHANES) periodically since 1970, and continuously since 1999.

Approximately 5,000 participants are examined annually. Participants will receive an interview, a physical examination, a telephone dietary interview and a home allergen dust collection. This survey is completely voluntary and confidential. Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center. There is no cost to respondents other than their time.

Respondent category	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden hours
1. Screening interview only	13,333	1	10/60	2,220
2. Screener, family, and sample	300	1	1.10	330
3. Screener, family, and sample	5,180	1	5.9	30,560
4. Household dust collection	2,328	1	36/60	1,400
5. Food propensity questionnaire	3,350	1	30/60	1,675
6. Physical activity monitor	4,000	1	15/60	1,000
7. Second dietary interview	4,300	1	27/60	1,935
8. Special studies	4,000	1	5.9	22,800
Total				61,920

Dated: April 23, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9936 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–47]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Foreign Quarantine Regulations, OMB No. 0920–0134—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background

Section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (DHHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and the existing regulations governing quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public health. DHHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents would include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine response would dictate which forms are completed by whom. Thus, the respondents' portion of the information below is replaced by the requisite form title. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per respondent (in hrs.)	Total burden hours
Radio reporting of death/illness:				
Aircraft	1	130	2/60	4
Cruise ships	90	23	1/60	34
Other ships	22	1	1/60	0.40
Report by persons held in isolation/surveillance	11	1	30/60	5.50
Report of death or illness on carrier during stay in port	5	1	3/60	0.25
Requirements for admission of dogs and cats:				
(1)	5	1	3/60	0.25
(2)	2,650	1	15/60	662.50
Application for permits to import turtles	10	1	30/60	5
Requirements for registered importers of nonhuman primates:				
(1)	40	1	10/60	6.70
(2)	50	1	30/60	25
Total				744

Dated: April 23, 2004.

Bill J. Atkinson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9937 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Agriculture Center Program, Program Announcement Number 04038

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Agriculture Center Program, Program Announcement Number 04038.

Times and Dates: 8 a.m.–8:30 a.m., June 9, 2004 (Open).

8:30 a.m.–5 p.m., June 9, 2004 (Closed).

9 a.m.–5 p.m., June 10, 2004 (Closed).

Place: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 23114; telephone (703) 684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04038.

For Further Information Contact: S. Price Connor, Ph.D., Research Grants Program Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS–E20, Atlanta, GA 30333, Telephone 404–498–2511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 27, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9942 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Mining Safety and Health Training and Translation Center, Request for Applications OH–04–005

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Mining Safety and Health Training and Translation Center, Request for Applications OH–04–005.

Times and Dates: 8 a.m.–8:30 a.m., June 16, 2004 (Open). 8:30 a.m.–5 p.m., June 16, 2004 (Closed). 8 a.m.–5 p.m.. June 17, 2004 (Closed).

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314; phone (703) 837–0440.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–04–005.

For Further Information Contact: S. Price Connor, Ph.D., Research Grants Program Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS–E20, Atlanta, GA 30333; telephone (404) 498–2511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 13, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–9943 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health, Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 9 a.m.–3 p.m., May 17, 2004.

Place: The Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41048, telephone 859/586–0166, fax 859/586–0266.

Status: Closed 9 a.m.–3 p.m., May 17, 2004.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary, Department of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort. In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The meeting will involve a review and discussion of the Independent Government Cost Estimate (IGCE) for task order contracts and proposals for work for the performance of these task order contracts. The Board may revise or accept the IGCE, the task order, and/or some or all of the ABRWH independent dose reconstruction review of contractor's bids. These contracts will serve to provide technical support consultation to assist the ABRWH in fulfilling its statutory duty to advise the Secretary, HHS, on the scientific validity and quality of dose estimation and reconstruction efforts under EEOICPA. These discussions will include reviews of the technical proposals to determine adequacy of the proposed approach and associated contract cost estimates. The information being discussed will include information of a confidential nature. The ICGEs will include contract cost estimates, the disclosure of which would adversely impact the Governments negotiating position and strategy in regards to these contracts by giving the ABRWH independent dose reconstruction review contractor undue advantage in determining the price associated with its bids. The meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b (c)(9)(B), 48 CFR 5.401(b)(1) and (4), and 48 CFR 7.304(D), and the Determination of the Director of the Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Public Law 92–463.

A summary of this meeting will be prepared and submitted within 14 days of the close of the meeting.

The agenda is subject to change as priorities dictate.

For Further Information Contact: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 28, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–10046 Filed 4–29–04; 1:39 pm]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interim Recommendations for Airborne Exposure Limits for Chemical Warfare Agents H and HD (Sulfur Mustard)

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services (HHS).

ACTION: Notice of interim recommendations for airborne exposure limits for chemical warfare agents H and HD (sulfur mustard).

SUMMARY: Agents H and HD are stored and are being destroyed by the Department of Defense (DoD). Public Law 99–145 (50 U.S.C. 1521) mandates that the Secretary of Defense carry out the destruction of the United States' stockpile of lethal chemical agents and munitions. Public Law 91–121 and Public Law 91–441 (50 U.S.C. 1512) mandate that, prior to the disposal of any such agent within the United States, the Secretary of Defense implement any precautionary measures recommended by the Secretary of the Department of Health and Human Services (HHS) to protect the public health. This notice provides CDC's interim recommendations for worker and general population airborne exposure limits (AELs) for sulfur mustard. These revised exposure limits replace CDC's previously recommended AELs originally issued in 1988. These limits are being issued as interim criteria pending improved characterization of carcinogenic potential associated with sulfur mustard.

EFFECTIVE DATE: July 1, 2005. An implementation period is necessary to allow the DoD to make program adjustments and allow time for changes to environmental permits as required.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Joe, Chief Medical Officer, Environmental Public Health Readiness Branch, Division of Emergency and Environmental Health Services, National Center for Environmental Health, CDC, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341.

SUPPLEMENTARY INFORMATION: On July 22, 2003, CDC published 68 FR 43356, "Proposed Airborne Exposure Limits for Chemical Warfare Agents H, HD, HT (Sulfur Mustard)" [1] seeking public comment. Today's notice discusses major comments received, describes decisions regarding the public comments, and provides interim recommendations. CDC received comments from the U.S. Army, the State of Utah, the State of Colorado, and one employee union.

The comments fell into the following general categories: risk management assumptions used in CDC's deliberations, selection of uncertainty factors, determination of the cancer potency factor for the mustard AELs, and practical concerns of conducting air monitoring at the lower exposure limits. The key comments potentially impacting CDC's recommendations are summarized and discussed below:

1. One reviewer remarked that the 5-minute ceiling (Ceiling-5M) may require too short of an analytical cycle for use with dual-agent air monitoring instrumentation.

Discussion: The Ceiling-5M was defined to provide a ceiling value for near-real-time (NRT) corrective action that would protect worker health in the short term and meet the long-term goal of keeping the carcinogenicity risk below one in one million. The 8-hour time-weighted average (TWA) exposure limit recommended by CDC in 1988 was implemented by the chemical demilitarization program as a ceiling value, monitored by NRT instruments having a sampling and analysis cycle time of under 5 minutes. CDC's proposal sought to reflect this conservative implementation of the 1988 criteria.

CDC closely examined the various implicit exposure doses, measured in terms of concentration multiplied by time of exposure (Ct), for various potential exposure scenarios. The ceiling-5M was based upon the analytic cycle times used in the stockpile demilitarization program. Longer sampling and analytic cycle times, such as those used in the monitoring programs for chemical agent storage facilities or nonstockpile program, could be considered in a similar manner, that is, by evaluating the effect on the Ct by changing duration of potential exposure with varying instrument cycle times.

CDC examined the implication of applying the ceiling-5M agent concentration with cycle times greater than 5 minutes. Comments received from the Army, indicated that the dual agent monitors use cycle times of up to 10 minutes. Accordingly, CDC reviewed the impact of using 10- to 15-minute cycle times at the same concentration used with the ceiling-5M. Both the short-term and long-term health protection goals were met; that is, the effective dose or Ct associated at this level and duration are still well under the Ct for the acute threshold of effects level (referenced in the July 22, 2003, support document for the proposed sulfur mustard AELs) and the carcinogenicity risk per episode would be well under one in one million.

The above analysis would suggest that a longer analytic cycle time, even up to the 15 minutes, associated with the Army's NRT monitoring definitions, would be acceptable at the

[1] The toxicity data for agent T are inadequate for setting exposure limits. The very low vapor pressure for agent T precludes it as a vapor under normal ambient conditions. For sulfur mustard and T mixtures, air monitoring for sulfur mustard alone should be sufficient under most circumstances to prevent airborne exposure to it.

concentration proposed with the ceiling-5M. However, real-world leaks, spills, or other unplanned agent releases do not follow a defined pattern of gradual airborne concentration increase. The first cycle of a monitoring alarm could be at much higher concentrations than the ceiling-5M. Consequently, to limit potential agent exposure durations at higher level exposures, analytic cycle time should be kept as short as practicable.

The final factor considered in CDC's review of this issue is the overall risk management implication of modifying the implied cycle time associated with the ceiling AEL. Clearly, the degree of protectiveness increases as the cycle time decreases, assuming all other quality control criteria remain constant. However, if programmatic delays or extraordinary new personnel protective measures are introduced as interim measures in the pursuit of more ideal monitoring capabilities, overall risk could increase to both workers and the public.

In summary, CDC believes that the proposed ceiling-5M was overly proscriptive and possibly counterproductive. Accordingly, CDC redesignated this AEL as a 15-minute short-term exposure limit (STEL). The concentration value, 0.003 mg/m^3, from the ceiling-5M is retained. This STEL is to be monitored with NRT technology using the shortest practicable instrument cycle time. For the maximum 15-minute duration of the STEL, the Ct is 0.045 mg-min/m^3.

2. One reviewer remarked that using the proposed general population limit (GPL) for worker protection could result in excessive false-positive situations and attendant disruptions wherever significant interferences might be located.

Discussion: The GPL is a criterion that is set to protect the general public. Community exposure limits are set lower than worker limits to reflect wider variation in human susceptibility than that of the healthy worker population.

CDC premised its proposal to use the new GPL as a worker protection criterion on two basic considerations. First, because the GPL is designed to protect the community, it would also be adequate for a worker population. Second, CDC believed that historic monitoring for the GPL for demilitarization perimeter monitoring similarly could be implemented in worker locations to accommodate longer 12-hour shifts.

As discussed in CDC's proposal, the GPL for sulfur mustard was driven largely by the goal of protecting the public at a cancer risk level of less than one cancer incidence in a million exposures at the GPL for 3 continuous years, a risk level that is considered to be negligible. Three years was chosen for the duration of the potential exposure at a GPL because it was believed to be the maximum duration of a campaign where sulfur mustard munitions would be handled and processed for destruction on a continuing basis. This assumed exposure scenario is conservative for both the public and workers for a number of reasons:

- No one worker works continuously for 3 years; actual time at work is probably well under one-third of all available hours per year when weekends, holidays, and vacations are considered.
- Demilitarization plant workers, storage site workers, non-stockpile site workers, or others who might reasonably be exposed to chemical agent do not remain stationary at one duty location for extended periods.
- Similarly, the individuals within the general community would not normally be anticipated to stay at one location continuously for 3 years.
- Varying meteorological conditions would preclude constant exposure conditions.
- With the rigorous active demilitarization site monitoring and the ongoing routine storage site inspection program, unplanned releases of chemical agent are unlikely to be sustained for any significant duration.
- CDC assumed exposure at the full GPL in its carcinogenicity evaluation even though detection at this level would result in investigation and remedial action. Typically, risk assessment professionals use some fraction of a "practical quantification limit" or detection level.

The above mitigating factors suggest that long-term exposure scenarios (up to 3 years) used to estimate sulfur mustard carcinogenicity review overstates the true risk. Accordingly, CDC recommends retaining the proposed GPL for perimeter monitoring stations at demilitarization facilities and evaluation of the allowable stack concentrations.

For worker protection against low-level exposure, CDC now recommends a separate 8-hour TWA for a worker protection limit (WPL) rather than applying the GPL as originally proposed. In the earlier proposal for mustard AELs, CDC investigated the development of a WPL using the Environmental Protection Agency (EPA) Categorical Regression (CatReg) method. The value derived from this method is 0.0003 mg/m^3. This value is in reasonably close agreement with the U.S. Army Center for Health Promotion and Preventive Medicine (CHPPM) reference concentration-derived (RfC) WPL of 0.0004 mg/m^3 and the Agency for Toxic Substances and Disease Registry (ATSDR) acute inhalation minimum risk level (MRL) [2] of 0.0007 mg/m^3 (1,2). CDC believes that the CHPPM-recommended value for an 8-hour TWA is protective for noncarcinogenic effects and should be implemented for worker protection.

3. The Army noted that, although CDC specified that the proposed AELs were developed for and based upon agent stockpile demilitarization practice, other non-stockpile and storage situations existed to which the AELs would be applied within other Army programs. Illustrations of a number of such situations and some suggested resolutions were provided for CDC's consideration.

Discussion: In CDC's proposal, the use of Ct evaluations was emphasized as an indication of potential acute exposure dose. For potential applications beyond strict stockpile demilitarization, adjustments to implementation of AELs might be warranted on the bases of site-specific or activity-specific conditions. However, any such potential AEL implementation and adjustment for site-specific conditions must ensure that the new monitoring action level protects at the potential exposure dose (Ct) so that the recommended 8-hour WPL is not exceeded. Also, any NRT monitors should not have action levels set above the recommended STEL.

4. Two reviewers commented that CDC's selection of the National Academy of Science (NAS) cancer potency factor (CPF) was inappropriate because the benzo-a-pyrene (BaP) index value used was based upon oral, not inhalation, exposure. They also believed that CDC should use the 30-year exposure assumption described in EPA's risk assessment guidelines.

Discussion: To estimate cancer risk, exposure assumptions and a numeric estimate of the potency of carcinogenicity of a substance are necessary. The reviewers believed that CDC should have used a 30-year duration for such exposure at the lifetime adjusted daily dose. CDC appreciates the general desirability to be

[2] ATSDR defines an MRL as "an estimate of daily human exposure to a substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified route and duration of exposure." ATSDR also developed an intermediate MRL (continuous exposure for up to 1 year) for sulfur mustard at a value of 0.00002 mg/m^3 that is numerically equivalent to the interim GPL recommended herein.

consistent with established guidelines in risk assessment, but EPA has acknowledged in its 1999 Carcinogen Risk Assessment Guidelines (RAG), that "in the face of scientific uncertainty, common sense and reasonable application of assumptions and policies are essential to avoid unrealistic estimates of risk" (3). CDC believes that a 30-year, or even a 10-year, exposure assumption significantly overestimates potential exposures by one or more orders of magnitude. For example, members of the general public are highly unlikely to be continually exposed to sulfur mustard, night and day, for 10 or 30 years. Similarly, atmospheric stability, wind speed, and direction are not fixed for years on end. No agent reduction is assumed for environmental degradations or rainfall that would reduce concentrations. No agent reduction is assumed for low temperature environmental conditions where mustard agent would not significantly volatilize. No agent reduction is assumed for agent dilution beyond the perimeter of a facility. At agent storage sites, GPL readings are taken daily at the facility perimeter. Levels of agent approaching GPL should be detected within days, not years, of occurrence and corrective action would be initiated. Historically, agent releases to the environment have been episodic; no indication exists that continuous, long term low-level agent releases routinely occur.

CDC's examination of the potential cancer risk associated with proposed AELs considered only incremental potential risk. That is, historic risk to workers and the public in the vicinity of stockpile storage facilities was not examined. This was because each site would have to be considered individually regarding amount, nature and age of stored mustard items; local spatial, and meteorologic conditions and their relation to area demographics; and the nature and capabilities of historic storage facility inspection programs. These site-specific factors, coupled with a weak quantification of cancer potency (see discussion below) of sulfur mustard, suggested limited utility in attempting to quantify such potential risk.

The other major criticism received by CDC regarding carcinogenicity analysis pertained to the use of the NAS recommended CPF (2000) based upon sulfur mustard relative potency compared with BaP. The NAS recommendation was predicated upon oral dosage, not inhalation. CDC believed that the other published studies used to support attempts at developing numeric estimates of the CPF for sulfur mustard seriously lacked merit for this application. Although an averaging estimate (i.e., geometric mean) for all the CPFs developed might provide a reasonable estimate, CDC believes that a mathematic manipulation of questionable numbers in no way ensures that the new number is appropriate. Furthermore, CDC believes that without a reasonable basis to suggest the estimates used in the averaging method bracket the true CPF as applied to humans; CDC should not arbitrarily rely on a number developed in this manner.

CDC agrees with the reviewers that extrapolation between exposure routes is undesirable when examining cancer risk. EPA's 1999 Carcinogen RAG addresses this issue briefly: "In the absence of contrary data, the qualitative default assumption is that, if the agent is absorbed by a route to give an internal dose, it may be carcinogenic by that route" (3). Furthermore, EPA states that, "For screening or hazard ranking, route-to-route extrapolation may be based on assumed quantitative comparability as a default, as long as it is reasonable to assume absorption by compared routes" (3). In light of CDC's reluctance to use CPF averaged numbers as described above, and in the absence of other, better data, CDC recognized that a route-to-route extrapolation was needed if the carcinogenicity risk through inhalation was to be examined and consequently based its analysis upon the NAS-recommended potency value.

CDC believes that the reviewers raise a valid point regarding the use of the indexed value as done in the Federal Register proposal. The reasonableness of the assumption that both exposure routes result in comparable agent absorption is debatable. CDC does not believe strongly that such an assumption is valid; consequently, CDC is open to further examination of this issue. CDC does not believe that the CPF geometric mean offers any demonstrable scientific improvement over the route-to route extrapolation originally used in CDC's proposal. The reviewers recommend that a range of inhalation cancer slope factors be described according to EPA's Carcinogen RAG. CHPPM presented such a range of factors in the "Evaluation of Airborne Exposure Limits for Sulfur Mustard: Occupational and General Population Exposure Criteria," November 2000 and can be referred to by the reader for insight into the variability of postulated risk dependent upon a range the exposure assumptions and CPFs (1). The CHPPM examination is consistent with EPA's guidance. CDC must caution the reader, however, that these numeric estimates are tenuous. Oak Ridge National Laboratory's 1993 discussion of this issue for sulfur mustard carcinogenicity illustrates CDC's concerns:

"Unfortunately, quantitative human cancer risk estimates are impractical because the experimental data from animal studies have three large uncertainties:

- Only a few experiments were conducted;
- Many were in a mouse strain that exhibited a high genetic susceptibility to spontaneous pulmonary tumors;
- Routes of administration tested and duration of follow-up observations are not comparable to the human exposures of concern." (4)

In 1991, EPA examined cancer risk estimates that cover the range of cancer slope factors presented in the CHPPM document. EPA observed, "Depending on the unknown true shape of the dose-response curve at low doses, actual risks may be anywhere from this upper bound down to zero"(5). Similarly, in the 2003 ATSDR Toxicological Profile for Sulfur Mustard, the inhalation cancer effects discussion states, "* * * in no case was the exposure level or duration quantified, and therefore, these data are inadequate for deriving dose-response relationships"(2).

CDC recommends that a better characterization of an appropriate cancer slope factor needs to be conducted to set exposure limits. CDC is aware of proposed forthcoming animal research by DoD to examine the chronic impact of long-term exposure to sulfur mustard. CDC encourages this research and the examination of results for possible insights and refinement of an estimate of a more accurate CPF.

5. All four reviewers provided opinions regarding the use of uncertainty factors to derive AELs. One reviewer believed that rationale was sufficient to reduce the total uncertainty used by the National Institute for Occupational Safety and Health (NIOSH) to derive the Immediately Dangerous to Life or Health (IDLH) criterion by a factor of three, which would result in an increase to a value of 2.0 mg/m^3. Another reviewer wanted to lower the IDLH by a factor of two because of limitations of military studies used to derive the value. Another reviewer believed strongly that the proposed GPL should be reduced by at least an additional factor of 10 to reflect uncertainties not adequately represented by either the CHPPM examination using the RfC method or the CDC examination using the CatReg method. Finally, another reviewer believed that CDC's total uncertainty

factor of 300 used to derive the GPL was appropriate but recommended that the uncertainty factor for intrahuman variation be decreased from 10 to 3 and the data quality factor be increased from 3 to 10. Supporting rationale was provided for all these opinions.

Discussion: Professional judgment is needed in the application of uncertainty factors. As discussed in CDC's original support document, considerable deliberation is ongoing regarding the use of uncertainty factors in risk assessment. No validated or calibrated means exist to precisely quantify total uncertainty used in deriving AELs. This was why CDC considered not only at the RfC, CatReg, and carcinogenicity considerations, but also the risk management aspects of safely managing sulfur mustard agent as associated with the demilitarization program.

The reviewer who recommended the minimal 10-fold decrease in the GPL also believed that AELs should be developed independent of risk management considerations. CDC agrees that ideally developed AELs should be independent of existing risk management conditions. One could argue that CDC should "safe-side" the AELs by using highest uncertainty factors recommended by all reviewers and ignore any recommendations for reduction of uncertainty factors. Except for compounds exhibiting hormesis, this approach always would be theoretically safer than using a number derived using uncertainty factors that are not on the most conservative end of the spectrum of professional judgment.

CDC's mission is to enhance public and worker health protection for people associated with or living near chemical agent demilitarization facilities. CDC believes that real-world risk management must be factored into its deliberations. Otherwise, CDC could increase or extend actual risk in the real world to minimize theoretical or undemonstrated risk. EPA's Carcinogenic RAG noted that, "While it is appropriate to err on the side of protection of health and the environment in the face of scientific uncertainty, common sense and reasonable application of assumptions and policies are essential to avoid unrealistic estimates of risk"(3,6). Furthermore, CDC/NIOSH policy for potential occupational carcinogens states that "* * * policy will be the development, whenever possible, of quantitative RELs (recommended exposure limits) that are based on human and/or animal data, as well as *on the consideration of technological feasibility for controlling workplace exposures to the REL*" (emphasis added).

Summary and Recommendations

Although CDC received only 4 sets of comments on the proposed mustard AELs, these reviewers clearly tried diligently to represent their perspectives and concerns. Three sets of comments focused primarily upon the process used to develop the proposed AELs, and the fourth focused primarily on the practical implications of the proposed values. In addition to the solicited comments described above, CDC had the original proposal reviewed by other government and professional health risk assessment personnel. With the exception of one reviewer, the CDC approach to developing AELs in concert with ongoing risk management provisions of the chemical demilitarization program was not questioned.

The examination of the carcinogenicity issue is problematic in that CDC believes that a numeric estimation of a cancer slope factor for mustard is not well supported. The CHPPM review of this issue, through the evaluation of the range of attempts at quantifying upper bound cancer risk from exposure to sulfur mustard, has been referenced herein to provide the reader with that perspective; however, CDC cannot say with confidence that the numeric range of slope factors is likely to provide a reasonable estimate of the true carcinogenic potency of this agent.

Because of the uncertainties discussed above, especially the characterization of cancer potency of sulfur mustard, CDC has decided to issue its recommended AELs as interim values pending better understanding of the CPF for this agent. CDC believes that for noncancer effects, the recommended AELs protect worker and public health.

Regarding the implied carcinogenicity risk, CDC believes that the strong risk management provisions, such as engineering and administrative controls within demilitarization facilities, extensive low-level air monitoring, and the previously discussed mitigating factors, minimize cancer risk at the interim AELs.

In summary, CDC recommends the following:

- Defer recommending a cancer potency factor until better data are available.
- Redesignate the ceiling-5M value as a 15-minute STEL, limited to one occurrence per day; CDC encourages shortest practicable analytic cycle times.
- Apply the U.S. Army CHPPM-derived 8-hour WPL for workplace; retain GPL as proposed for use in protecting the general public.
- Implement the recommended AELs as interim values, to go into effect on July 1, 2005; values to remain interim until better cancer potency characterization is available or research data indicate the need for revision.
- Continue to recommend rigorous risk management analysis and practice as has been associated with the chemical agent demilitarization program practice.
- Given the uncertainty in the risk assessment regarding cancer potency, reduced exposures to sulfur mustard to the lowest practicable level.

Table 1 below contains the numeric values for the interim recommended AELs.

Dated: April 27, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

TABLE 1.—CDC RECOMMENDED INTERIM AIRBORNE EXPOSURE LIMITS*

[All values expressed as mg/m^3 in air with concentration × time [Ct — mg – min/m^3] values in parentheses]

Sulfur mustard (H, HD †) criteria	General population limit	Worker population limit	Short-Term exposure limit ‡	Immediately dangerous to life or health §
Exposure Level	0.00002 (0.01)	0.0004 (0.19)	0.003 (≤0.04)	0.7 (≤21).
Averaging Time	12 hours	8 hours	≤15 minutes	≤30 minutes.
Recommended Monitoring Method	Historic §§	Historic §§ or Near-real-time.	Near-real-time	Near-real-time.

* Although CDC does not specifically recommend additional reduction factors for statistical assurance of action at the exposure limit, exposures to sulfur mustard should be minimized given the uncertainties in risk assessment, particularly as related to characterizing carcinogenic potency.

† The toxicity data for agent T is inadequate for setting exposure limits. The very low vapor pressure for agent T precludes it as a vapor hazard under normal ambient conditions. For sulfur mustard and T mixtures, air monitoring for sulfur mustard alone should be sufficient under most circumstances to prevent exposure to T.

‡ To be evaluated with near-real-time instrument using shortest practicable analytic cycle time. No more than one exposure per work-shift.

§ The 30-minute period is not meant to imply that workers should stay in the work environment any longer than necessary; in fact, they should make every effort to exit immediately. IDLH conditions require highly reliable dermal and respiratory protection.

§§ Historic monitoring typically is used for time-weighted average (TWA) monitoring where the sample analyzed represents an extended time period, *e.g.*, 8 or 12 hours. Results are not known until laboratory analysis is completed after the sampling event. AELs using historic monitoring are set at levels at which health effects are not expected to occur for most workers. Exposures above the WPL–8, but below the STEL, likewise are not expected to result in significant health effects unless such exposures occur continuously for long periods.

References

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2. U.S. Department of Health and Human Services: Toxicological Profile for Sulfur Mustard (Mustard Gas). Atlanta, GA: Agency for Toxic Substances and Disease Registry, September 2003.
3. U.S. Environmental Protection Agency: Draft Guidelines for Carcinogen Risk Assessment. Washington, DC: U.S. Environmental Protection Agency, July 1999; Publication No. NCEA–F–0644.
4. Nicholson W, Watson A. Risk assessment considerations for sulfur mustard. In: Pechura CM, Rall DP (eds.) Veterans at Risk: The Health Effects of Mustard Gas and Lewisite, Washington, DC: National Academy Press, 1993: 390–8.
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6. U.S. Environmental Protection Agency: Policy for Risk Characterization. Memorandum of Carol M. Browner, Washington, DC: U.S. Environmental Protection Agency, March 21, 1995.

[FR Doc. 04–9946 Filed 4–30–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0185]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fee Cover Sheet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the animal drug user fee cover sheet.

DATES: Submit written or electronic comments on the collection of information by July 2, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fee Cover Sheet; FDA Form 3547 (OMB Control Number 0910–0539)—Extension

Under section 740 of the act, as amended by the Animal Drug User Fee Act (ADUFA) (21 U.S.C. 379j-12), FDA has the authority to assess and collect certain animal drug user fees. Because the submission of user fees concurrently with applications and supplements is required, review of an application cannot begin until the fee is submitted. Under the new statutory provisions (section 740(e) of the act, as amended by ADUFA), animal drug applications and supplemental animal drug applications for which the required fee has not been paid are considered incomplete and are not to be accepted for review by the agency. The types of fees that require a cover sheet are certain animal drug application fees and certain supplemental animal drug application fees. The cover sheet, FDA Form 3546, is designed to provide the minimum necessary information to determine whether a fee is required for the review of an application or supplement, to determine the amount of the fee required, and to assure that each animal drug user fee payment and each animal drug application for which payment is made, is appropriately linked to the payment that is made. The form, when completed electronically, will result in the generation of a unique payment identification number used in tracking the payment. FDA will use the information collected, to initiate administrative screening of new animal drug applications and supplements to determine if payment has been received.

Inability to collect this information would delay the review process and would also delay receipt of revenue that is to be used to fund the review of animal drug applications during the current fiscal year. Respondents to this collection of information are new animal drug applicants or manufacturers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING[1]

Section of the act as Amended by ADUFA	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
740(a)(1) FDA Form 3547 (Cover Sheet)	69	1 time for each application	69	1	69

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's database system, there are an estimated 140 manufacturers of products or sponsors of new animal drugs potentially subject to ADUFA. However, not all manufacturers or sponsors will have any submissions in a given year and some may have multiple submissions. The total number of annual responses is based on the number of submissions received by FDA in fiscal year 2003. FDA's Center for Veterinary Medicine estimates 69 annual responses that include 28 new animal drug premarket approval applications and 41 supplements. The estimated hours per responses are based on past FDA experience with the various submissions and range from 30 minutes to 1 hour. The hours per response are based on the average of these estimates.

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9889 Filed 4–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0186]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Drug User Fees and Fee Waivers and Reductions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for the animal drug user fees and fee waivers and reductions.

DATES: Submit written or electronic comments on the collection of information by July 2, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506 (c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDAs estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Animal Drug User Fees and Fee Waivers and Reductions (OMB Control Number 0910–0540)—Extension

Enacted on November 18, 2003, the Animal Drug User Fee Act (ADUFA) (Public Law 108–130) amended the Federal Food, Drug, and Cosmetic Act (the act) and requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. It also requires the agency to grant a waiver from, or a reduction of those fees in certain circumstances. Thus, to implement this statutory provision of ADUFA, FDA developed a guidance entitled "Guidance for Industry: Animal Drug User Fees and Fee Waivers and Reductions." This document provides guidance on the types of fees FDA is authorized to collect under ADUFA, and how to request waivers and reductions from FDA's animal drug user fees. Further, this guidance also describes the types of fees and fee waivers and reductions; what information FDA recommends be submitted in support of a request for a fee waiver or reduction; how to submit such a request; and FDA's process for reviewing requests. Respondents to this collection of information are new animal drug sponsors. Requests for waivers or reductions may be submitted by a person paying any of the animal drug user fees assessed—application fees, product fees, establishment fees, or sponsor fees.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the act Types of Waiver or Reduction Requests	No. of Respondents	Annual Frequency per Responses	Total Annual Responses	Hours per Response	Total Hours
740(d)(1)(A) Significant barrier to innovation	5	1 time for each application	5	2	10
740(d)(1)(B) Fees exceed cost	1	"	1	2	2
740(d)(1)(C) Free choice feeds	5	"	5	2	10
740(d)(1)(D) Minor use or minor species	10	"	10	2	20
740(d)(1)(E) Small business	2	"	2	2	4
Request for reconsideration of a decision	5	"	5	2	10
Request for Review—(user fee appeal officer)	2	"	2	2	4
Total					60

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA's data base system, there are an estimated 250 sponsors of products subject to ADUFA. However, not all sponsors will have any submissions in a given year and some may have multiple submissions. The total number of waiver requests is based on the number of submission types received by FDA in fiscal year 2003. FDA's Center for Veterinary Medicine estimates 30 waiver requests that include the following: 5 significant barriers to innovation, 1 fee exceed cost, 5 free choice feeds, 10 minor use or minor species, 2 small business waiver requests, 5 requests for reconsideration of a decision, and 2 requests for user fee appeal officer. The estimated hours per response are based on past FDA experience with the various waiver requests in FDA's Center for Drug Evaluation and Research. The hours per response are based on the average of these estimates.

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9970 Filed 4–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999N–0193]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Supplements and Other Changes to an Approved Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Supplements and Other Changes to an Approved Application; Final Rule" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 28, 1999 (64 FR 34608), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0538. The approval expires on March 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

At this time the agency has incorporated the information collection's reporting burden, previously identified by OMB control number 0910–0431, entitled "Changes to an Approved NDA or ANDA," into this collection of information, identified by OMB control number 0910–0538.

Dated: April 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–9971 Filed 4–30–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is

publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 2003, through December 31, 2003.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FUTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Special Programs Bureau, 5600 Fishers Lane, Room 16C–17, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Laura Griffin on behalf of Cory Griffin, Boston, Massachusetts, Court of Federal Claims Number 03–2266V
2. Mary Parfait on behalf of William Parfait, Boston, Massachusetts, Court of Federal Claims Number 03–2267V
3. Melissa Felsch on behalf of Hannah Felsch, Boston, Massachusetts, Court of Federal Claims Number 03–2268V
4. Shauna Dawley on behalf of Andrew Dawley, Boston, Massachusetts, Court of Federal Claims Number 03–2269V
5. Autumn Beardsley on behalf of Kendall Beardsley, Boston, Massachusetts, Court of Federal Claims Number 03–2270V
6. Beverly and Charles Cox on behalf of Nasya Cox, Houston, Texas, Court of Federal Claims Number 03–2275V
7. Carolyn and Elton Green on behalf of Michael Green, Houston, Texas, Court of Federal Claims Number 03–2276V
8. Michelle Rolfson on behalf of Tyler Robert Rolfson, Houston, Texas, Court of Federal Claims Number 03–2277V
9. Jennifer James on behalf of Tyrese James, Houston, Texas, Court of Federal Claims Number 03–2278V
10. Erica McDowell on behalf of Jerica McDowell, Houston, Texas, Court of Federal Claims Number 03–2279V
11. Brandon Lowery on behalf of Vicky Lowery, Vienna, Virginia, Court of Federal Claims Number 03–2280V
12. Susan and August Tomelleri on behalf of August Tomelleri, Vienna, Virginia, Court of Federal Claims Number 03–2281V
13. Kimberly and Joseph Piro on behalf of James Piro, New York, New York, Court of Federal Claims Number 03–2282V
14. Julie Burke and James Donnelly on behalf of Christian Donnelly, New York, New York, Court of Federal Claims Number 03–2283V
15. Frances Talley and Dimitrios Karamitsos on behalf of Konstantinos Karamitsos, New York, New York, Court of Federal Claims Number 03–2284V
16. Deanna and Richard Gadjen on behalf of Jesse Gadjen, New York, New York, Court of Federal Claims Number 03–2285V
17. Kimberley Schank on behalf of Dallas Schank, New York, New York, Court of Federal Claims Number 03–2286V
18. Lisa and Robert Stitzel on behalf of Robert Austin Stitzel, New York, New York, Court of Federal Claims Number 03–2287V
19. Tanya Blair on behalf of Celine Vandervoort, New York, New York, Court of Federal Claims Number 03–2288V
20. Lisa Lewin-Gay and Carl Gay on behalf of Christian Gay, New York, New York, Court of Federal Claims Number 03–2289V
21. Kaycie Smith on behalf of Garrison Smith, Dallas, Texas, Court of Federal Claims Number 03–2290V
22. Lisa Dawn Taylor on behalf of Collin Ty Taylor, Tyler, Texas, Court of Federal Claims Number 03–2291V
23. Tricia and James Edwards on behalf of William B. Edwards, Alexandria, Virginia, Court of Federal Claims Number 03–2294V
24. Heidi and Dalton Carder on behalf of Todd Carder, Alexander, Virginia, Court of Federal Claims Number 03–2295V

25. Tina Johnson on behalf of Byron D. Smith Alexandria, Virginia Court of Federal Claims Number 03–2296V
26. Karen Vandermark on behalf of Austen Vandermark, McClure, Illinois, Court of Federal Claims Number 03–2297V
27. Linda Garcia and Paul May on behalf of Ian Michael May, Gardena, California, Court of Federal Claims Number 03–2298V
28. Carmen and Craig Carley on behalf of Colin Seamus Carley, Torrance, California, Court of Federal Claims Number 03–2299V
29. Shane Halvorsen on behalf of Nikki Halvorsen, Dover, New Hampshire, Court of Federal Claims Number 03–2300V
30. Penny and Duane Holt on behalf of Rachel Holt, Dover, New Hampshire, Court of Federal Claims Number 03–2301V
31. Jose Carmona on behalf of Katya E. Carmona, Decatur, Texas, Court of Federal Claims Number 03–2302V
32. Patricia and Jay Copeland on behalf of James Copeland, Decatur, Texas, Court of Federal Claims Number 03–2303V
33. Stacy Paquin on behalf of Jay Anthony Dollloff, Decatur, Texas, Court of Federal Claims Number 03–2304V
34. Erika Duree on behalf of Erin Jonathon Duree, Decatur, Texas, Court of Federal Claims Number 03–2305V
35. Mythany Flores on behalf of Broderick Foster, Decatur, Texas, Court of Federal Claims Number 03–2306V
36. Trina Galindo on behalf of Alec Paul Galindo, Decatur, Texas, Court of Federal Claims Number 03–2307V
37. Christy Gallardo on behalf of Diego Silverio Gallardo, Decatur, Texas, Court of Federal Claims Number 03–2308V
38. Christy Gallardo on behalf of Jeremy Christopher Gallardo, Decatur, Texas, Court of Federal Claims Number 03–2309V
39. Milly Lepovitz on behalf of Robert Luis Garcia, Decatur, Texas, Court of Federal Claims Number 03–2310V
40. Bertha and Juan Carlos Garza on behalf of Juan Carlos Garza, II, Decatur, Texas, Court of Federal Claims Number 03–2311V
41. Melinda and Javier Gatica on behalf of Javier Nico Gatica, Decatur, Texas, Court of Federal Claims Number 03–2312V
42. Jennifer Gluth Graham on behalf of Sebastian Gluth Graham, Decatur, Texas, Court of Federal Claims Number 03–2313V
43. Jessica Mast on behalf of Jacob Rossi Hinojosa, Decatur, Texas, Court of Federal Claims Number 03–2314V
44. Jessica Mast on behalf of Jon Daniel Hinojosa, Decatur, Texas, Court of Federal Claims Number 03–2315V
45. Shirley Knight-Henson on behalf of Caleb Knight, Decatur, Texas, Court of Federal Claims Number 03–2316V
46. Tracy Lucio on behalf of Justin Lucio, Decatur, Texas, Court of Federal Claims Number 03–2317V
47. Ursula Mallin on behalf of Hector Mallin, Jr., Decatur, Texas, Court of Federal Claims Number 03–2318V
48. Ursula Mallin on behalf of Luis Alberto Mallin, Decatur, Texas, Court of Federal Claims Number 03–2319V
49. Stacy Moinat on behalf of Mitchell Moinat, Decatur, Texas, Court of Federal Claims Number 03–2320V
50. April and Jesse Overton on behalf of Arianna Overton, Decatur, Texas, Court of Federal Claims Number 03–2321V
51. Nora Pedraza on behalf of Dobie Pedraza, Decatur, Texas, Court of Federal Claims Number 03–2322V
52. Lisa Pedraza on behalf of Jacob Oliva Pedraza, Decatur, Texas, Court of Federal Claims Number 03–2323V
53. Lydia Perez on behalf of Nathaniel Tyler Perez, Decatur, Texas, Court of Federal Claims Number 03–2324V
54. Lydia Perez on behalf of Longino Perez, Decatur, Texas, Court of Federal Claims Number 03–2325V
55. Lydia Perez on behalf of Mario Alberto Perez, Decatur, Texas, Court of Federal Claims Number 03–2326V
56. Nancy G. Pollan on behalf of Joshua Pollan, Decatur, Texas, Court of Federal Claims Number 03–2327V
57. Stacy Royo on behalf of Alexander Julian Royo, Decatur, Texas, Court of Federal Claims Number 03–2328V
58. Mirtal and Jesus Saucedo on behalf of Christian Saucedo, Decatur, Texas, Court of Federal Claims Number 03–2329V
59. David Scott on behalf of Stran Scott, Decatur, Texas, Court of Federal Claims Number 03–2330V
60. Adelia R. Segovia on behalf of Alexander Segovia, Decatur, Texas, Court of Federal Claims Number 03–2331V
61. Michelle Sturgeon on behalf of Coris Brian Sturgeon, Decatur, Texas, Court of Federal Claims Number 03–2332V
62. Deborah and Lloyd Taliaferro on behalf of Alexander Taliaferro, Decatur, Texas, Court of Federal Claims Number 03–2333V
63. Deborah and Lloyd Taliaferro on behalf of Erik Taliaferro, Decatur, Texas, Court of Federal Claims Number 03–2334V
64. Deborah and Lloyd Taliaferro on behalf of Nikita Taliaferro, Decatur, Texas, Court of Federal Claims Number 03–2335V
65. Dominga and Manuel Torres on behalf of Derek Torres, Decatur, Texas, Court of Federal Claims Number 03–2336V
66. Saray Vicencio on behalf of Alexander Vasques, Decatur, Texas, Court of Federal Claims Number 03–2337V
67. Etta J. Villanueva on behalf of Daniel Joseph Villanueva, II, Decatur, Texas, Court of Federal Claims Number 03–2338V
68. Melinda Poist and Cambell Compton on behalf of Jeffrey Compton, Van Nuys, California, Court of Federal Claims Number 03–2341V
69. Joan and Patrick Boyle on behalf of Thomas Joseph Boyle, New York, New York, Court of Federal Claims Number 03–2342V
70. Tania Carter on behalf of Cameron Smith, Atlanta, Georgia, Court of Federal Claims Number 03–2343V
71. Sherry Noles on behalf of Elijah Noles, Atlanta, Georgia, Court of Federal Claims Number 03–2344V
72. Brenda Meeks on behalf of Michael A. Bigglest, Atlanta, Georgia, Court of Federal Claims Number 03–2345V
73. Susan and Frank Iuliano on behalf of Christopher Iuliano, Lake Success, New York, Court of Federal Claims Number 03–2346V
74. Lisa and Patrick DiPippa on behalf of Louis DiPappa, Freehold, New Jersey, Court of Federal Claims Number 03–2347V
75. Narcedalla Ortiz on behalf of Nelson Vega Carachure, Seaford, Delaware, Court of Federal Claims Number 03–2349V
76. Laura Ann Hammers on behalf of Troy Hammers, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2352V
77. Elizabeth and John Parsons on behalf of Jacob R. Parsons, Broken Arrow, Oklahoma, Court of Federal Claims Number 03–2353V
78. Magaly and Steven Lenker on behalf of Adam Lenker, Towson, Maryland, Court of Federal Claims Number 03–2354V
79. Melissa and Shawn Cook on behalf of Shawn Cook, Jr., New Orleans, Louisiana, Court of Federal Claims Number 03–2355V
80. Meshaunn Reed on behalf of Brandon Poshtkouhi, Boston, Massachusetts, Court of Federal Claims Number 03–2356V
81. Sharon Hill on behalf of Austin Hill, Boston, Massachusetts, Court of Federal Claims Number 03–2357V
82. Janet Latini on behalf of Dominic Latini, Boston, Massachusetts, Court of Federal Claims Number 03–2358V
83. Mary and Larry Woodruff on behalf of Nathan Woodruff, Jacksonville, Florida, Court of Federal Claims Number 03–2364V
84. Virginia Dugger on behalf of Austin Boone, Jacksonville, Florida, Court of Federal Claims Number 03–2365V
85. Harry Hawkins, Bunker Hill, Indiana, Court of Federal Claims Number 03–2366V
86. Rongrong and Daniel Johnson on behalf of James D. Johnson, Towson, Maryland, Court of Federal Claims Number 03–2368V
87. Kathleen and James Mercure on behalf of Jacqueline Mercure, Dallas, Texas, Court of Federal Claims Number 03–2460V
88. Jennifer and Jason Dedonato on behalf of Jared Dedonato, Dallas, Texas, Court of Federal Claims Number 03–2461V
89. Andrea Garcia on behalf of Austin Garcia, Portland, Oregon, Court of Federal Claims Number 03–2462V
90. Sid Leader on behalf of Sam Leader, Portland, Oregon, Court of Federal Claims Number 03–2463V
91. Paula and James Bryant-Trerise on behalf of Faith Bryant-Trerise, Portland, Oregon, Court of Federal Claims Number 03–2464V
92. Mary Buckland and Michael Wagnitz on behalf of Josie Wagnitz, Madison, Wisconsin, Court of Federal Claims Number 03–2465V
93. Angela and Donavon Price on behalf of Nathan Ray Price, Houston, Texas, Court

of Federal Claims Number 03–2466V
94. Victoria and Gregory Johnson on behalf of Kennith L. Johnson, Houston, Texas, Court of Federal Claims Number 03–2467V
95. Dremetericus Thurmond on behalf of Demarius Thurmond, Houston, Texas, Court of Federal Claims Number 03–2468V
96. Kim and Mark Brawn on behalf of Zackary Brawn, Buckingham, Pennsylvania, Court of Federal Claims Number 03–2469V
97. Cara Koscinski on behalf of Jacob Koscinski, Boston, Massachusetts, Court of Federal Claims Number 03–2471V
98. Kristin Breslin on behalf of Kara Breslin, Boston, Massachusetts, Court of Federal Claims Number 03–2472V
99. Pamela Wright on behalf of Oscar Wright, Boston, Massachusetts, Court of Federal Claims Number 03–2473V
100. Pamela Wright on behalf of Omar Wright, Boston, Massachusetts, Court of Federal Claims Number 03–2474V
101. Victoria Razzante on behalf of Vincent Razzante, Boston, Massachusetts, Court of Federal Claims Number 03–2475V
102. Suzanne and Joseph McAllister on behalf of Alec Joseph McAllister, Melbourne, Florida, Court of Federal Claims Number 03–2476V
103. Patricia Lee, Sylva, North Carolina, Court of Federal Claims Number 03–2479V
104. Donna and Jeffrey Popp on behalf of Justin Popp, Van Nuys, California, Court of Federal Claims Number 03–2480V
105. Amber Sandifer on behalf of Derric Sandifer, Van Nuys, California, Court of Federal Claims Number 03–2481V
106. Bonnie and Gregory Schmidt on behalf of Andrew Schmidt, Van Nuys, California, Court of Federal Claims Number 03–2482V
107. Donna and Jeffrey Popp on behalf of Joshua Popp, Van Nuys, California, Court of Federal Claims Number 03–2483V
108. Lin Yuan on behalf of Eric Wang, Boston, Massachusetts, Court of Federal Claims Number 03–2486V
109. Anne Hutchinson on behalf of Aaron Hutchinson, Boston, Massachusetts, Court of Federal Claims Number 03–2487V
110. Michelle Redmond on behalf of Trevor Carroll, Jacksonville, Florida, Court of Federal Claims Number 03–2488V
111. Marilyn and Keith York on behalf of Michael York, Vienna, Virginia, Court of Federal Claims Number 03–2490V
112. Trina and Kevin Montgomery on behalf of Keller Montgomery, Vienna, Virginia, Court of Federal Claims Number 03–2491V
113. Melissa Two Bulls on behalf of Kylie Two Bulls, Rapid City, South Dakota, Court of Federal Claims Number 03–2493V
114. Lori and Rich Knowles on behalf of Daniel Knowles, Houston, Texas, Court of Federal Claims Number 03–2494V
115. Sheryl and Bruce Daldrup on behalf of Lauren Daldrup, Dallas, Texas, Court of Federal Claims Number 03–2495
116. Saraswati Mahindrakar and Vinay Doijode on behalf of Rishab Doijode, Dallas, Texas, Court of Federal Claims Number 03–2496V
117. Stephanie and Robert Reis on behalf of Blake Reis, Dallas, Texas, Court of Federal Claims Number 03–2497V
118. Julee Spear on behalf of Keaton Spear, Dallas, Texas, Court of Federal Claims Number 03–2498V
119. Mayela Juarez on behalf of Ignacio Juarez, Palo Alto, California, Court of Federal Claims Number 03–2499V
120. Theresa and John Prego on behalf of Gabrielle Prego, Boston, Massachusetts, Court of Federal Claims Number 03–2501V
121. Patrick Inglis on behalf of Jackson Inglis, Dallas, Texas, Court of Federal Claims Number 03–2502V
122. Fatmeh and Ahmad Shihadeh on behalf of Omar A. Shihadeh, Melbourne, Florida, Court of Federal Claims Number 03–2503V
123. Greg Estes on behalf of Parker Scott Estes, Tyler, Texas, Court of Federal Claims Number 03–2504V
124. Lytress and Ruben Monroe on behalf of Ruben Monroe, Jr., Miami, Florida, Court of Federal Claims Number 03–2506V
125. Paige Stanfield-Myers on behalf of Whitman Stanfield-Myers, Boston, Massachusetts, Court of Federal Claims Number 03–2507V
126. Maira Hildreth on behalf of Megan Hildreth, Boston, Massachusetts, Court of Federal Claims Number 03–2508V
127. Tawnya Bates on behalf of Jayden Bates, Boston, Massachusetts, Court of Federal Claims Number 03–2509V
128. Jeremy Libbey and Christina Putty-Justice on behalf of Kayla Justice, Van Nuys, California, Court of Federal Claims Number 03–2511V
129. Christina Putty-Justice and Jason Triplett on behalf of Brandon Triplett, Van Nuys, California, Court of Federal Claims Number 03–2512V
130. Jodie and Brian Sullivan on behalf of Kyle Sullivan, Baltimore, Maryland, Court of Federal Claims Number 03–2513V
131. Lori and Dale Moore on behalf of Jeremiah Moore, Philadelphia, Pennsylvania, Court of Federal Claims Number 03–2516V
132. Michelle Vanderwey on behalf of Hans Vanderwey, Houston, Texas, Court of Federal Claims Number 03–2517V
133. Mary Pino and Daniel O'Connell on behalf of Aidan O'Connell, Houston, Texas, Court of Federal Claims Number 03–2518V
134. Tammy Lyons on behalf of J.J. Lyons, Houston, Texas, Court of Federal Claims Number 03–2519V
135. Teresa and Ben Price on behalf of Houlton Price, Houston, Texas, Court of Federal Claims Number 03–2520V
136. Alice Achieng on behalf of Tevin Moro, Houston, Texas, Court of Federal Claims Number 03–2521V
137. Charlene Sawyer, Kettering, Ohio, Court of Federal Claims Number 03–2524V
138. Denise McKenna on behalf of Camryn J. McKenna, Deceased, Boston, Massachusetts, Court of Federal Claims Number 03–2525V
139. Janine Dykstra on behalf of Derek Allan Dykstra, Deceased, Ventura, California, Court of Federal Claims Number 03–2612V
140. Dana and John Sharp on behalf of Austin Michael Sharp, Temecula, California, Court of Federal Claims Number 03–2613V
141. Christine and Joseph Wysocki on behalf of Adam Christopher Wysocki, Temecula, California, Court of Federal Claims Number 03–2614V
142. Janie and Dean Revier on behalf of Dallan Ray Revier, Olivia, Minnesota, Court of Federal Claims Number 03–2615V
143. Kimberly and Christopher Bostick on behalf of Christopher Deavin Bostick, Canton, Georgia, Court of Federal Claims Number 03–2616V
144. Anne Marie and Matthew Yagonczak on behalf of Collin Yagonczak, Houston, Texas, Court of Federal Claims Number 03–2617V
145. Diane Ventimiglia on behalf of Vincenzo Ventimiglia, Issaquah, Washington, Court of Federal Claims Number 03–2618V
146. Kerri Speights on behalf of Tyler Speights, Aubrey, Texas, Court of Federal Claims Number 03–2619V
147. Gloria and Glen Yerich on behalf of Kevin Yerich, Melbourne, Florida, Court of Federal Claims Number 03–2620V
148. Irene Ramirez on behalf of Carlos Daniel Rivera, Atlanta, Georgia, Court of Federal Claims Number 03–2628V
149. Melinda and Patrick Hiles on behalf of Luke Richard Hiles, Indianapolis, Indiana, Court of Federal Claims Number 03–2629V
150. Heather Summers-Webb and Eric Webb on behalf of Sandra Webb, Chicago, Illinois, Court of Federal Claims Number 03–2631V
151. Deborah White on behalf of Xavier Deshad Baldwin, Houston, Texas, Court of Federal Claims Number 03–2632V
152. Deanne Lee on behalf of Titus Lee, Houston, Texas, Court of Federal Claims Number 03–2633V
153. Lisa and Johnny Horton on behalf of Justin Horton, Houston, Texas, Court of Federal Claims Number 03–2634V
154. Wanda Lafayette on behalf of Javis Lafayette, Houston, Texas, Court of Federal Claims Number 03–2635V
155. Valerie and Thomas Bradley on behalf of Thomas Bradley, Houston, Texas, Court of Federal Claims Number 03–2636V
156. Paula Lewis on behalf of Jarquis Lewis, Houston, Texas, Court of Federal Claims Number 03–2637V
157. Tewana Johnson on behalf of Nikeara Hinton, Houston, Texas, Court of Federal Claims Number 03–2638V
158. Kimberly Mitchell on behalf of Kelvin Mitchell, Houston, Texas, Court of Federal Claims Number 03–2639V
159. Lisa and Douglas Nelson on behalf of Kameron M. Nelson, Houston, Texas, Court of Federal Claims Number 03–2640V
160. Jason Taylor on behalf of Jacob Taylor,

Houston, Texas, Court of Federal Claims Number 03–2641V
161. Tewana Johnson on behalf of Troy Johnson, Houston, Texas, Court of Federal Claims Number 03–2642V
162. Terri Schuldt on behalf of Sarah Schuldt, Boston, Massachusetts, Court of Federal Claims Number 03–2643V
163. Teresa Tucker on behalf of Payton Tucker, Houston, Texas, Court of Federal Claims Number 03–2646V
164. Holly and Mark Batsford on behalf of Cameron M. Batsford, Temecula, California, Court of Federal Claims Number 03–2647V
165. Kimberly Schneider on behalf of Troy Schneider, Lake Forest, California, Court of Federal Claims Number 03–2648V
166. Tiana and Ward Boyd on behalf of Xela Rebecca Boyd, Sierra Vista, Arizona, Court of Federal Claims Number 03–2649V
167. Sarah Rosengren on behalf of Sam Rosengren, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2650V
168. Heather and Donovan Hoover on behalf of Trenton Hoover, Dallas, Texas, Court of Federal Claims Number 03–2651V
169. Steven Weisbond on behalf of Jay Weisbond, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2652V
170. Jennifer and Russell Maza on behalf of Jordan Dean Maza, Staten Island, New York, Court of Federal Claims Number 03–2653V
171. Paul Joseph and Amanda Kay Elliott on behalf of Trent Michael Elliott, Houston, Texas, Court of Federal Claims Number 03–2656V
172. Beau Bradley and Patricia Jean Bryant on behalf of Joseph Paul Bryant, Houston, Texas, Court of Federal Claims Number 03–2657V
173. Amy and David Green on behalf of Michael Watson Green, Stockbridge, Georgia, Court of Federal Claims Number 03–2658V
174. Merry Beth and Keith Kennedy on behalf of Konner Kennedy, Claxton, Georgia, Court of Federal Claims Number 03–2660V
175. Carrie and Joseph Costa on behalf of Hannah Costa, Vienna, Virginia, Court of Federal Claims Number 03–2661V
176. Mia and Tim McNary on behalf of Colin McNary, Vienna, Virginia, Court of Federal Claims Number 03–2662V
177. Michelle and Philip Edwards on behalf of John Edwards, Wyomissing, Pennsylvania, Court of Federal Claims Number 03–2664V
178. Shauna and Gregg Steffen on behalf of Gregg Steffen, Jr., Houston, Texas, Court of Federal Claims Number 03–2668V
179. Irene Ruby Ramirez on behalf of Regan Danielle Ramirez, Houston, Texas, Court of Federal Claims Number 03–2675V
180. Elizabeth and Joseph Acree on behalf of Joseph Bryan Acree, Houston, Texas, Court of Federal Claims Number 03–2676V
181. Tracy and Guy Sas on behalf of Jonathan Lyons Sas, Melbourne, Florida, Court of Federal Claims Number 03–2677V
182. Rebecca and John Reno on behalf of Chad Reno, Washington, District of Columbia, Court of Federal Claims Number 03–2678V
183. April and Patrick Heuer on behalf of Matthew Heuer, Dallas, Texas, Court of Federal Claims Number 03–2679V
184. Therese and John Minni on behalf of Paris Minni, Dallas, Texas, Court of Federal Claims Number 03–2680V
185. Susan Dunn on behalf of Sheridan Dunn, Boston, Massachusetts, Court of Federal Claims Number 03–2681V
186. Lynda Capoccia on behalf of Zachary Capoccia, Boston, Massachusetts, Court of Federal Claims Number 03–2682V
187. Engracia Gutstadt on behalf of Amber Gutstadt, Margate, Florida, Court of Federal Claims Number 03–2683V
188. Mary and Troy Petersen on behalf of Theodore Petersen, Dallas, Texas, Court of Federal Claims Number 03–2685V
189. Janet Zale on behalf of Christine Zale, Bedford, New Hampshire, Court of Federal Claims Number 03–2686V
190. Karen Rizzo on behalf of Antonio Rizzo, Swededboro, New Jersey, Court of Federal Claims Number 03–2687V
191. Ann Hatcher on behalf of Fredina Hatcher, Houston, Texas, Court of Federal Claims Number 03–2693V
192. Melicia Boose on behalf of Ja'Colby Boose, Houston, Texas, Court of Federal Claims Number 03–2694V
193. Rebeca Webb on behalf of Taylor Robinson, Houston, Texas, Court of Federal Claims Number 03–2695V
194. Florence Olatunbosun on behalf of Seyi Bankole, Lanham, Maryland, Court of Federal Claims Number 03–2696V
195. Robby Stuart on behalf of Coby Bunn Stuart, Deceased, Griffin, Georgia, Court of Federal Claims Number 03–2697V
196. Heather Crews on behalf of Sydney Crews, Dayton, Ohio, Court of Federal Claims Number 03–2700V
197. Shelly LaFleur on behalf of Chasity Sonnier, New Orleans, Louisiana, Court of Federal Claims Number 03–2701V
198. The Reverend John M. Young, Webster, New York, Court of Federal Claims Number 03–2702V
199. Deborah and Charley West on behalf of Charley West, IV, Houston, Texas, Court of Federal Claims Number 03–2705V
200. Ann and Kevin Madsen on behalf of Nicholas Madsen, Houston, Texas, Court of Federal Claims Number 03–2706V
201. Myra and Scott Robinson on behalf of William Robinson, Houston, Texas, Court of Federal Claims Number 03–2707V
202. Rachel and Robert Ross on behalf of Benjamin Ross, Houston, Texas, Court of Federal Claims Number 03–2708V
203. Shawna and Rand Sarver on behalf of Ryan Sarver, Houston, Texas, Court of Federal Claims Number 03–2709V
204. Cary Ann Bennett on behalf of Zachary Scraver, Houston, Texas, Court of Federal Claims Number 03–2710V
205. Rebecca and Michael Hohe on behalf of Caroline Hohe, Houston, Texas, Court of Federal Claims Number 03–2711V
206. Carolyn and Marcelo Ferrari on behalf of Stefan Ferrari, Houston, Texas, Court of Federal Claims Number 03–2712V
207. Susan and James Wiles on behalf of Blake Wiles, Houston, Texas, Court of Federal Claims Number 03–2713V
208. James Bumbaugh on behalf of Jaxon Bumbaugh, Boston, Massachusetts, Court of Federal Claims Number 03–2715V
209. Ellen Hill on behalf of Kyle Hill, Boston, Massachusetts, Court of Federal Claims Number 03–2716V
210. Mark Woodsmall on behalf of Andrew Woodsmall, Portland, Oregon, Court of Federal Claims Number 03–2717V
211. Jane and Wallace Sparks on behalf of Shane Sparks, Portland, Oregon, Court of Federal Claims Number 03–2718V
212. Seann Colgan on behalf of Samuel Colgan, Portland, Oregon, Court of Federal Claims Number 03–2719V
213. Deborah Mielewski and Kevin Ellwood on behalf of Tate Ellwood-Mielewski, Dallas, Texas, Court of Federal Claims Number 03–2720V
214. Linda Peak on behalf of Cody Peak, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2721V
215. Teri Spiers on behalf of Jason Babington, Flowood, Mississippi, Court of Federal Claims Number 03–2722V
216. Deneiece Rushing on behalf of Somer Rushing, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2723V
217. Doris Thomas Jackson on behalf of Rakeem Mathis, Clarksdale, Mississippi, Court of Federal Claims Number 03–2724V
218. Lisa Kay Schmittling on behalf of Sterling Schmittling, Laurel, Mississippi, Court of Federal Claims Number 03–2725V
219. Linda Gibson on behalf of Aaron Gibson, Jackson, Mississippi, Court of Federal Claims Number 03–2726V
220. Chandrika Watts on behalf of Kevaughn Bowie, Greenville, Mississippi, Court of Federal Claims Number 03–2727V
221. Brenda McMurtry on behalf of Kenneth Billingslea, Canton, Mississippi, Court of Federal Claims Number 03–2728V
222. Tina Martin on behalf of Demarcus Martin, Jacksonville, Florida, Court of Federal Claims Number 03–2729V
223. Sheila Leonard on behalf of Richard Leonard, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2730V
224. Willys G. Smith on behalf of Clark Smith, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2731V
225. Heather Revelis on behalf of Frank A. Revelis, III, Dallas, Texas, Court of Federal Claims Number 03–2732V
226. Holly and Mark Blackburn on behalf of Mitchell Blackburn, Fort Worth, Texas, Court of Federal Claims Number 03–2733V
227. Kassie Brown-Carter on behalf of Christopher Carter, Greenwood, Mississippi, Court of Federal Claims Number 03–2734V
228. Vera Ray on behalf of Teresa Ray, Greenwood, Mississippi, Court of Federal Claims Number 03–2735V
229. Patricia Sanders on behalf of Devonte Sanders, Jackson, Mississippi, Court of Federal Claims Number 03–2736V
230. Ellen and Prentiss Guyton on behalf of

Kenneth Guyton, Jackson, Mississippi, Court of Federal Claims Number 03–2737V
231. Vanessa Hutchenson on behalf of Felicia Hutchenson, Greenville, Mississippi, Court of Federal Claims Number 03–2738V
232. Lynn Morris on behalf of Mason Morris, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2739V
233. Pearle King on behalf of Veronica Jones, Cleveland, Mississippi, Court of Federal Claims Number 03–2740V
234. Lisa Crain on behalf of Leila Crain, Jackson, Mississippi, Court of Federal Claims Number 03–2741V
235. Sheila Gowdy Watson on behalf of Sequency Gowdy, Jackson, Mississippi, Court of Federal Claims Number 03–2742V
236. Hazel Townsend on behalf of Shemika Townsend, Indianola, Mississippi, Court of Federal Claims Number 03–2743V
237. George Jean Carr on behalf of Walter Jones, Jackson, Mississippi, Court of Federal Claims Number 03–2744V
238. Felicia Keys on behalf of Shiron Myers, Hattiesburg, Mississippi, Court of Federal Claims Number 03–2745V
239. Sandra Kolankiewicz and Robert Brawley on behalf of Trevor Brawley, Houston, Texas, Court of Federal Claims Number 03–2749V
240. Melinda and Taj Riojas on behalf of Matthew Riojas, Houston, Texas, Court of Federal Claims Number 03–2750V
241. Wyldn Pearson, Salt Lake City, Utah, Court of Federal Claims Number 03–2751V
242. Dale Krenik on behalf of Valen Krenik, Vienna, Virginia, Court of Federal Claims Number 03–2755V
243. Natalie Evans on behalf of Luke Alexander Evans, Deceased, Lake County, Indiana, Court of Federal Claims Number 03–2756V
244. Melonie and William Bailey on behalf of William Bailey, Houston, Texas, Court of Federal Claims Number 03–2757V
245. Nicole Carsell and Ron Lee Miller on behalf of Jalen Laron Miller, Houston, Texas, Court of Federal Claims Number 03–2758V
246. Denise and Frank Miller on behalf of Blake Miller, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2759V
247. Autumn Ahlgrem on behalf of Jacob Ahlgrem, Somers Point, New Jersey, Court of Federal Claims Number 03–2760V
248. Patricia and Philip Carroll on behalf of Sean T. Carroll, Vienna, Virginia, Court of Federal Claims Number 03–2765V
249. Emlyn and David Riggle on behalf of Evan Riggle, Vienna, Virginia, Court of Federal Claims Number 03–2766V
250. Rhonda Sango, nka Rhonda Tubbs, Cincinnati, Ohio, Court of Federal Claims Number 03–2770V
251. Jennifer and John Gilmore on behalf of Luke Gilmore, Lake Success, New York, Court of Federal Claims Number 03–2775V
252. Melissa and J. Craig Belser on behalf of Zachary R. Belser, Alexandria, Virginia, Court of Federal Claims Number 03–2778V
253. Leigh and Kelly Depiazza on behalf of Alexander E. Depiazza, Alexandria, Virginia, Court of Federal Claims Number 03–2779V
254. Ephie and Chris Jackson on behalf of Christopher Jackson, Alexandria, Virginia, Court of Federal Claims Number 03–2780V
255. Beverlee and Jeffrey Peters on behalf of Ashley Peters, Houston, Texas, Court of Federal Claims Number 03–2781V
256. Nicole Driver on behalf of Sha'Tequa Key'Vion Driver, Decatur, Texas, Court of Federal Claims Number 03–2782V
257. Shelley and Rex Brandt on behalf of Ethan R. Brandt, Alexandria, Virginia, Court of Federal Claims Number 03–2784V
258. Tammy and Charles Jones on behalf of Travis Jones, Vienna, Virginia, Court of Federal Claims Number 03–2785V
259. Christal and Matthew Boesen on behalf of Zachary Boesen, Vienna, Virginia, Court of Federal Claims Number 03–2786V
260. Stephanie Hidalgo on behalf of Adam Cade Hidalgo, Deceased , Bossier City, Louisiana, Court of Federal Claims Number 03–2787V
261. Claires and Paul Shimer on behalf of Jordan M. Shimer, Houston, Texas, Court of Federal Claims Number 03–2791V
262. Marcos A. Gonzalez, Sr. on behalf of Marcos A. Gonzalez, Jr., Houston, Texas, Court of Federal Claims Number 03–2792V
263. Michelle and Robert Redfoot on behalf of Alexander Redfoot, San Diego, California, Court of Federal Claims Number 03–2801V
264. Melissa Gorman on behalf of Jullian Gorman, Somers Point, New Jersey, Court of Federal Claims Number 03–2806V
265. Joy Roseman on behalf of James Alec Roseman, Somers Point, New Jersey, Court of Federal Claims Number 03–2807V
266. Lucy and Michael Blake on behalf of Rachel Blake, Van Nuys, California, Court of Federal Claims Number 03–2808V
267. Laura and Trevor Fletcher on behalf of Alexandra Fletcher, Groton, Connecticut, Court of Federal Claims Number 03–2810V
268. Steve Golliher on behalf of Luke Golliher, Oakdale, California, Court of Federal Claims Number 03–2812V
269. Holly and Patrick Macaulay on behalf of Sean Macaulay, Vienna, Virginia, Court of Federal Claims Number 03–2813V
270. Ana and Christopher Castner on behalf of David Brenden Castner, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2814V
271. Ernestina and Manuel Hernandez on behalf of Gabrielle Hernandez, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2815V
272. David Taylor on behalf of Davey Taylor, Houston, Texas, Court of Federal Claims Number 03–2816V
273. Anne and Darren Tucker on behalf of Ethan Joseph Tucker, Bethesda, Maryland, Court of Federal Claims Number 03–2818V
274. Anne and Darren Tucker on behalf of Andrew Michael Tucker, Bethesda, Maryland, Court of Federal Claims Number 03–2819V
275. Harry Tembenis on behalf of Elias Tembenis, Boston, Massachusetts, Court of Federal Claims Number 03–2820V
276. Vicki Gale on behalf of Seth Gale, Portland, Oregon, Court of Federal Claims Number 03–2821V
277. Angela and Darrell Foy on behalf of Nicholas Foy, New York, New York, Court of Federal Claims Number 03–2826V
278. Kristina Dickerson on behalf of Christopher Holleman, New York, New York, Court of Federal Claims Number 03–2827V
279. Shannon and Jason Robinson on behalf of Cody Robinson, New York, New York, Court of Federal Claims Number 03–2828V
280. Angie and Clint Ward on behalf of Devin Ward, New York, New York, Court of Federal Claims Number 03–2829V
281. Melanie and Mark Wax on behalf of Andrew Wax, New York, New York, Court of Federal Claims Number 03–2830V
282. Jill and Rob MacKay on behalf of Alec Andrew MacKay, Houston, Texas, Court of Federal Claims Number 03–2833V
283. George Daily, Montvale, New Jersey, Court of Federal Claims Number 03–2834V
284. Cindy and Edward Bubar on behalf of Sara Caitlyn Bubar, Pensacola, Florida, Court of Federal Claims Number 03–2837V
285. Cayanne Elmas and Said Kheir on behalf of Benjamin Kheir, Houston, Texas, Court of Federal Claims Number 03–2838V
286. Bj and Haywood Prejean on behalf of Hope Prejean, Huntington, Vermont, Court of Federal Claims Number 03–2839V
287. Regina and Gregory Harris on behalf of Madalyn Harris, Melbourne, Florida, Court of Federal Claims Number 03–2841V
288. Lekesha Slaughter on behalf of Terry Bennett, Houston, Texas, Court of Federal Claims Number 03–2846V
289. Carol Killmaier on behalf of Stephen Andrew Budko, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2849V
290. Jacqueline and Paul Martinez on behalf of Paul Charles Martinez, Jr., Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2850V
291. Elizabeth Wright on behalf of Jacob Wright, Boston, Massachusetts, Court of Federal Claims Number 03–2851V
292. Elizabeth Gill on behalf of Cavon Terrell, Boston, Massachusetts, Court of Federal Claims Number 03–2852V
293. William Wallace on behalf of Hunter Wallace, Boston, Massachusetts, Court of Federal Claims Number 03–2853V
294. Mary Brown-Brooks on behalf of Tennia Brooks, Alexandria, Virginia, Court of

Federal Claims Number 03–2854V
295. Lynette Johnson on behalf of Marcus Harris, Alexandria, Virginia, Court of Federal Claims Number 03–2855V
296. Charlene Jefferson on behalf of Taylor Jefferson, Alexandria, Virginia, Court of Federal Claims Number 03–2856V
297. Nancy and Dan Ledoux on behalf of Nicole Ledoux, Alexandria, Virginia, Court of Federal Claims Number 03–2857V
298. Cynthia and Dwight Wilkerson on behalf of John Wilkerson, Westfield, Indiana, Court of Federal Claims Number 03–2860V
299. David Gray on behalf of Ashley Gray, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2864V
300. Lora D. and James R. Brewer on behalf of James D. Brewer, Huntington, Vermont, Court of Federal Claims Number 03–2865V
301. Kellie Smith on behalf of Jason Smith, Bala Cynwyd, Pennsylvania, Court of Federal Claims Number 03–2866V
302. Kelley A. O'Sullivan-McColgan and John M. McColgan on behalf of Kevin Francis McColgan, New York, New York, Court of Federal Claims Number 03–2870V
303. Deborah Umphries on behalf of Timothy Umphries, Boston, Massachusetts, Court of Federal Claims Number 03–2872V
304. Marie Louise and Stephen Moriarty on behalf of Eilise Moriarty, Vienna, Virginia, Court of Federal Claims Number 03–2876V
305. Anja K. and Jay A. Bouchard on behalf of Austin John Bouchard, New York, New York, Court of Federal Claims Number 03–2879V
306. DeAnna and George Wright on behalf of Lane Elliot Wright, Deceased, Boise, Idaho, Court of Federal Claims Number 03–2880V

Dated: April 27, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–9972 Filed 4–30–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, DB–15 Basic Science.

Date: June 7–8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892; (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, DB–14 DCRC.

Date: June 10–11 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dale Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd., Democracy Two Building, Suite 401, Bethesda, MD 20892; (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, JH–3 Clinical Science.

Date: June 21–22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeanette M. Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892; (301) 594–9096.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, CP–17 Training & Education.

Date: July 1, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: April 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9897 Filed 4–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, National Institutes of Health Loan Repayment Program.

Date: June 3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate loan applications.

Place: Residence Inn Orlando, 8800 Universal Boulevard, Orlando, FL 32819.

Contact Person: D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room, 747, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7682, *pateldg@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: April 26. 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9894 Filed 4–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the national Diabetes and

Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 26–27, 2004.

Open: May 26, 2004, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 27, 2004, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: May 27, 2004, 10:15 a.m. to adjournment.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of health, 6707 Democracy Blvd., Room 715, MSC 5452, Bethesda, MD 20892–5452; 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive Advisory Council, Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: May 26–27, 2004.

Open: May 26, 2004, 1 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 26, 2004, 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: May 27, 2004, 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: May 27, 2004, 8:30 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452; 301–594–8834; *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: May 26–27, 2004.

Open: May 26, 2004, 1 p.m. to 3 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Closed: May 26, 2004, 3:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Open: May 27, 2004, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452; 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: May 26–27, 2004.

Open: May 26, 2004, 1 p.m. to 4:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: May 26, 2004, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant aplications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: May 27, 2004, 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammond@extra.niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building. Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: April 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9895 Filed 4–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities.

Date: May 18, 2004.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616; 301–435–2766, *gm145a@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: April 26, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–9896 Filed 4–30–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a SAMHSA Center for Substance Abuse Prevention (CSAP) National Advisory Council meeting to be held in May 2004.

The meeting will be open and include discussions on the Agency's Strategic Prevention Framework, Drug Testing Guidelines, and the HIV Rapid Drug Testing Initiative; a report on the Centers for the Application of Prevention Technologies; and updates on issues pertaining to CSAP's budget and its divisions.

A summary of this meeting, a roster of committee members and substantive program information may be obtained from Carol Watkins, Executive Secretary, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–9542.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed below to comment or to request special accommodations for persons with disabilities.

Committee Name: SAMHSA Center for Substance Abuse Prevention National Advisory Council.

Date/Time: OPEN, Wednesday, May 12, 2004, 9 a.m.–4 p.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland, 20852; telephone (301) 368–1100.

Contact: Carol D. Watkins, Executive Secretary, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857; telephone: (301) 443–9542.

Dated: April 27, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration (SAMHSA).

[FR Doc. 04–9974 Filed 4–30–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Data Integrity, Privacy, and Interoperability Advisory Committee

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Extension of application period for committee membership.

SUMMARY: The period for candidates to submit applications for membership on the Data Integrity, Privacy, and Interoperability Advisory Committee is being extended to May 15, 2004.

DATES: Application forms for membership should reach the Privacy Office on or before May 15, 2004.

ADDRESSES: You may request an application form by writing to Tina Hubbell, U.S. Department of Homeland Security Privacy Office, Washington, DC 20528, by calling (202) 772–9848, or by faxing (202) 772–5036. Send your application in written form to the above address.

Responsible DHS Officials: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, telephone (202) 772–9848.

SUPPLEMENTARY INFORMATION: In an April 9, 2004, **Federal Register** Notice (69 FR 18923 April 9, 2004), the Department of Homeland Security provided notice that the Secretary was establishing the Data Integrity, Privacy, and Interoperability Advisory Committee and requested that qualified individuals interested in serving should apply for membership by April 30, 2004. Potential candidates have requested more time to submit applications. Therefore, we are extending the period to submit applications to May 15, 2004. Applications should be received on or before that date but will be accepted for a limited time after May 15.

Dated: April 28, 2004.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 04–10057 Filed 4–30–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of the Coverage Amount Under the Group Flood Insurance Program, for Policies Issued for Disasters Declared on or Before October 14, 2002

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: FEMA gives notice that the coverage amount for Group Flood Insurance Policies issued by the IFG Program for disasters declared on or before October 14, 2002 is increased.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Berl Jones, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–4235.

SUPPLEMENTARY INFORMATION: 44 CFR 61.17 sets the amount of coverage under a Group Flood Insurance Policy (GFIP). Although the current version of § 61.17 sets this amount as equivalent to the maximum grant amount established under section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5174,) prior to October 15, 2002, this regulation set the amount of coverage as equivalent to the maximum grant amount under the Individual and Family Grant (IFG) program under section 411 of the Stafford Act (42 U.S.C. 5178,) see 67 FR 61462, Sept. 30, 2002. Section 411 was repealed as of October 15, 2002. Because FEMA's policy is to apply regulations in force on the date of a disaster declaration to all assistance provided during that disaster (which in this case is also the time that the policies were issued), we will set the coverage for GFIP based upon the same criteria used to adjust the maximum IFG grant amount under section 411 for GFIP polices issued for those disasters declared prior to the repeal of section 411. Since section 411 has been repealed this adjustment is made solely for purposes of establishing the GFIP coverage amount for policies issues for disasters declared on or before October 14, 2002.

The Stafford Act prescribed for the annual adjustment of grants made under Section 411, IFG Program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. If the IFG program were still in effect, the maximum grant amount for the IFG Program under Section 411 of the Act, would have been increased to $15,300 for fiscal year 2004. As a result the coverage amount for GFIP is adjusted to $15,300.

FEMA bases the adjustments on an increase in the Consumer Price Index for All Urban Consumers of 2.2 percent for the 12-month period ended in August 2003. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 18, 2003.

(Catalog of Federal Domestic Assistance No. 97.035, Individual and Family Grant Program.)

Dated: April 27, 2004.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–9983 Filed 4–30–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4912–N–04]

Notice of Availability of a Final Environmental Impact Statement for the Greenbridge Redevelopment Master Plan Project, King County, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public, agencies, and Indian tribes on the availability for public review of the Final Environmental Impact Statement (EIS) for the redevelopment of Park Lake Homes public housing community (Greenbridge) in King County, WA. HUD gives this notice on behalf of the King County Department of Development and Environmental Services (DDES) acting as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4. Also HUD gives this notice on behalf of the DDES and King County Housing Authority (KCHA), jointly acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (RCW 43.21). The NEPA/SEPA Final EIS will be available for a 30-day period beginning today. A NEPA Record of Decision (ROD) will be issued after the 30-day availability period. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. The King County Housing Authority's SEPA regulations (KCHA Resolution 3185) provide a 21-day appeal period. The NEPA review period and SEPA appeal period will run concurrently from the issuance date of the Final EIS.

DATES: Comments must be received 30 days from the date of publication of this notice in the **Federal Register**. Comments are to be submitted to Greg Borba at the below address or *Greg.Borba@metrokc.gov*.

ADDRESSES: The Final EIS is available on the Internet and can be viewed or downloaded at *http://www.metrokc.gov/ddes/lusd/gb*. Hard copies of the Final EIS may be purchased for the cost of reproduction. Copies are available at the King Housing Authority's office (600 Andover Park, W., Tukwila). Please contact Oksana Winstead at the King County Housing Authority (206.574.1197) to make arrangements to obtain a copy. The Final EIS can also be reviewed at the King County Housing Authority's office (600 Andover Park, W.) Monday through Friday 8 a.m. to 4:30 p.m.; at the Park Lake Homes HOPE VI Office (206) 574–1160); and at the following public libraries:

- Boulevard Park Library (12015 Roseberg Avenue South, Boulevard Park community);
- Burien Public Library (14700 Sixth, SW., City of Burien);
- Foster Public Library (7614 S. 126th, Skyway community);
- White Center Public Library (11220–16th, SW., White Center community);
- King County Library System, Documents Branch (690 Newport Way, NW., City of Issaquah);
- Seattle Public Library Central Library (800 Pike Street, City of Seattle);
- Seattle Public Library Central Library, Documents Branch (800 Pike Street, City of Seattle);
- Seattle Public Library Southwest Branch (9010–35th Avenue, SW., Westwood community);
- Seattle Public Library West Seattle Branch (2306–42nd Avenue, SW., West Seattle community).

FOR FURTHER INFORMATION CONTACT: Greg Borba, Planning Supervisor, King County Department of Development and Environmental Services, 900 Oaksdale Avenue, SW., Renton, WA 98055–1219, Phone (206) 296–7118, Fax (206) 296–7051.

SUPPLEMENTARY INFORMATION: The King County DDES, acting under authority of Section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)), Section 26 of the United States Housing Act of 1937 (42 U.S.C. 1437x), and HUD's regulations at 24 CFR part 58, in cooperation with other interested agencies, has prepared a Final EIS to analyze potential impacts of redevelopment of the Park Lake Homes public housing community (Greenbridge Redevelopment Project-Proposed Master Plan). The Final EIS is a joint NEPA and Washington SEPA document intended to satisfy requirements of federal and state environmental statutes. HUD has allowed the assumption of its NEPA authority and NEPA lead agency responsibility by King County (DDES) as the Responsible Entity in cooperation with the Recipient, KCHA, as the SEPA lead agency.

Park Lake Homes is KCHA's oldest and largest public housing development. Built in 1942 to serve as temporary housing for World War II defense workers, structures have been renovated several times. The KCHA received a HOPE VI grant award from HUD in November of 2001 to initiate planning for the revitalization of this public housing development.

The Proposed Master Plan includes redevelopment of the existing approximately 94-acre project site located in the White Center area of unincorporated King County, Washington. The proposed redevelopment is consistent with requirements for a mixed-use, mixed-income housing project as described in the HOPE VI grant. The project site currently contains 569 residential units, a Community Center, a maintenance shop, a Head Start School, and a secondary building containing a food bank and administrative offices. The residential units are in primarily single story duplex structures.

The plan is to replace all existing low-income housing either within the site or elsewhere in King County through construction of public housing units on-site and project-based Section 8 vouchers in existing or new housing complexes. Existing residents would be relocated and assisted with benefits according to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. Where possible, displaced residents in good standing would be allowed to return to the public housing units once redevelopment is complete.

Most of the current buildings on the site would be demolished in phases, unless renovation for community services use is feasible. The existing Jim Wiley Community Center building will likely be renovated. In addition, much of the existing infrastructure would be demolished, abandoned, or replaced, also in phases. The project site would be redeveloped to provide approximately 900 to 1,100 dwelling units of rental and for-sale housing, in attached and detached forms, to meet a wide range of needs. Rental housing could include public housing units (attached townhouses, over/under flats, over/under townhouses, cottages) and workforce housing (attached townhouses, over/under flats, over/under townhouses, and apartments). For-sale housing could include single family detached cottages, attached townhouses, condominium flats and condominium townhouses.

An estimated 2,235,000 square feet of net buildable area is associated with the Proposed Master Plan. Non-residential development would include an estimated 80,000–100,000 square feet of community-oriented uses. Such uses may include: A branch library, renovated community center, youth and family facilities, Head Start and child care facility, Sheriff's office, food bank, career development center and meeting/gathering space. Approximately 22,300 square feet of neighborhood-scale retail, to meet the everyday needs of residents, is also proposed. A new elementary school (White Center Heights Elementary) is presently under construction; this is an independent proposal for purposes of land use permitting and SEPA review (although the site is included within the Greenbridge Preliminary Plat). A SEPA Determination of Nonsignificance was published on September 18th and 25th, 2002, for the new elementary school.

No significant unavoidable adverse impacts are anticipated for all elements of the environment analyzed in the Final EIS. The Proposed Master Plan would generate impacts to various elements of the environment that can be mitigated so as to not be significant. Existing traffic noise levels on SW. Roxbury Street, which affect the Greenbridge site, exceed levels generally considered desirable by HUD guidelines.

The State Historic Preservation Officer (SHPO) concurs with the Heritage Resources Report (Appendix I of the Draft EIS) finding that the project site is not eligible for the National Register of Historic Places (*see* Section IV and Appendix 2 of the Final EIS). The SHPO response letter also states that further coordination with the Office of Archaeology and Historic Preservation is not necessary unless additional information becomes available or any archaeological resources are uncovered during construction.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NOAA Fisheries) concur with the BE determination of "may affect, but not likely to adversely affect" for Puget Sound chinook salmon (*Oncorhynchus tshawytscha*), which is listed as ESA "threatened" species (see Section IV and Appendix 2 of the Final EIS). The NOAA response letter also states that because the habitat requirements for the Magnuson Stevens Fisheries Conservation Act (MSA) managed species are similar to that of Endangered Species Act (ESA) "listed" species, and because the conservation measures that the DDES included as part of the Proposed Action to address ESA concerns are also adequate to avoid, minimize or otherwise offset potential adverse effects to designated Essential Fish Habitat, conservation recommendations pursuant to MSA are not necessary.

Noise control measures (site planning, noise attenuation, or construction techniques) will be required and implemented to reduce noise from traffic on SW. Roxbury Street so that day-night sound levels at outdoor use locations and onsite residences would meet HUD requirements for attenuation, and/or would satisfy HUD's criteria for exceptions (24 CFR 51.105).

Some consider the HOPE VI program and implementing projects to be controversial. Similarly, land use changes, socioeconomic issues, and housing displacement/relocation associated with redevelopment may also be viewed as controversial. Relevant land use, socioeconomic, and housing issues are discussed in Section 4.9 of the Draft EIS and are summarized in Section I of the Final EIS.

Issuance of the Final EIS will trigger a 30-day review period, after which the ROD will be issued. Issuance of the ROD will conclude a planning and environmental review process that started with the Notice of Intent (NOI) to prepare an EIS, dated January 24, 2003. A 30-day scoping period was initiated subsequent to the NOI and a public scoping meeting was held on February 26, 2003. The Draft EIS was made available on November 21, 2003 for a 45-day comment period. A public comment meeting to take oral comments on the Draft EIS was held on December 17, 2003.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: April 26, 2004.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 04–9776 Filed 4–30–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0022, Federal Fish and Wildlife Permit Applications and Reports, Migratory Birds and Eagles

AGENCY: Fish and Wildlife Service.

ACTION: Notice, request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before June 2, 2004.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile using the following fax number: (202) 395–6566 (fax); or by electronic mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer by mail, fax, or email: 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; (703) 358–2269 (fax); *anissa_craghead@fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact

Anissa Craghead, Information Collection Clearance Officer, at 703–358–2445 or electronically to *anissa_craghead@fws.gov*, or Susan Lawrence at 703–358–2016 or *SusanM_Lawrence@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We have submitted a request to OMB to renew approval of a collection of information for the Service's permit application forms, and related report forms, for migratory bird and eagle permits.

Our request to OMB asks for its approval of the collection of information for: (1) The Service's permit application form numbers 3–200–6 through 3–200–18, and 3–200–67 through 3–200–70; report forms 3–202–1 through 3–202–9; and forms 3–186 and 3–186A, which are all currently approved under OMB control number 1018–0022; (2) the addition of form 3–200–10b(sup.) and forms 3–202–10 through 3–202–12; and (3) the deletion of form 3–200–14b. We are requesting a 3-year term of approval for this information collection activity.

A previous 60-day notice on this information collection requirement was published in the November 13, 2003, **Federal Register** (68 FR 64362) inviting public comment. In addition to publishing the **Federal Register** notice, we asked certain migratory bird or eagle permittees to review forms relating to the permits they hold and comment on the clarity and relevance of the information collection, the burden associated with the collection, and whether there is something the Service could do to minimize the burden. Comments were received on the **Federal Register** notice and from the permittees we contacted from a total of 14 individuals and one organization, the Ornithological Council. As a result of the comments, numerous revisions were made to the applications, instructions, and report forms. In addition, several items of information previously collected or proposed for collection on annual reports were reassessed by the Service and eliminated. The Disposition information requirement was eliminated from the scientific collecting annual report (3–202–2) and certain information about programs given and attendees was eliminated from the special purpose possession annual report (3–202–5), which will reduce the burden on holders of these permits. As a result, the time burden was adjusted for several forms. Finally, in response to comments, the Service will not finalize the proposed Donation to Public Museum form.

The Ornithological Council suggested that the number of applications be reduced to one for migratory birds and one for eagles, with a check-off list of the activities proposed to be conducted. The Service disagrees that this would benefit applicants. Many different types of permits are authorized under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 704) and the Bald and Golden Eagle Act (BGEPA) (16 U.S.C. 668) regulations (50 CFR parts 21 and 22, respectively), as well as other permit regulations, each with different application requirements and issuance criteria. The vast majority of permittees request a permit for a single type of activity, such as taxidermy, falconry, or scientific collecting. The Service has developed a variety of activity-specific application forms for the express purpose of reducing the paperwork burden on applicants and simplifying application requirements. Tailoring application forms to specific types of activities makes it easier for an applicant to understand the information required for the Service to issue a permit under any particular regulatory provision and to complete the application with minimal confusion. A single application form addressing all activities allowed under a given statute would be extremely confusing for applicants and result in a greater public burden. However, in response to this comment, we consolidated the eagle scientific research application (3–200–14b) into the migratory bird scientific collecting application (3–2007), and we also added to this application the ability to request authorization to import or export migratory bird specimens (except eagles) for scientific purposes. This will eliminate the need for scientific collecting applicants to refer to those applications to request this additional authorization. These revisions will streamline application requirements for scientists.

This notice provides an additional 30 days in which to comment on the information collection.

All of these forms are used by the Regional Migratory Bird Permit Offices. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0022.

The information obtained from the applications and report forms will be used by the Service to determine eligibility of applicants for permits they are requesting according to criteria in various Federal wildlife conservation laws, international treaties, and regulations on the issuance, suspension, revocation, or denial of permits, to monitor permit compliance, and to track species taken from the wild.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the MBTA (16 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the BGEPA (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 UST 108), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR). Generic permit application and record keeping requirements shared by our permit-issuing offices have been consolidated in 50 CFR part 13.

OMB Control Number: 1018–0022.

Title: Federal Fish and Wildlife Permit Applications and Report Forms, Migratory Birds and Eagles (50 CFR 13, 21, 22, 23).

Service Form Numbers: 3–200–6 through 3–200–18, 3–200–67 through 3–200–70, 3–202–1 through 3–202–12, 3–186, 3–186A.

Description of Respondents: Individuals; zoological parks; museums; universities; scientists; wildlife rehabilitators, educators, taxidermists; businesses; and State, local, Tribal and Federal governments.

Frequency of Collection: On occasion.

Total Annual Responses: 49,910.

Total Annual Burden Hours: 35,455.

We invite comments concerning this information collection on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 23, 2004.

Anissa Craghead,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 04–10008 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Geological Survey

Request for Public Comments on Guidelines for Providing Appropriate Access to Geospatial Data in Response to Security Concerns

AGENCY: Geological Survey, Interior.

ACTION: Notice of availability.

SUMMARY: The guidelines provide procedures to identify sensitive information content of geospatial data sets. Should such content be identified, the guidelines help organizations decide what access to provide to such data and still protect sensitive information content. The geospatial data community's use of a common, standardized approach to identify data sets that have sensitive content and to restrict such information will increase the effectiveness of individual organization's actions.

DATES: Comments must be received on or before June 2, 2004.

ADDRESSES: The proposed guidelines are available through *http://www.fgdc.gov/fgdc/homeland/index.html.* All comments concerning these proposed guidelines should be submitted by electronic mail to *guidelines@fgdc.gov* or by postal mail to FGDC HSWG Guidelines Review, 511 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

FOR FURTHER INFORMATION CONTACT: Michael Domaratz, Co-chair, Federal Geographic Data Committee Homeland Security Working Group, 703–648–4434

SUPPLEMENTARY INFORMATION: Many public, private, and non-profit organizations originate and publicly distribute geospatial data sets. It is conceivable that the content of some of these data sets could prove useful to an adversary of the United States. The guidelines help organizations decide on reasonable access to sensitive data and avoid unnecessary restrictions. They do so by helping organizations identify content that might be sensitive. They then guide organizations to take appropriate actions by evaluating the sensitive content in the context of other available information, the benefits lost by restricting data access, and the options for restricting data.

Additional instructions for comment accompany the guidelines. The working group will use the comments to improve the guidelines and to plan ways to encourage their adoption. It will summarize major or recurring themes from the comments and the working group's responses, and post the information through the working group's home page at *http://www.fgdc.gov/fgdc/homeland/index.html.*

The Federal Geographic Data Committee will issue the guidelines under the authority provided by U.S. Office of Management and Budget Circular A–16 to establish procedures necessary and sufficient to carry out interagency coordination and the implementation of the National Spatial Data Infrastructure. The U.S. Geological survey, which houses the committee's secretariat, provides this notice on behalf of the committee.

Ivan DeLoatch,

Staff Director, Federal Geographic Data Committee.

[FR Doc. 04–9956 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the St. Croix Chippewa Indians of Wisconsin and the Bad River Band of the Lake Superior Tribe of Chippewa Indians' Proposed 26 Acre Fee-to-Trust Transfer and Casino Project in the City of Beloit, Rock County, Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the St. Croix Chippewa Indians of Wisconsin and the Bad River Band of the Lake Superior Tribe of Chippewa Indians (the Tribes) as cooperating agencies, intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 26 acre fee-to-trust land transfer and casino project in Rock County, Wisconsin. The purpose of the proposed action is to help meet the economic development needs of the Tribes.

DATES: Written comments on the scope and implementation of this proposal must arrive by June 3, 2004. We estimate that the EIS will be ready for a Record of Decision by February 2005. This estimate includes public comment periods of 30 days for this notice, 60 days for the Draft EIS and 30 days for the Final EIS, plus time for notice issuance, a public hearing, response to comments, document revision and legal review.

ADDRESSES: Comments should be addressed to Terrance L. Virden, Director, Midwest Region, Bureau of Indian Affairs, Bishop Henry Whipple Federal Building, One Federal Drive, Room 550, Ft. Snelling, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Herb Nelson, (612) 713–4400 extension 1143.

SUPPLEMENTARY INFORMATION: The BIA proposes to take 26 acres of land into trust on behalf of the Tribes, on which the Tribes propose to build a resort and casino complex. The property is located along the west side of Interstate 90 (I–90) in the City of Beloit, Rock County, Wisconsin. The project design contemplates a 100,000 square foot casino and support area, a 35,000 square foot conference/convention center, several restaurants, a 7,000 square foot child care facility and a gift shop, to be located on the 26 acres to be taken into trust. A 500 unit hotel, a 2,000 seat theater, a 68,000 square foot water park, and parking facilities would be located on an adjacent, fee parcel. An Environmental Assessment (EA) was prepared for this project under the direction of the BIA and the Tribes by Environmental Resource Group. The BIA independently evaluated, revised and approved the EA's scope and contents. The BIA released the EA to the public for comment on September 17, 2003. Upon consideration of the EA and the comments received on it during the comment period, the BIA concluded that the potential environmental impact of the proposed action was significant enough to warrant an EIS. The BIA proposes to use the EA and the comments received on it as a substantial part of the scoping process for the EIS.

Issues identified to date to be addressed in the EIS include the following:

• Traffic (how the traffic generated by the casino development may effect the existing transportation system);

• Air quality (possible additive impacts of project-induced traffic on air quality);

• Socio-economics (how the project may affect employment and income, housing, schools, and infrastructure);

• Cumulative effects (environmental impacts of the project together with those of other reasonably foreseeable development projects in the area); and

• Alternatives to the preferred alternative.

The range of issues and alternatives addressed in the EIS may be expanded based on comments received in response to this notice.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 15, 2004.

Woodrow W. Hopper, Jr.,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 04–10007 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–04–1040–PH–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council will meet June 9–10, 2004, in Moab, Utah. A field tour of the Sand Flats Recreation Area is scheduled for June 9 beginning at 8 a.m. and concluding at 5 p.m. On June 10, the RAC will meet at the LaQuinta Inn, 815 South Main, Moab, Utah, from 8 a.m. until noon.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: On June 9, the Council will be taking a field tour, looking at OHV issues and impacts related to unofficial events and dispersed camping. On June 10, the RAC will discuss the OHV Subgroup's report, the Moab Field Office's route designation process, and updates on issues within BLM Utah. A public comment period, where members of the public may address the Council, is scheduled from 10:45 a.m. until 11:15 a.m. Written comments may be sent to the Bureau of Land Management address listed above.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: April 27, 2004.

Sally Wisely,

State Director.

[FR Doc. 04–9944 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–58575]

Esmeralda County, Nevada; Notice of Realty Action: Direct Sale of Public Lands, Esmeralda County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands near Dyer, Esmeralda County, Nevada, have been examined and found suitable for sale utilizing direct sale procedures.

DATES: Comments must be submitted by June 17, 2004.

ADDRESSES: Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Post Office Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Wendy Seley, Realty Specialist, at the above address or at (775) 482–7800.

SUPPLEMENTARY INFORMATION: The following described lands have been appraised at a fair market value (FMV) of $5,500.00.

Mount Diablo Meridian, Nevada

T. 1 S., R. 35 E., Sec. 16, lot 13;

Totaling 1.35 acres, more or less.

These lands are being offered for direct sale, pursuant to 43 CFR 2711.3–3 (a)(5), to The Botner 1992 Family Trust of Dyer, Nevada to resolve inadvertent unauthorized use and development. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of October 21,1976 (43 U.S.C. 1701,1713, 1719). The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium and potassium, and geothermal resources are reserved on the land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

And will be subject to the following:

1. A right-of-way authorized under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961) for powerline purposes granted to Valley Electric Association, its successor or assignees, by right-of-way No. NEV–051579.

2. All existing and valid land uses, including livestock grazing leases, unless waived.

3. Valid existing rights.

The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party arising out of or in connection with the patentee's use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations that are now or in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by

Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

No warranty of any kind shall be given or implied as to the potential use of the land offered for sale. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. In the event of a sale, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. The remaining unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The purchaser will be required to pay a $50.00 non-refundable filing fee for conveyance of the available mineral interests. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 30 percent of the purchase price, the $50.00 filing fee for conveyance of mineral interests, and for payment of publication costs. The purchaser must remit the remainder of the purchase price within 180 days from the date the sale offer is received. Payments must be by certified check, postal money order, bank draft or cashiers check, payable to the U.S. Department of the Interior—BLM. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. This parcel of land located near Dyer, Nevada, is being offered for sale through direct sale procedures. The land is not required for Federal purposes. The disposal (sale) of the parcel would serve an important public objective by resolving the management costs of an inadvertent unauthorized use of the public lands. As such, these lands meet the criteria found under 43 CFR 2710.0–3(a)(2). The proposed action is consistent with the objectives, goals, and decisions of the Tonopah Resource Management Plan. An appraisal report has been prepared by a state certified appraiser for the purposes of establishing fair market value (FMV). The appraisal report is available for review at the address shown above.

Publication of this Notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws, except sale under the Federal Land Policy and Management Act of 1976. The segregation will terminate upon issuance of the patent or January 28, 2005, whichever occurs first.

For a period until June 17, 2004, interested parties may submit comments to the Tonopah Field Station Manager at the above address. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior. The land will not be offered for sale until July 2, 2004.

Dated: March 16, 2004.

Raymond C. Lee,

Acting Assistant Field Manager, Tonopah.

[FR Doc. 04–9891 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1430–ES; WYW–149433]

Notice of realty action; classification and conveyance of public lands for recreation and public purposes in Park County, WY.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following public lands in Park County, Wyoming, have been examined and found suitable for classification for conveyance to Park County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Park County intends to use the following lands for solid waste disposal purposes.

1. Sixth Principal Meridian, Park County, Wyoming

T. 52 N., R. 101 W.,
Sec. 17, SW¼SW¼, SW¼SE¼SW¼, S½NW¼SE¼SW¼, NW¼NW¼SE¼SW¼, W½SE¼SE¼SW¼, SW¼NE¼SE¼SW¼.

The land described contains approximately 65.00 acres.

The following public lands, currently under lease to Park County for solid waste disposal purposes, were previously classified in 1968 for lease. This classification will allow for the disposal of the existing, leased landfill area and access road to Park County under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

2. Sixth Principal Meridian, Park County, Wyoming

T. 52 N., R. 101 W.,
Sec. 20, W½NW¼, N½N½NE¼SW¼.

The land described contains approximately 90.00 acres.

The following public lands have been examined and found suitable for classification for conveyance for solid waste disposal purposes, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). There is no application for conveyance of these lands at this time.

3. Sixth Principal Meridian, Park County, Wyoming

T. 52 N., R. 101 W.,
Sec. 17, NW¼SW¼, SW¼SW¼NW¼;
Sec. 18, E½SE¼SE¼, E½NW¼SE¼SE¼, NE¼SE¼, NE¼NW¼SE¼, W½SE¼NE¼, SE¼SE¼NE¼, E½SW¼NE¼, NW¼SW¼NE¼.

The land described contains approximately 185.00 acres.

FOR FURTHER INFORMATION CONTACT: Cara Blank, Cody Field Office, Bureau of Land Management, PO Box 518, Cody, Wyoming 82414, (307) 578–5900.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. The conveyance of these lands to Park County for sanitary landfill purposes is consistent with the Cody Resource Management Plan and would be in the public interest. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Cody Field Office, Cody, Wyoming. The conveyance, when completed, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such minerals from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.
4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302).

5. Park County, its successors or assigns, and the City of Cody (predecessor in interest) on the existing landfill, assume all liability for and shall defend, indemnify, and save the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the lands described as the, Sixth Principal Meridian, Park County, Wyoming, T. 52 N., R. 101 W., sec. 17, SW¼SW¼, SW¼SE¼SW¼, S½NW¼SE¼SW¼, NW¼NW¼SE¼SW¼, W½SE¼SE¼SW¼, SW¼NE¼SE¼SW¼, sec. 20, W½NW¼, N½N½NE¼SW¼., regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

6. Existing rights of record at the time of patent issuance, including right-of-way grants WYW–89601, to Pacific Power & Light Company, for a power line; WYC–045214, to Great Falls Gas Company, for a 6″ pipeline; WYC–066394, to WAPA, for a 69 kV power line; WYW–94173, to Cody Gas Company, for an 8″ pipeline; WYW–112026, to WAPA, for a 115 kV power line; WYW–94163, to Pacific Power & Light Company, for a power line; and WYW–0313050, to Qwest Corporation, for a telephone line.

7. The land described in Summary Paragraph No. 1 has been conveyed for utilization as a solid waste disposal site. Records describing location of cells and other information about the solid waste disposal site are available from Park County. Solid waste commonly includes small quantities of household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (43 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

8. The land described in Summary Paragraph No. 2 has been conveyed for continued use as a solid waste disposal site. Records describing location of cells and other information about the solid waste disposal site are available from the Bureau of Land Management (Past use) and from Park County for past and continued use. Solid waste commonly includes small quantities of household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (43 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

9. Provided, that the land conveyed under Summary Paragraph No. 1, shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

10. No portion of the land described in Summary Paragraph No. 2, shall under any circumstances revert to the United States.

11. If, at any time, the patentee transfers to another party ownership of any portion of the land described in Summary Paragraph No. 2, not used for the purpose(s) specified in the application and the plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

Eighteen AUMs within the Horse Center South Grazing Allotment, associated with the lands described in Summary Paragraph No. 1 and No. 2, will be canceled.

Conveyance of these lands to Park County is consistent with applicable Federal and County land use plans and will help meet the needs of Park County residents for solid waste disposal. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Cody Field Office, P.O. Box 518, Cody, Wyoming 82414.

Classification Comments: Interested parties may submit comments involving the request to amend the 1968 lease classification to include conveyance of the lands described in Summary Paragraph No. 2, as well as the classification of the lands described in Summary Paragraph No. 1 and 3, for disposal for landfill purposes. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision; or any other factor not directly related to the suitability of the land for a sanitary landfill. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Dated: March 18, 2004.

Michael J. Blymyer,

Field Manger, Cody.

[FR Doc. 04–9892 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–120–04–1630–PD]

Proposed Supplementary Rules for the Public Lands Administered by the Bureau of Land Management in Nevada Relating to the Unlawful Use of Alcohol and Drugs

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rules for public lands within the State of Nevada.

SUMMARY: The Bureau of Land Management (BLM) is establishing these proposed supplementary rules for application to the public lands within the State of Nevada. The rules relate to the illegal use of alcohol and drugs on public lands. The BLM needs supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce regulations pertaining to alcohol and drug laws on public lands in a manner consistent with current State of Nevada State Laws as contained in the Nevada Revised Statutes.

DATES: Send your comments by July 2, 2004. In developing final rules, the BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: Send comments to Erika Schumacher, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd. Reno, Nevada 89502 or to *Erika_Schumacher@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Donette Gordon, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520–0006, 775–861–6667.

I. Discussion of the Supplementary Rules

These proposed supplementary rules would apply to all BLM-administered public lands within the State of Nevada. In keeping with the BLM's performance goal to reduce threats to public health and safety and property, these proposed supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health. Alcohol-related offenses are a growing problem on the public lands. Unlawful consumption of alcohol and drugs, and abuses of alcohol and drugs, such as driving under the influence, poses a significant health and safety hazard to users and uses of the public lands. This may result in the destruction of natural resources and property, and/or cause physical injury or death. In addition, drug related offenses, including the possession of drug paraphernalia, may encourage the illegal use of controlled substances by making the drug culture more visible and enticing. Further, the presence of drug paraphernalia on public lands may tend to promote, suggest, or increase the public acceptability of the illegal use of controlled substances. These proposed supplementary rules will assist BLM in reducing illegal use of drugs and alcohol on public lands. These proposed supplementary rules would allow BLM Law Enforcement Officers to enforce on public lands regulations pertaining to alcohol and drug laws in a manner patterning current State of Nevada laws as contained in the Nevada Revised Statues in an effort to further the working relationship and partnerships forms with numerous Sheriff's Departments throughout Nevada and the Nevada Highway Patrol.

II. Procedural Information

Executive Order 12866, Regulatory Planning and Review.

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at preventing unlawful personal behavior on public lands for purposes of protecting public health or safety, State, local or tribal governments or communities. These proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; the supplementary rules would not alter the budgetary effects of entitlements, grants, user fees or loan programs or the right or obligations of their recipients; would not raise novel legal or policy issues. The supplementary rules would merely enable BLM law enforcement personnel to enforce regulations pertaining to unlawful possession/use of alcohol and drugs in a manner patterning current State of Nevada laws as contained in the Revised Statues, where appropriate on public lands.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately put a burden on small entities. The RFA requires a regulatory flexibility analysis if a rules would have a significant economic impact, either detrimental or on a substantial number of small entities. The final supplementary rules do not pertain specifically to commercial or governmental entities of any size, and do not regulate any legal business activity, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These proposed supplementary rules would not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the proposed supplementary rules only pertain to individuals who may unlawfully use alcohol or drugs on the public lands. The proposed rule will assist in the protection of the public lands and facilities and those including small business concessionaires and outfitters, who use them. The proposed supplementary rules would have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor would these interim proposed supplementary rules have significant or unique effect on State, local, or tribal governments. The supplementary rules would be patterned on State law. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandate Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Action and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights in any form, and so do not cause the impairment of any property rights. The rules would not provide for the surrender or confiscation of any legal personal or real property. Therefore, the Department of Interior has determined that the supplementary rules would not give rise of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government. The supplementary rules apply only to one State, Nevada, and do not address jurisdictional issues involving the Nevada State government. Therefore, in accordance with Executive Order 13132, BLM has determined that the proposed supplementary rules do not have sufficient federalism implications to warrant preparation of a federalism assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that these proposed supplementary rules would not include policies that have tribal implications. Since the rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships should remain unaffected. The proposed supplementary rules only prohibit the unlawful use of alcoholic beverages and illegal drugs on public lands.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Nevada State Office of BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

BLM has determined the supplementary rules are categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM) Chapter 2, Appendix 1. In addition, the supplemental rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2 and Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of Interior, the term "categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal Agency, and for which neither an environmental assessment nor environmental impact statement is required.

Executive Order 13211, Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These proposed supplementary rules do not comprise a significant energy action. The rules would not have an adverse effect on energy supplies, production or consumption. They only address use of alcoholic beverages and drugs on public lands, and have no conceivable connection with energy policy.

Author

The principal author of these supplementary rules is State Staff Ranger Erika Schumacher of the Nevada State Office, Bureau of Land Management, Department of the Interior.

Under the authority of 43 CFR 8365.1–6, 43 U.S.C. 1733a, the Nevada State Director, Bureau of Land Management, issues supplementary rules for public lands in Nevada.

Supplementary Rules on Possession and Use of Drugs and Alcohol on Public Lands

The Nevada State Office issues these supplementary rules under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1740 and 43 CFR 8365.1–6. The State law as it pertains to driving under the influence, minors in possession, open container and drug paraphernalia that is now or later to be in effect is adopted and made part of the regulation.

1. Definitions

The following definitions will apply to the proposed supplementary rules, unless modified within a specific part or regulation:

a. Drug paraphernalia means equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance to include diluting agents or substances.

b. Motor vehicle means any vehicle that is self-propelled by a non-living power source, including a vehicle that is propelled by electric power. Exempt from this definition are motorized wheelchairs.

c. Operator means any person who operates, drives, controls, or otherwise has charge of a mechanical mode of transportation or any other mechanical equipment.

d. Public lands means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership. This includes, but is not limited to a paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or areas where the public may drive a motorized vehicle, paved or unpaved roads, roads, routes or trails.

2. Operating a Motor Vehicle Under the Influence of Alcohol or Drugs

a. You must not operate or be in actual physical control of a motor vehicle on public lands while:

i. Under the influence of alcohol, or a drug, or drugs or any combination thereof, to a degree that renders the operator incapable of safe operation of that vehicle; or

ii. The alcohol concentration in your blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. If the State of Nevada establishes by statute a more restrictive standard of alcohol concentration than that defined in this supplemental rule, that more restrictive standard is hereby adopted and made a part of this supplemental rule and supersedes the standard specified in the preceding sentence.

a. At the request or direction of a law enforcement officer who has probable cause to believe that you as an operator of a motor vehicle within public lands have violated a provision of paragraph (a) of this section, you must submit to one or more tests of the blood, breath, saliva or urine for the purpose of determining blood alcohol and drug content.

b. Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

c. Any test or tests for the presence of alcohol and drugs will be determined by and administered at the direction of an authorized person.

d. Any test will be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

e. The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(i) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(ii) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

f. The provisions of paragraph (d) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

3. Open Container of Alcoholic Beverage

a. You must not carry or store a bottle, can or other receptacle containing an alcoholic beverage that is open, or has been opened, or whose seal is broken or the contents of which have been partially removed, within a motor vehicle on public lands.

b. Each person within a motor vehicle is responsible for complying with the provision in this section that pertains to carrying an open container. The operator of a motor vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

c. This section does not apply to:

i. An open container stored in the trunk of a motor vehicle or, if a motor vehicle is not equipped with a trunk, to an open container stored in some other portion of the motor vehicle designed for the storage of luggage and not normally occupied by or readily accessible to the operator or passengers; or

ii. An open container stored in the living quarters of a motor home or camper; or

iii. Unless otherwise prohibited, an open container carried or stored in a motor vehicle that is parked and the vehicle's occupant(s) are camping.

iv. For the purpose of paragraph (c)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a motor vehicle.

4. Possession of Alcohol by Minor

a. The following are prohibited:

i. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

ii. Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

b. This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

5. Possession of Drug Paraphernalia

a. Possession of drug paraphernalia by any person on public lands is prohibited.

b. Drug paraphernalia is defined as equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance.

Penalties

Under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), if you violate or fail to comply with these supplementary rules. You may be subjected to imprisonment for not more than 12 months, or a fine in accordance with 18 U.S.C. 3571, other penalties in accordance with 43 U.S.C. 1733 or both.

Robert V. Abbey,
State Director.

[FR Doc. 04–9961 Filed 4–30–04; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1073–1075 (Preliminary)]

Certain Circular Welded Carbon Quality Line Pipe From China, Korea, and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Korea, and Mexico of certain circular welded carbon quality line pipe provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the FR as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 3, 2004, a petition was filed with the Commission and Commerce by American Steel Pipe Division of American Cast Iron Pipe Co., Birmingham, AL; IPSCO Tubulars, Inc., Camanche, IA; Lone Star Steel Co., Dallas, TX; Maverick Tube Corp., Chesterfield, MO; Northwest Pipe Co., Portland, OR; and Stupp Corp., Baton Rouge, LA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain circular welded carbon quality line pipe from China, Korea, and Mexico. Accordingly, effective March 3, 2004, the Commission instituted antidumping duty investigations Nos. 731–TA–1073–1075 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the FR of March 9, 2004 (69 FR 11404). The conference was held in Washington, DC, on March 24, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 19, 2004. The views of the Commission are contained in USITC Publication 3687 (April 2004), entitled Certain Circular Welded Carbon Quality Line Pipe from

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

China, Korea, and Mexico: Investigations Nos. 731–TA–1073–1075 (Preliminary).

Issued: April 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–9987 Filed 4–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–384 and 731–TA–806–808 (Review)]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia

AGENCY: International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan, the suspended countervailing duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Brazil, and the suspended antidumping duty investigation on certain hot-rolled flat-rolled carbon-quality steel products from Russia.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Japan and termination of the suspended investigations on certain hot-rolled flat-rolled carbon-quality steel products from Brazil and Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is June 22, 2004. Comments on the adequacy of responses may be filed with the Commission by July 16, 2004. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 29, 1999, the Department of Commerce (Commerce) issued an antidumping duty order on imports of certain hot-rolled flat-rolled carbon-quality steel products from Japan (64 FR 34778). Effective July 12, 1999, Commerce suspended the antidumping duty investigation on such imports from Russia (64 FR 38642, July 19, 1999) and, effective July 6, 1999, Commerce suspended the countervailing duty and antidumping duty investigations on such imports from Brazil (64 FR 38792 and 38797, July 19, 1999). Subsequent to the termination of the suspension agreement with respect to the antidumping duty investigation on imports of certain hot-rolled flat-rolled carbon-quality steel products from Brazil (67 FR 6226, February 11, 2002), Commerce issued an antidumping duty order on such imports (67 FR 11093, March 12, 2002). The Commission is conducting reviews to determine whether revocation of the orders and terminations of the suspended investigations would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, Japan, and Russia.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product consisting of all hot-rolled steel, as defined in Commerce's scope.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as all producers of hot-rolled steel.

(5) The Order Date is the date that the antidumping duty orders under review became effective and the investigations were suspended. In the reviews concerning the suspended antidumping and countervailing duty investigations and the subsequent antidumping duty order on imports of certain hot-rolled flat-rolled carbon-quality steel products from Brazil, the Order Date is July 6, 1999. In the review concerning the suspended antidumping investigation on imports of certain hot-rolled flat-rolled carbon-quality steel products from Russia, the Order Date is July 12, 1999. In the review concerning the antidumping duty order on imports of certain hot-rolled flat-rolled carbon-quality steel products from Japan, the Order Date is June 29, 1999.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the FR. The Secretary will maintain a public service list containing the names

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–090, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response To This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders and termination of the suspended investigations on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each of the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each of the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each of the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 23, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–9992 Filed 4–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Second Review)]

Natural Bristle Paint Brushes from China

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on natural bristle paint brushes from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on natural bristle paint brushes from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 2004. Comments on the adequacy of responses may be filed with the Commission by July 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 14, 1986, the Department of Commerce issued an antidumping duty order on imports of natural bristle paint brushes from China (51 FR 5580). Following five-year reviews by Commerce and the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–089, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission, effective June 10, 1999, Commerce issued a continuation of the antidumping duty order on imports of natural bristle paint brushes from China (64 FR 42911). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as all domestically produced paint brushes (including natural bristle and synthetic filament paint brushes).

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited five-year review determination, the Commission defined the Domestic Like Product as all domestic producers of paint brushes.

(5) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1998.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1998, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 23, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–9991 Filed 4–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation With Respect To One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondent Atico International USA,

Inc. ("Atico") to terminate the above-captioned investigation with respect to that respondent on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO., 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan.

On March 9, 2004, complainants and respondent Atico filed a joint motion to terminate the investigation as to Atico on the basis of a consent order. On March 19, 2004, the Commission investigative attorney filed ("IA") a response supporting the motion in part. The IA noted that the motion did not include a statement that there were no other agreements between the parties and that there was no public version of the settlement agreement. On March 19, 2004, complainants and Atico filed an amended joint motion to terminate the investigation as to Atico. The amended motion addressed the concerns of the IA, and on March 22, 2004, the ALJ issued the subject ID terminating the investigation as to Atico on the basis of a consent order.

No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: April 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–9986 Filed 4–30–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Identification of explosive materials.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 2, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Bangs, Public Safety Branch, Suite 710, 800 K Street, NW., Washington, DC 20001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Identification of Explosive Materials.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The regulations of 27 CFR 55.109 require that manufacturers of explosive materials place marks of identification on the materials manufactured. Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,563 respondents will respond to this information collection. Estimated time for a respondent to respond is none. Because the manufacturers are required to place markings on explosives, the burden hours are considered usual and customary. 5 CFR 1320.3(b)(2) states, there is no burden when the collection of information is usual and customary.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual total burden hour associated with this collection is 1 hour.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 27, 2004.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–9953 Filed 4–30–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on April 1, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Centre for Research and Technology Hellas, Thessaloniki, Greece; and Stichting SURF, Utrecht, The Netherlands have been added as parties to this venture. Also, Fretwell-Downing Informatics, Sheffield. United Kingdom has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 21, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2004 (69 FR 10262).

Dorothy Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–10000 Filed 4–30–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Optical Internetworking Forum

Notice is hereby given that, on April 5, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cray, Chippewa Falls, WI; FiberHome Telecommunications, Wuhan, People's Republic of China; Maxim Integrated Products, Sunnyvale, CA; Acuid, Midlothian, United Kingdom; Azna, Wilmington, MA; Mitretek, Falls Church, VA; Pontusys, Pasadena, CA; and Wavecrest, Eden Prairie, MN have been added as parties to this venture. Also, Innovance, Ottawa, Ontario, Canada; and US Conec, Hickory, NC have been dropped as parties to this venture. Synopsys, Mountain View, CA acquired Accelerant Networks, Beaverton, OR.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on October 14, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2003 (68 FR 64125).

Dorothy Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–10002 Filed 4–30–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 12, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Atrenta, Inc., San Jose, CA; Steve Bibyk (individual member), Columbus, OH; Bitboys Oy, Noormarkku, Finland; Certess, Voreppe, France; Digitas, Tranby, Norway; Richard Stolzman (individual member), Campbell, CA; and Tower Semiconductors, Migdal Haemek, Israel have been added as parties to this venture.

Also, Advantest, Gunma, Japan; Analog Devices, Norwood, MA; Barcelona Designs, Newark, CA; CAST, Inc., Nyack, NY; IMEC, Leuven, Belgium; InTime Software, Cupertino, CA; Matsushita Electric Industrial, Co., Ltd., Osaka, Japan; Microelectronics Research Insit PROGRESS, Moscow, Russia; ModelWare, Inc., Red Bank, NJ; NEC Electronics Corp., Santa Clara, CA; Piiri Technologies Oy, Oulu, Finland; Sharp Corporation, Tenri, Japan; SPaSE BV, Nijmegen, The Netherlands; Telecom Italia, Torino, Italy; Vast Systems, Inc., San Jose, CA; and Christopher Wang (individual member), Tokyo, Japan have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 10, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the

Act on November 12, 2003 (68 FR 64126).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–10001 Filed 4–30–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 13, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 13, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of April, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/29/2004 and 04/02/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,608	MedSource Technologies (Comp)	Newton, MA	03/29/2004	03/22/2004
54,609	Akzo Nobel Coatings, Inc. (Comp)	High Point, NC	03/29/2004	03/19/2004
54,610	Watts Regulator (Wkrs)	Spindale, NC	03/29/2004	03/17/2004
54,611	Jockey International, Inc. (Comp)	Mt. Sterling, KY	03/29/2004	03/29/2004
54,612	CCC Information Services (Wkrs)	Chicago, IL	03/29/2004	03/15/2004
54,613	TI Group Automotive Systems, LLC (Comp)	Greeneville, TN	03/29/2004	03/23/2004
54,614	IDRA Prince (Wrks)	Holland, MI	03/29/2004	03/27/2004
54,615	PPG Industries, Inc. (Wkrs)	Berea, KY	03/29/2004	03/23/2004
54,616	B and C Hosiery, Inc. (Comp)	Henagar, AL	03/30/2004	03/19/2004
54,617	General Electric (USWA)	Coshocton, OH	03/30/2004	03/10/2004
54,618	Dayton Technologies (DE)	Wilmington, DE	03/30/2004	03/29/2004
54,619	Agilent Technologies (Wkrs)	Liberty Lake, WA	03/30/2004	03/29/2004
54,620	NVF (DE)	Wilmington, DE	03/30/2004	03/29/2004
54,621	W.P. Industries (Wkrs)	Norwalk, CA	03/30/2004	03/02/2004
54,622	Henderson Sewing Machine Co. (Comp)	Andalusia, AL	03/30/2004	03/26/2004
54,623	Piedmont Sewing Machine (Comp)	Pittsburgh, PA	03/30/2004	03/30/2004
54,624	Belarus Tractor International (Wkrs)	Milwaukee, WI	03/30/2004	03/22/2004
54,625	SGL Carbon, LLC (IUE)	St. Mary's, PA	04/01/2004	03/22/2004
54,626	Distribution Dynamics (Wkrs)	Portland, OR	04/01/2004	03/18/2004
54,627	CFM Home Products (Comp)	Ardmore, TN	04/01/2004	03/11/2004
54,628	United States Steel (Wkrs)	Pittsburgh, PA	04/01/2004	03/25/2004
54,629	Motorola (Wkrs)	Tempe, AZ	04/01/2004	03/31/2004
54,630	Osborn Manufacturing, Co. (UAW)	Cleveland, OH	04/01/2004	03/22/2004
54,631	IBM Corporation (Wkrs)	RTP, NC	04/01/2004	03/26/2004
54,632	Alpine Electronics Mfg. of America, Inc. (Comp)	Greenwood, IN	04/01/2004	03/25/2004
54,633	Philips Consumer Electronics (Comp)	Knoxville, TN	04/01/2004	03/24/2004
54,634	Ampad (Comp)	W. Valley City, UT	04/01/2004	03/19/2004
54,635	West Side Stitching, Inc. (Comp)	Wyoming, PA	04/01/2004	03/30/2004
54,636	Wyoming Wood Products, Inc. (Comp)	Wyoming, PA	04/01/2004	03/03/2004
54,637	Rice Mills, Inc. (Comp)	Belton, SC	04/01/2004	03/31/2004
54,638	Spartech Polycom (Wkrs)	Danora, PA	04/01/2004	03/30/2004
54,639	PL Subsidiary, Inc. (Comp)	Winder, GA	04/01/2004	03/29/2004
54,640	PSC Metals, Inc. (Comp)	Cleveland, OH	04/01/2004	03/30/2004
54,641	Flynt Fabrics, Inc. (Comp)	Burlington, NC	04/01/2004	03/24/2004
54,642	Smart Papers, LLC (Wkrs)	Hamilton, OH	04/01/2004	03/25/2004
54,643	General Electric Consumer Finance (Wkrs)	Canton, OH	04/01/2004	03/22/2004
54,644	Celestica (Comp)	Chippewa Falls, WI	04/01/2004	03/31/2004
54,645	Precision Interconnect/Tyco Electronics (OR)	Wilsonville, OR	04/01/2004	03/30/2004
54,646	Advanced Glass Fiber Yarns, LLC (Comp)	South Hill, VA	04/01/2004	03/23/2004
54,647	Ormet Primary Aluminum Corp. (Comp)	Hannibal, OH	04/01/2004	03/31/2004
54,648	American General Life (Wkrs)	Dallas, TX	04/02/2004	03/29/2004
54,649	Cigna Healthcare (NH)	Hooksett, NH	04/02/2004	04/02/2004
54,650	Wright Express (Wkrs)	S. Portland, ME	04/02/2004	03/31/2004
54,651	XL Dowel (ME)	New Portland, ME	04/02/2004	03/31/2004

APPENDIX—Continued

[Petitions instituted between 03/29/2004 and 04/02/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,652	Tanya Creations, Inc. (Comp)	E. Providence, RI	04/02/2004	03/01/2004
54,653	Affina (Wkrs)	Peoria, IL	04/02/2004	03/29/2004
54,654	Medtronic Vascular (Comp)	Danvers, MA	04/02/2004	03/30/2004
54,655	KF Industries (Wkrs)	Oklahoma City, OK	04/02/2004	03/31/2004
54,656	Eljer Plumbingware, Inc. (USWA)	Ford City, PA	04/02/2004	03/26/2004

[FR Doc. 04–9962 Filed 4–30–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–06385]

Ameriphone, Inc., A Wholly Owned Subsidiary of Plantronics, Inc., Garden Grove, CA; Notice of Revised Determination on Remand; Withdrawal

SUMMARY: The Department of Labor is withdrawing an earlier revised notice, published in the **Federal Register** on April 20, 2004 (69 FR 21162–21163), pertaining to the Notice of Revised Determination on Remand of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter "Ameriphone"). For the reasons discussed below, the Department has decided to withdraw this revised notice.

DATES: This withdrawal is made on May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Elliott S. Kushner, Certifying Officer, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C5311, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–3565. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Department is withdrawing the revised notice pertaining to the initial denial of NAFTA-Transitional Adjustment Assistance (NAFTA–6385) for the workers of Ameriphone, Inc., a wholly owned subsidiary of Plantronics, Inc., Garden Grove, California (hereafter "Ameriphone"). The revised notice, which was not intended to be a valid document, was inadvertently published on April 20, 2004 (69 FR 21162–21163).

A revised notice, pertaining to the subject facility, was previously corrected on September 9, 2003 and published in the **Federal Register** on September 17, 2003 (68 FR 54490) and is the valid decision applicable to workers of the subject facility.

Based on this review, the Department has decided to withdraw the revised notice published on April 20, 2004 (69 FR 21162–21163).

Document Preparation

This document was prepared under the direction and control of Elliott S. Kushner, Certifying Officer, Division of Trade Adjustment, Employment and Training Administration, U.S. Department of Labor.

Signed in Washington, DC this 27th day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–995 Filed 4–30–04; 8:45 am]

BILLING CODE 4510–13–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 212, Qualifications Investigation (Professional, Technical, and Administrative Positions (other than clerical positions).

NRC Form 212A, Qualifications Investigation (Secretarial/Clerical)

2. *Current OMB approval number:* 3150–0033, NRC Form 212; 3150–0034, NRC Form 212A.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Current/former supervisors, co-workers of applicants for employment.

5. *The number of annual respondents:* NRC Form 212: 1200; NRC Form 212A: 400.

6. *The number of hours needed annually to complete the requirement or request:* NRC Form 212, 300 hours (15 minutes per response); NRC Form 212A, 100 hours (15 minutes per response).

1. *Abstract:* Information requested on NRC Form 212, "Qualifications Investigation, Professional, Technical, and Administrative Positions (other than clerical positions)" and NRC Form 212A, "Qualification Investigation (Secretarial/Clerical)" is used to determine the qualifications and suitability of external applicants for employment with NRC. The completed forms may be used to examine, rate and/or assess the prospective employee's qualifications. The information regarding the qualifications of applicants for employment is reviewed by professional personnel of the Office of Human Resources, in conjunction with other information in the NRC files, to determine the qualifications of the applicant for appointment to the position under consideration.

Submit, by July 2, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville

Pike, room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5F52, Washington, DC. 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 27th day of April, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. E4–994 Filed 4–30–04; 8:45 a.m.]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–07710–CO; License No. 50–14102–01, EA–03–126; ASLBP No. 04–827–02–CO]

Alaska Department of Transportation and Public Facilities; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

State of Alaska Department of Transportation and Public Facilities (Confirmatory Order Modifying License Effective Immediately)

A Licensing Board is being established pursuant to a hearing opportunity notice issued in conjunction with a March 15, 2004 immediately affective NRC staff confirmatory order modifying the 10 CFR part 30 byproduct materials license of the State of Alaska Department of Transportation and Public Facilities (ADOT) authorizing the possession and use of certain license material in portable gauging devices (69 FR 13594 (Mar. 23, 2004)). In response to that notice a request for hearing dated April 9, 2004, has been filed by petitioners Robert F. Farmer and Alaska Forum for Environmental Responsibility challenging the confirmatory order, which requires ADOT to take certain actions to ensure its compliance with NRC employee protection regulations (10 CFR 30.7) and to ensure ADOT has established and will maintain a safety conscious work environment (*see* 61 FR 24336 (May 14, 1996)).

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 27th day of April 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E4–993 Filed 4–30–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17j–1; SEC File No. 270–239; OMB Control No. 3235–0224.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17j–1 under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"), which the Commission adopted in 1980 [1] and amended in 1999,[2] implements section 17(j) of the Act. Section 17(j) makes it unlawful for persons affiliated with a registered investment company or with the investment company's investment adviser or principal underwriter (each, a "17j–1 organization"), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) authorizes the Commission to promulgate rules requiring the adoption of code of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and "Access Persons" [3] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a rule 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization [4] to: (i) Adopt a written code of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report at least annually to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons from violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

[1] Prevention of Certain Unlawful Activities With Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821–01 (Aug. 27, 1999)).

[3] Rule 17j–1(a)(1) defines an "access person" as "any director, officer, general partner, or advisory person of a fund or of a fund's investment adviser" and as "any director, officer, or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities."

[4] Money market funds and funds that do not invest in "Covered Securities," as defined in paragraph (a)(4) of the rule, are excepted.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[5] to file: (i) Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the access person's securities and accounts, (ii) within 10 days of the end of each calendar quarter, a dated quarterly transaction report providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter, and (iii) dated annual holding reports providing information with respect to each covered security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

The Commission estimates that each year a total of 73,976 Access Persons and 17j–1 organizations are subject to the rule's reporting requirements. Respondents provide approximately 102,230 responses each year. The total annual burden of the rule's paperwork requirements is estimated to be approximately 243,884 hours. Of the total, 38,722 hours are associated with reporting requirements for access persons, and the remaining 205,162 hours are associated with the requirements applicable to rule 17j–1 entities.

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 26, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9975 Filed 4–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49624; File No. PCAOB–2003–11]

Public Company Accounting Oversight Board; Order Approving Proposed Technical Amendments to Interim Standards Rules

April 28, 2004.

I. Introduction

On December 23, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rule amendments (PCAOB–2003–11) pursuant to sections 101, 103 and 107 of the Sarbanes-Oxley Act of 2002 (the "Act"), consisting of technical amendments to the PCAOB's interim standards rules. Notice of the proposed rule amendments was published in the **Federal Register** on March 24, 2004.[1] The Commission received no comment letters relating to the proposed rule amendments.[2] For the reasons discussed below, the Commission is granting approval of the proposed rule amendments.

II. Description

Section 103 of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission. Section 103 of the Act also authorized the PCAOB to adopt initial or transitional standards, to the extent the Board deemed necessary, and directed that any such initial or transitional standards would be separately approved by the Commission at the same time the Commission made its determination that the PCAOB was operational under section 101(d) of the Act.

Pursuant to its standards-setting authority under the Act, on April 16, 2003, the Board adopted on an initial, transitional basis five temporary rules that directed registered public accounting firms to comply with the then-existing generally accepted standards on auditing, attestation, quality control, ethics and independence (the "interim standards rules"). On November 12, 2003, the Board proposed technical amendments to its interim standards rules to reflect that, when the Board adopts a new auditing or related professional practice standard that addresses a subject matter also addressed in the interim standards, the affected portion of the interim standards will be superseded or amended. Specifically, the proposed technical amendments add the phrase "to the extent not superseded or amended by the Board" to each of the Board's interim standards rules (PCAOB

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[5] Rule 17j–1(d)(2) exempts Access Persons from reporting in five instances in which reporting would be duplicative or would not serve the purposes of the rule.

[1] *See* Rel. No. 34–49444 (March 18, 2004).

[2] The Commission received one comment letter in response to the request for comments on the proposed technical amendments, but the letter's contents related solely to the PCAOB's Proposed Rule on Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* (Rel. No. 34–49544; File No. PCAOB–2004–03).

Rules 3200T, 3300T, 3400T, 3500T and 3600T).

The PCAOB adopted the proposed technical amendments to its interim standards rules on December 17, 2003, and submitted them for Commission approval on December 23, 2003. Pursuant to the requirements of section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), the Commission published the proposed amendments for public comment on March 18, 2004.

III. Discussion

The Commission received no public comments relating to the PCAOB's proposed technical amendments to its interim standards rules. Section 103 of the Act directs the PCAOB to establish auditing and related professional practice standards. Section 103 also authorized the PCAOB to adopt initial or transitional standards, subject to the approval of the Commission. Pursuant to this authority, the Board adopted five interim standards rules as its initial, transitional auditing and related professional practice standards. These interim standards rules facilitate the Board's exercise of its standards-setting authority under the Act and assist in fulfilling the Board's standards-setting obligations under the Act. The proposed technical amendments are intended to revise these interim standards rules to clarify that a registered public accounting firm, and its associated persons, should comply with the Board's interim standards rules "to the extent not superseded or amended by the Board."

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed technical amendments to the Board's interim standards rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Exchange Act, that the proposed rule amendments (File No. PCAOB–2003–11) be and hereby are approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–9976 Filed 4–30–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49621; File No. SR–Amex–2004–19]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Listing and Trading of Contingent Principal Protection Notes Linked to the Performance of the Dow Jones Global Titans Index

April 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On April 23, 2004, Amex filed an amendment to the proposal.[3] The proposal was amended again on April 23, 2004.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade principal protected notes, linked to the performance of the Dow Jones Global Titans 50 Index ("Global Titans Index").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[5] The Amex proposes to list for trading under section 107A of the Company Guide notes linked to the performance of the Global Titans Index that provide for principal protection ("Principal Protected Notes" or "Notes").[6] Citigroup will issue the Notes under the name "Principal Protected Equity Linked Notes." The Global Titans Index is determined, calculated and maintained solely by Dow Jones.[7] The Notes will provide for a participation in the positive performance of the Global Titans Index during their term while also reducing the risk exposure to the principal investment amount.

The Principal Protected Notes will conform to the initial listing guidelines under section 107A[8] and continued

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[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 23, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex filed a 19b–4 that replaced and superseded the original filing in its entirety.

[4] *See* letter from Eric Van Allen, Assistant General Counsel, Amex, to Florence E. Harmon, Senior Special Counsel, Division, Commission, dated April 23, 2004 ("Amendment No. 2"). In Amendment No. 2, Amex added a discussion regarding the methodology used by Dow Jones for selecting stocks for the Dow Jones Global Titans Index.

[5] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[6] Citigroup Global Markets Holdings, Inc. ("Citigroup") and Dow Jones & Co. ("Dow Jones") have entered into a non-exclusive license agreement providing for the use of the Global Titans Index by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. Dow Jones is not responsible and will not participate in the issuance and creation of the Notes.

[7] The Global Titans Index is a price-weighted index that consists of fifty (50) common stocks. The Index seeks to provide an effective representation of the world's largest global companies. The companies included in the Index are selected for their market capitalization, assets, book value, sales/revenue and net profits. On an annual basis, Dow Jones selects the world's largest stocks by market capitalization to create the Global Titans universe of potential companies. After determining this list, Dow Jones then uses a model, described below, to create the Index based on the factors noted above. The Index was launched on August 11, 1999 with a value of 250.96.

[8] The initial listing standards for the Notes require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer has assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three

listing guidelines under sections 1001–1003[9] of the Company Guide. The Notes are senior non-convertible debt securities of Citigroup. The Notes will have a term of no more than ten (10) years. Citigroup will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit.

The Notes will bear interest at a rate of up to one percent per annum, which will be paid in cash semi-annually. At maturity, a Holder will receive, for each $10 principal amount of Notes held, a payment equal to the sum of $10 and an interest distribution amount. The interest distribution amount will be based on the monthly returns of the Global Titans Index, with each such monthly return subject to a periodic appreciation cap. Specifically, the interest distribution amount will be calculated based on the monthly return of the Dow Jones Global Titans 50 Index during the term of the Notes and will not be less than zero. If the index return (defined below) is less than or equal to an interest received percentage,[10] the interest distribution amount will equal zero. If the index return is greater than the interest received percentage, the interest distribution amount will equal the product of:

$10 * (Index Return − Index Received Percentage)

The index return will equal the compounded value of the periodic capped return for each reset period,[11] computed in the following manner:

[Product of (1.00 + the periodic capped return) for each reset period] − 1.00

The periodic capped return for any reset period (including the reset period ending at maturity) will equal the following fraction:

$$\frac{\text{Ending Value} - \text{Starting Value}}{\text{Starting Value}}$$

provided that the periodic capped return for any reset period will not in any circumstances be greater than a predetermined percentage.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Global Titans Index. The Notes are designed for investors who want an interest payment that participates or gains exposure to the world's largest corporations while limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of the streetTRACKS Dow Jones Global Titans Index Fund at the Exchange.[12] In addition, options are listed and traded on the Global Titans Index Fund.

The Global Titans Index is composed of 50 common stocks, which are chosen by Dow Jones. The stock must, in their opinion of Dow Jones, meet all four of the following criteria to qualify as a candidate for the Index: (1) It must be a well established company with a solid financial situation and a broad client base; (2) it must be well known to global investors for either its long history of success or its widely used products or services; (3) it must be a market leader in its industry with either a dominant position or a competitive advantage; and (4) it must be among the largest of blue-chip companies in the global arena. In constructing the Global Titans Index, a multi-factor methodology is adopted.[13] First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool with a view towards ensuring that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. Dow Jones' rationale for this step is that market value is a universal measurement across industries and also that its use is most appropriate for an index built for investment purposes. Every company in the final pool of 100 must derive some revenue from outside its home country. This screen is instituted to ensure that all stocks in the Index are truly global companies. The next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. These four indicators, two from the balance sheet and two from the income statement, are assets, book value, sales/revenue, and net profit. The combined rankings of these four fundamental factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components.

The Index methodology described in the preceding paragraph is subject to an annual review. A three-month window—March through June—is used for stock evaluation. The steps described above are repeated to build the Final Pool and to calculate the final rankings with respect to the four fundamental measures and weighted average market value. Any non-components that fall into the top 25 of the new final rankings are added to the Index, automatically replacing the lowest ranked components. A 20% buffer zone is applied, meaning that any component stocks ranked higher than 20% above the Index's target number of stocks are retained, while those ranked lower than 20% above the target number are replaced by the top ranked non-component stocks.

For purposes of calculation of the Index value, securities for which the primary market is outside of the U.S. are valued based on the last sale price on the primary market. During periods when the primary market is closed, these securities are valued based on the last sale price of the corresponding American Depositary Receipts ("ADR"), if any.

The Fund will invest in foreign securities, including non-U.S. dollar-denominated securities traded outside of the United States and dollar-denominated securities of foreign issuers traded in the United States. Foreign securities also include investments such as ADRs which are U.S. dollar-denominated receipts representing shares of foreign-based corporations. ADRs are issued by U.S. banks or trust companies, and entitle the holder to all dividends and capital

prior fiscal years. In the case of an issuer that is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[9] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[10] The interest received percentage will equal the sum of the interest payable on the Notes over their term, expressed as a percentage of the principal amount of the Notes.

[11] The reset period will be the period between any two consecutive reset dates. Reset dates will occur each month on a predetermined day.

[12] *See* Securities Exchange Act Release No. 43338 (September 25, 2000), 65 FR 59235 (October 4, 2000) (approving the listing and trading of the streetTRACKS Dow Jones Global Titans Index Fund).

[13] Information relating to the Global Titans Index methodology is based on materials prepared by Dow Jones.

gains that are paid out on the underlying foreign shares.

As of March 1, 2004, the Index included 29 U.S. companies, 16 Western European companies 4 Swiss Companies and 1 Japanese company, representing approximately 67%, 25%, 6% and 2% of the Index weight, respectively (See Exhibit A for a list of the component stocks of the Index). Twenty-five (25) Index components, representing approximately 55% of the Index weight, are listed on the New York Stock Exchange ("NYSE") and four (4) Index components representing approximately 12% of the Index weight are traded on Nasdaq. Of the 21 non-U.S. companies in the Index, 15 companies or approximately 26% of the Index weight have ADRs listed and traded on the NYSE while three (3) companies or approximately 4% of the Index weight have ADR's traded OTC. Two (2) companies or approximately 2% of the Index weight are dual listed on the NYSE while one (1) company or approximately 2% of the Index weight is traded OTC (See Exhibit A). As of March 1, 2004, the average size of a component company included in the Index was $125.2 billion, with the largest and smallest amounting to $329.3 billion and $45.6 billion, respectively.

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.[14] Second, the Notes will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction. In addition, Citigroup will deliver a prospectus in connection with the initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6 of the Act[16] in general and furthers the objectives of section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will result in any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include SR–Amex–2004–19 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to SR–Amex–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–Amex–2004–19 and should be submitted on or before May 24, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[18] The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.[19] Accordingly, the Commission finds that the listing and trading of the Notes based on the Global Titans Index is consistent with the Act

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462 and section 107B of the Company Guide.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(5).

[19] *See, e.g.*, Securities Exchange Act Release Nos. 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); and 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes).

and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[20]

As described more fully above, at maturity, the holder of the Note will receive 100% of the principal investment amount. The interest distribution amount that the holder receives, however, will depend on the monthly returns of the Global Titans Index, with each such monthly return subject of a periodic appreciation cap. While the interest distribution amount will not be less than zero, the investor may not receive any interest if the index return is less than or equal to an interest received percentage.

The Amex requests that the Commission approve the proposal, on an accelerated basis to accommodate the timetable of listing the Notes. The Commission notes that it has previously approved the listing of options on, and securities the performance of which have been linked to or based on, the streetTRACKS Dow Jones Global Titans Index Fund.[21] The Commission has also previously approved the listing of securities with a structure substantially the same as that of the Notes.[22]

The Commission notes that the Notes are principal protected instruments. The Notes are debt instruments, the price of which will be derived from and based upon the value of the Global Titans Index. The Notes have a minimum principal amount that will be repaid at maturity. The interest distribution amount is derivatively based on the monthly returns of the Global Titans Index. Because the final rate of interest return of the Notes is derivatively priced, based on the performance of the 50 common stocks underlying the Global Titans Index, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes that the Amex's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Notes.

Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Citigroup will deliver a prospectus in connection with the initial sales of the Notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities, which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Global Titan Index is a price-weighted index comprised of 50 common stocks chosen by Dow Jones. In constructing the Global Titans Index, a multi-factor methodology is adopted. First, the 3,000 stocks of the Dow Jones Global Indexes are used as the Initial Pool with a view towards ensuring that all candidates are investable, liquid and representative of the global markets. Market capitalization is then used as the first screen to create the Final Pool by selecting the top 100 companies. The next step in Index construction is to combine the Final Pool components' market capitalization rankings with their rankings according to four other indicators of size and leadership. The combined rankings of these four fundamental factors determine the fundamental rank of each company. The fundamental rank and the market capitalization rank are used equally as the basis for selecting the Index components. The Index methodology described above is subject to an annual review. As of March 1, 2004, the average size of a component company included in the Index was $125.2 billion, with the largest and smallest amounting to $329.3 billion and $45.6 billion, respectively.

Given the compositions of the stocks underlying the Global Titans Index, the Commission believes that the listing and trading of the Notes that are linked to the Global Titans Index, should not unduly impact the market for the underlying securities comprising the Global Titans Index or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the Global Titans Index are well-capitalized, highly liquid stocks. Moreover, the majority of the issuers of the underlying securities comprising the Global Titans Index are subject to reporting requirements under the Act, and nearly all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Only a small percentage of the components of the Global Titans Index trade on the Pink Sheets; however, it is determinative that these ADRs or the stock are Nestle, SA, Royal Bank of Scotland Group Plc,[23] Roche Holding AG, and HBOS Plc. While last sale reporting is not available for these securities and they are not subject to the reporting requirements of the Act, the Commission notes that they only comprise 5.4% of the weight of the Index, have substantial financial information that is current and accessible, and have significant market capitalizations that range from $98.57 billion to $50.47 billion. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the issuer, Citigroup. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[24] In any event, financial information regarding Citigroup, in addition to the information on the 50 common stocks comprising the Global Titans Index, will be publicly available.[25]

The Commission also has a systemic concern, however, that a broker-dealer such as Citigroup, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[26] the Commission believes that

[20] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See supra* note 12.

[22] *See supra* note 19.

[23] On April 26, 2004, Royal Bank of Scotland Group Plc filed Form 20–F to become registered under section 12 of the Act. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on April 26, 2004.

[24] *See* Company Guide section 107A.

[25] The SEC notes that the 50 component stocks that comprise the Global Titans Index are reporting companies under the Act, and the Notes will be registered under section 12 of the Act.

[26] *See, e.g.*, Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6,

Continued

this concern is minimal given the size of the Notes issuance in relation to the net worth of Citigroup.

Finally, the Commission notes that the value of the Global Titans Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Global Titans Index at least once every fifteen seconds throughout the trading day is important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.[27] Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[28] to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change, as amended, (SR–Amex–2004–19) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Jill M. Peterson,

Assistant Secretary.

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2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

[27] *See supra* note 18.

[28] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR.200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49613; File No. SR–Amex–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Allocation and Performance Evaluation Procedures for Securities Admitted to Dealings on an Unlisted Basis

April 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Amex as a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex seeks a one year extension of its allocations and performance evaluation procedures for securities admitted to dealings on an unlisted trading privileges ("UTP") basis to permit these programs to remain in effect while the Commission considers permanent approval of these procedures. The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its specialist allocation and performance evaluation rules for securities admitted to dealings on a UTP basis while the Commission considers permanent approval of these rules. The Commission approved on a pilot basis, through two independent approval orders, the Exchange's specialist allocation procedures and performance evaluation procedures with respect to securities admitted to trading pursuant to UTP ("Pilots").[4] These procedures are set forth in Amex Rule 28, "Allocation of Securities Admitted to Dealings on an Unlisted Trading Privileges ("UTP") Basis," which details the Exchange's specialist allocation rules for UTP trading and Amex Rule 29, "Market Quality Committee," which details the Exchange's specialist performance evaluation rules for UTP trading. The proposed rule change does not alter the operation of either of the Pilots in any way.[5]

The proposed rule change contains a detailed description of the Pilots. That description has not been included in this notice because it is duplicative of the descriptions contained in the original approval orders for the Pilots.[6] This filing extends the effective dates of both Amex Rule 28 and Amex Rule 29 for one year until April 6, 2004.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the

[4] *See* Securities Exchange Act Release Nos. 45698 (April 5, 2002), 67 FR 18051 (April 12, 2002) (File No. SR–Amex 2001–107); and 46750 (October 30, 2002), 67 FR 67880 (November 7, 2002) (File No. SR–Amex 2002–19). On October 3, 2003, Amex filed a proposed rule change for immediate effectiveness that extended both Pilots until April 5, 2004. *See* Securities Exchange Act Release No. 48657 (October 17, 2003), 68 FR 61025 (October 24, 2003).

[5] The instant proposal's description of the frequency by which the Exchange may "routinely evaluate" UTP specialist performance relative to both market quality and market share criteria, however, varies from the original proposal. Telephone conversation between Bill Floyd-Jones, Associate General Counsel, Amex, and Frank N. Genco, Special Counsel, Division of Market Regulation, Commission (April 22, 2004).

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. More specifically, the Exchange believes that trading securities on an unlisted basis will provide investors with increased flexibility in satisfying their investment needs by providing additional choice and increased competition in markets to effect transactions in the securities subject to UTP.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will tend to enhance competition by providing investors with additional choice and increased competition in markets to effect transactions in securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because, the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[9] it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

Although Rule 19b–4(f)(6) under the Act[12] requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Amex's request in view of the fact that the proposed rule change seeks to continue existing pilot programs. At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Exchange's allocation and performance evaluation procedures to continue without any interruption in service to investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–22 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–Amex–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–22 and should be submitted on or before May 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

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[9] *See* letter from Willam Floyd Jones, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated April 6, 2004.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] *Id.*

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49620; File No. SR–CBOE–2004–16]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to an Interpretation of Paragraph (b) of Article Fifth of its Certificate of Incorporation and an Amendment to Rule 3.16(b)

April 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2004, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 9, 2004, the CBOE filed an amendment to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 8, 2004 ("Amendment No. 1"). Amendment No. 1 provides further clarification to the proposal by including

Continued

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to adopt a proposed rule change consisting of an interpretation of paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation ("Article Fifth(b)") pertaining to the right of the 1,402 Full Members of CBOT to become members of CBOE without having to purchase a CBOE membership ("Exercise Right"). The proposed interpretation of the Exercise Right is embodied in an agreement dated December 17, 2003 ("2003 Agreement"), between the CBOE and the Board of Trade of the City of Chicago, Inc. ("CBOT"). The CBOE also proposes related revisions to CBOE Rule 3.16. Below is the text of the proposed amendment to CBOE Rule 3.16. Proposed language is in italics; proposed deletions are in brackets.

* * * * *

Rule 3.16 Special Provisions Regarding Chicago Board of Trade Exerciser Memberships

(a) *Termination of Nontransferable Memberships*. [No change]

(b) *Board of Trade Exercisers*. For the purpose of entitlement to membership on the Exchange in accordance with Paragraph (b) of Article Fifth of the Certificate of Incorporation of the Exchange ("Article Fifth(b)") the term "member of the Board of Trade of the City of Chicago" (the "CBOT"), as used in Article Fifth(b), is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate," as those terms are defined in the Agreement entered into on September 1, 1992 (the "*1992* Agreement") between the CBOT and the Exchange, *and in the Agreement entered into on December 17, 2003, ("the 2003 Agreement") between the CBOT and the Exchange,* and shall not mean any other person. In order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in an offer, distribution or redemption of the kind referred to in the last two sentences of Paragraph 3(a) of the *1992* Agreement, and solely for such purpose, the Exchange will waive all membership dues, fees and other charges and all qualification requirements, other than those that may be imposed by law, that may be applicable to the application for membership on the Exchange of each Eligible CBOT Full Member and Eligible CBOT Full Member Delegate who wishes to exercise the Exercise Right during the period commencing on the date the Exchange gives notice to the CBOT pursuant to Paragraph 3(b) of the *1992* Agreement and ending on the date such individual participates in such offer, distribution or redemption (as the case may be); provided, however, that (i) no Exerciser Member (as defined in the *1992* Agreement) for whom dues, fees and other charges and qualification requirements are waived in accordance with the foregoing shall have any rights as a member of the Exchange other than to participate in such offer, distribution or redemption, and (ii) the membership on the Exchange of each such Exerciser Member shall terminate immediately following the time such individual participates in such offer, distribution or redemption.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide an interpretation to the rules of the CBOE as set forth in Article Fifth(b) that will apply, upon the distribution by the CBOT to each of its 1,402 Full Members upon their individual request, a separately transferable interest representing the Exercise Right component of each CBOT Full Membership. According to the CBOE, the CBOT's willingness to issue transferable Exercise Right interests is reflected in the 2003 Agreement and recently adopted changes to the CBOT Rules and Regulations. The CBOE notes that the 2003 Agreement, resulting from negotiations with the CBOT, is intended to result in the issuance by the CBOT of a separately transferable interest representing the Exercise Right component of CBOT Full Membership in advance of the consummation of the CBOT's proposed corporate restructuring, which contemplates a similar structure. The CBOE believes that the CBOT's proposed restructuring has not yet been consummated and it is uncertain as to when such proposed restructuring will occur.[4]

Although the CBOT recently reconfirmed to the CBOE its commitment to pursue its proposed restructuring, the CBOT also agreed with the CBOE that, before it implements such restructuring, it is willing to implement a structure that provides for the issuance of separately transferable interests representing the Exercise Right component of CBOT Full Memberships. As described above, the CBOT's membership has approved changes to the CBOT Rules and Regulations, which were proposed by the CBOT pursuant to the terms of the 2003 Agreement to give effect to a structure providing for the issuance of these interests. The CBOE proposes to interpret how Article Fifth(b) of the CBOE Certificate of Incorporation will apply once these interests are issued. Such an interpretation is embodied in the 2003 Agreement, and it constitutes the substance of the proposed rule change that is the subject of this filing.[5]

According to the CBOE, the interpretation of Article Fifth(b) embodied in the 2003 Agreement includes definitions of who will be "Eligible CBOT Full Members" and "Eligible CBOT Full Member Delegates" entitled to exercise after the CBOT has issued separately transferable interests representing the Exercise Right component of CBOT Full Memberships to those CBOT Full Members who request them. (Such interests are referred to in the 2003 Agreement and in this filing as "Exercise Right Privileges.") Under these definitions, to be able to become a member of the CBOE by virtue of the Exercise Right, the holder or delegate (*i.e.*, a lessee under CBOT Rules and Regulations) of one of the 1,402 outstanding CBOT Full Memberships in which an Exercise

three additional exhibits to the proposed rule change.

[4] The CBOE notes that the CBOT's proposal to issue a separately transferable interest representing the Exercise Right as part of its restructuring was the subject of a prior proposed interpretation by the CBOE of Article Fifth(b), which was filed with the Commission as a proposed rule change in File No. SR–CBOE–2002–01. On April 7, 2004, the CBOE withdrew this filing. *See* letter from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Lisa N. Jones, Special Counsel, Division, Commission, dated April 6, 2004.

[5] The CBOE notes that the only other change proposed in this filing is a conforming amendment to CBOE Rule 3.16 that adds a reference to the 2003 Agreement.

Right Privilege has been issued must be in possession of one Exercise Right Privilege, whether bundled or unbundled from the related CBOT Full Membership. In addition, as holder or delegate of a CBOT Full Membership, one must also be in possession of all of the other rights or privileges appurtenant to a CBOT Full Membership and must meet the applicable membership and eligibility requirements of the CBOT and be deemed to be a "CBOT Full Member" or a "CBOT Full Member Delegate" under the CBOT Rules and Regulations.

As noted above, under the proposed interpretation of Article Fifth(b) embodied in the 2003 Agreement, Exercise Right Privileges may be separately bought and sold and bundled and rebundled with the other rights and privileges of CBOT Full Membership for purposes of making the holder of an Exercise Right Privilege eligible to exercise. The 2003 Agreement also provides that the CBOT will adopt and maintain rules and procedures acceptable to the CBOE governing the issuance and subsequent transfer of Exercise Right Privileges and CBOT Full Memberships, to enable the CBOE to administer the operation of the Exercise Right in a manner consistent with the interpretation embodied in the 2003 Agreement. In addition, the CBOT and the CBOE have each agreed to provide to the other certain current information regarding the status of their members, including exercisers and persons who own or lease an Exercise Right Privilege.

The CBOE believes that the proposed interpretation of Article Fifth(b) is consistent with the language of Article Fifth(b), which provides in part that "every present and future member of the [CBOT] who applies for membership in the [CBOE] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members or elsewhere." The CBOE believes that this filing does not propose to amend Article Fifth(b) in any respect, but only to interpret how it should apply in circumstances that were not envisioned when Article Fifth(b) was adopted, and therefore were not addressed in the language of Article Fifth(b).[6]

The CBOE believes that the proposed interpretation of Article Fifth(b) is also consistent with the interpretation of the Exercise Right embodied in the 1992 Agreement. According to the CBOE, the 1992 Agreement served to resolve a dispute between the CBOE and the CBOT concerning the meaning of certain terms in Article Fifth(b) regarding the Exercise Right and concerning action taken or proposed to be taken by the CBOT at that time to unbundle certain of the trading rights held by CBOT members, issue transferable evening trading permits to its members, and allow CBOT members to "delegate" (*i.e.*, lease) the trading rights associated with their memberships. According to the CBOE, to preserve the original intent of the Exercise Right, Article Fifth(b) was interpreted in the 1992 Agreement so that, in the event of any division of the trading rights and privileges appurtenant to a CBOT Full Membership, or any division of the CBOT full membership itself, a CBOT member retained the right to exercise only if he held all of the parts into which his membership may have been divided and all of the trading rights and privileges appurtenant thereto. According to the CBOE, as a result of the interpretation of Article Fifth(b) embodied in the 1992 Agreement, the number of potential "exerciser" members of the CBOE is limited to the 1,402 Full Members of the CBOT or their delegates (lessees), but not both in respect of the same CBOT membership.[7]

The CBOE notes that the proposed interpretation of the Exercise Right that is the subject of this filing does not displace the interpretation embodied in the 1992 Agreement, except it provides that if there are any inconsistencies between the interpretation embodied in the 2003 Agreement and the interpretation embodied in the 1992 Agreement, then the interpretation embodied in the 2003 Agreement would control. Because CBOE Rule 3.16 refers to certain terms that were previously interpreted and defined in the 1992 Agreement and are now further interpreted and defined in the modified 2003 Agreement, the proposed rule change also amends Rule 3.16 to include the definitions and interpretations in both Agreements.

According to the CBOE, the interpretation of Article Fifth(b) embodied in the 2003 Agreement is intended to apply solely in the circumstances involving the issuance of Exercise Right Privileges to some or all of its 1,402 Full Members as described in that Agreement, so as to make it clear that such interpretation is not intended to cover any other circumstances that might arise and might also have an impact on the Exercise Right.

2. Statutory Basis

The CBOE believes that the proposed interpretation of the Exercise Right embodied in the 2003 Agreement and the related proposed amendment to CBOE Rule 3.16 that together constitute the proposed rule change is consistent with and furthers the objectives of the Act, and section 6(b)(5) of the Act in particular,[8] in that it constitutes an interpretation of, and an amendment to, the rules of the Exchange that are designed to promote just and equitable principles of trade, to perfect the mechanisms of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[6] By its terms, Article Fifth(b) may be amended only with the approval of 80% of CBOE's members admitted by exercise, and 80% of CBOE's members admitted other than by exercise, each voting as a separate class.

[7] The CBOE asserts that the interpretation of Article Fifth(b) embodied in the 1992 Agreement and an amendment to Rule 3.16 referring to the 1992 Agreement were approved by the Commission in Securities Exchange Act Release No. 32430 (June 8, 1993), 58 FR 32969 (June 14, 1993).

[8] 15 U.S.C. 78f(b)(5).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–16 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE–2004–16 and should be submitted on or before May 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9978 Filed 4–30–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49623; File No. SR–EMCC–2004–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Emerging Markets Clearing Corporation's Rules With Regard to the Imposition of Fines Upon Its Members

April 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 4, 2004, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EMCC is seeking to amend its rules with regard to the imposition of fines upon its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to expand EMCC's rules with regard to the imposition of fines upon its members and to more specifically identify the actions or inactions of members that will result in the imposition of fines.

Rule 35, "Disciplinary Proceedings," permits EMCC to impose fines upon members for violations of any provision of EMCC's rules or member's agreements with EMCC, for any error, delay, or other conduct that is determined by EMCC to be detrimental to the EMCC's operations or for not providing adequate facilities for members' business with EMCC.[3]

Section 3 of Rule 13, "Financial Responsibility and Operational Capability," permits EMCC to request that members furnish to EMCC such adequate assurances of their financial responsibility and operational capability as EMCC may at any time deem necessary. Pursuant to Rule 13 and in furtherance of EMCC's responsibilities, EMCC may periodically request that its members provide financial and operational information about their business.[4] Failure to timely receive requested information could create risk to EMCC. To address this concern, EMCC intends to fine members who fail to timely respond to requests for information. Additional fines will be imposed in the event a member fails to respond to subsequent requests for information.

In addition to the obligation to provide adequate assurances described above, members have an ongoing responsibility as stated in Rule 2, "Members," Section 7, "General Continuance Standards," to notify EMCC both in writing and orally of certain conditions, including, but not limited to, material changes in control or financial condition. It is EMCC's intent to fine members that fail to comply with these notification requirements with each failure considered a separate finable event.

To implement the changes described above, EMCC will create Addendum J, "Fine Schedule," to its rules,[5] which will list all finable offenses and their associated fines. In addition, EMCC will: (1) Modify Rule 35, "Disciplinary Proceedings," Section 1 to increase the maximum fine for any single offense

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Previously, EMCC did not impose fines upon members for violations of its rules. It has, however, charged members a fee for late margin payments in the amount of $500.00. If the fine schedule contemplated by the proposed rule change is approved, the late margin payment fee will be elimianted from EMCC's Fee Schedule and will be replaced with a specified fine.

[4] In this regard, EMCC will notify all members that is will require members to provide certain information on an ongoing basis and that failure to provide the information will result in a fine being imposed. Imposition of fines would commence not earlier than three months after effectiveness of this proposed rule change.

[5] While Rule 2, "Members," and Rule 13, "Financial Responsibility and Operational Capability," are specifically noted within this filing, they are not the only rules under which a fine may be imposed by EMCC.

from $5,000 to $10,000, which is the new maximum fine under Addendum J; (2) make a corresponding change to Rule 31, "Hearing Procedures;" and (3) modify Addendum F, "Fee Schedule," to eliminate the fee for late margin payments described above. EMCC will collect fines imposed on members through a miscellaneous charge in the member's monthly statement of charges, and in order to comply with section 19(d)(1) of the Act,[6] EMCC will provide the Commission with pertinent information regarding each fine imposed.

The proposed rule change to impose fines upon members for conduct detrimental to the operations of EMCC will further ensure that EMCC may appropriately discipline its members for violation of its Rules, as well as improve EMCC's ability to enforce compliance with its Rules. Therefore, EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from EMCC members have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EMCC–2004–01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–EMCC–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC and on EMCC's Web site at *http://www.e-m-c-c.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMCC–2004–01 and should be submitted on or before May 24, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9932 Filed 4–30–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(d)(1).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49605; File No. SR–Phlx–2004–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Susquehanna Indices, LLP Disclaimer

April 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1104A, Susquehanna Indices, LLP Indexes.[3] The text of the proposed rule change is set forth below. Additions are *italicized*.

* * * * *

Rule 1104A. Susquehanna Indices, LLP Indexes

Susquehanna Indices, LLP makes no warranty, express or implied, as to results to be obtained by any person or any entity from the use of the SIG Investment Managers Index *or the SIG Cable, Media & Entertainment Index* or any data included therein in connection with the trading of option contracts thereon, or for any other use. Susquehanna Indices, LLP makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to the SIG Investment Managers Index *or the SIG Cable, Media & Entertainment Index* or any data included therein.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Commission notes that it approved Phlx Rule 1104A on July 7, 2003. *See* Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR-Phlx-2003-21).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 1104A which applies to indexes maintained by Susquehanna Indices, LLP.[4] The rule currently provides generally that Susquehanna Indices, LLP ("SI") makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of SIG Investment Managers Index and that SI makes no express or implied warranties of merchantability or fitness for a particular purpose for use with respect to that index or any data included therein.[5] The Exchange is now proposing to amend Exchange Rule 1104A to expand the coverage of the rule to include the SIG Cable, Media & Entertainment Index, a new index upon which options have recently been listed on the Exchange.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)[7] of the Act in general, and Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by amending its rules to more closely track the provisions of the Act. The Exchange believes that the proposed rule should encourage SI to continue to maintain the SIG Cable, Media & Entertainment Index so that options on it may be traded on the Exchange, thereby providing investors with enhanced investment opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–22 and should be submitted on or before May 24, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–9979 Filed 4–30–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3573]

State of Illinois

As a result of the President's major disaster declaration on April 23, 2004, I find that Kankakee, LaSalle, Putnam and Will Counties in the State of Illinois constitute a disaster area due to damages caused by severe storms and tornadoes occurring on April 20, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of

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[4] The Exchange currently lists options on the SIG Investment Managers Index and the SIG Cable, Media & Entertainment Index pursuant to a license agreement with Susquehanna Indices, LLP and Exchange Rule 1009A(b). The Exchange is filing this proposed rule change pursuant to a requirement in the license agreement. SIG Investment Managers Index and SIG Cable, Media & Entertainment Index are trademarks of Susquehanna Indices, LLP.

[5] The Exchange noted in its filing to adopt Rule 1104A that it believed that the disclaimer proposed in Rule 1104A is appropriate given that it is similar to disclaimer provisions of American Stock Exchange Rule 902C relating to indexes underlying options listed on that exchange. *See* Securities Exchange Act Release No. 48135 (July 7, 2003), 68 FR 42154 (July 16, 2003) (approving SR–Phlx–2003–21).

[6] The Commission notes that the Phlx trades options on this index pursuant to the requirements set out in Rule 19b–4(e) and filed Form 19b(4)(e) concerning these options on February 18, 2004.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

business on June 22, 2004 and for economic injury until the close of business on January 24, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small business located in the following contiguous counties may be filed until the specified date at the above location: Bureau, Cook, DeKalb, DuPage, Ford, Grundy, Iroquois, Kane, Kendall, Lee, Livingston, Marshall and Woodford in the State of Illinois; and Lake and Newton counties in the State of Indiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 357312. For economic injury the number is 9ZA700 for Illinois; and 9ZA800 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 26, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–9949 Filed 4–30–04; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3572]

Commonwealth of Massachusetts

As a result of the President's major disaster declaration on April 21, 2004, I find that the counties of Essex, Middlesex, Norfolk, Suffolk, and Worcester in the Commonwealth of Massachusetts constitute a disaster area due to damages caused by flooding occurring on April 1, 2004 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 21, 2004 and for economic injury until the close of business on January 21, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bristol, Franklin, Hampden, Hampshire, and Plymouth Counties in the Commonwealth of Massachusetts; Providence County in the State of Rhode Island; Tolland and Windham Counties in the State of Connecticut; and Cheshire, Hillsborough, and Rockingham Counties in the State of New Hampshire.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.125
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 357206. For economic injury the number is 9ZA300 for Massachusetts; 9ZA400 for New Hampshire; 9ZA500 for Rhode Island; and 9ZA600 for Connecticut.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 23, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–9950 Filed 4–30–04; 8:45 am]

BILLING CODE 80225–01–M

DEPARTMENT OF STATE

[Public Notice 4700]

Culturally Significant Objects Imported for Exhibition Determinations: "Painters of Reality: The Legacy of Leonardo and Caravaggio in Lombardy"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Painters of Reality: The Legacy of Leonardo and Caravaggio in Lombardy," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about May 24, 2004, to on or about August 15, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 26, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–9989 Filed 4–30–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4606]

Renewal of the Charter of the United States International Telecommunication Advisory Committee

Summary: The Charter of the United States International Telecommunication Advisory Committee (ITAC) has been renewed for an additional two years.

ITAC is established under the general authority of the Secretary of State and the Department of States as set forth in title 22, sections 2656 and 2707, of the United States Code. The purpose of the

United States Telecommunication Advisory Committee is to advise the Department of State with respect to, and provide strategic planning recommendations on, telecommunication and information policy matters related to the United States' participation in the work of the International Telecommunication Union, the Permanent Consultative Committees of the Organization of American States Inter-American Telecommunication Commission, the Organization for Economic Cooperation and Development, and the Asia-Pacific Economic Cooperation. ITAC provides advice on matters of U.S. policy and preparation of positions for meetings of international and regional organizations pertaining to telecommunication and information issues.

Dated: March 4, 2004.

Anne D. Jillson,

Foreign Affairs Officer, Department of State.

[FR Doc. 04–9988 Filed 4–30–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request to Release Airport Property at Newport Municipal Airport, Newport, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Newport Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 2, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mayor David Stewart, City of Newport, at the following address: City of Newport, 615 Third Street, Newport, AR 72112.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Program Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Newport Municipal Airport under the provisions of the AIR 21.

On April 13, 2004, the FAA determined that the request to release property at Newport Municipal Airport submitted by the City of Newport met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than May 13, 2004.

The following is a brief overview of the request:

The City of Newport requests the release of 31.42 acres of non-aeronautical airport property. The land is part of a War Assets Administration Quitclaim Deed dated December 17, 1947 conveying certain lands comprising the Newport Municipal Airport to the City of Newport. The release of property will allow funding for maintenance, operation, and development of the airport.

The sale is estimated to provide $50,700 to be deposited in an interest-bearing account and will be expended on airport maintenance, operation, and development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Newport Municipal Airport.

Issued in Fort Worth, Texas, on April 13, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–9927 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Bradley International Airport, as submitted by the Connecticut Department of Transportation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Bradley International Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 18, 2004.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is April 21, 2004. The public comment period ends on June 21, 2004.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Bradley International Airport is in compliance with applicable requirements of Part 150, effective April 21, 2004. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 18, 2004. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts non compatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The Connecticut Department of Transportation submitted to the FAA, on March 2, 2004, a noise exposure map, descriptions, and other documentation that were produced during the Airport Noise Compatibility Planning (Part 150) study at Bradley International Airport from February 1999 to March 2004. It was requested that the FAA review this material as the noise exposure map, as directed in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Connecticut Department of Transportation. The specific maps under consideration were Figure 7–1, "2003 NEM [Noise Exposure Map] on Existing Land Use" and Figure 7–4, "Mitigated 2008 NEM on Existing Land Use", along with the supporting documentation in Noise Exposure Map and Noise Compatibility Program: Volume 1. The FAA has determined that the maps for Bradley International Airport are in compliance with applicable requirements. This determination is effective on April 21, 2004.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Bradley International Airport, also effective on April 21, 2004. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 18, 2004. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Connecticut Department of Transportation, Bradley International Airport, Administrative Offices, Terminal B, Windsor Locks, Connecticut 06096.

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 16 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on April 21, 2004.

Vincent A. Scarano,

Manager, Airports Division.

[FR Doc. 04–9921 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Reno/Tahoe International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Airport Authority of Washoe County under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On November 15, 2001, the FAA determined that the noise exposure maps submitted by Airport Authority of Washoe County under Part 150 were in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Reno/Tahoe International Airport is April 7, 2004.

FOR FURTHER INFORMATION CONTACT: Andy Richards, Manager, San Francisco Airports District Office, Airports Division, Western-Pacific Region, Federal Aviation Administration, 831 Mitten Road, Burlingame, California 94010. Telephone: 650/876–2778. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Reno/Tahoe International Airport, effective April 7, 2004. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (hereinafter referred to as the "Act") [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of light procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought; requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The Airport Authority of Washoe County submitted to the FAA on October 10, 2003, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 8, 1995 through October 10, 2003. The Reno/Tahoe International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on November 15, 2001. Notice of this determination was published in the **Federal Register** on November 27, 2001.

The Reno/Tahoe International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (October 10, 2003 to beyond the year 2008). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly section 104(b) of the Act). The FAA began its review of the program on October 10, 2003 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-four (24) proposed actions for noise abatement, noise mitigation, land use planning and program management on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Associate Administrator for Airports, effective April 7, 2004.

Outright approval was granted for all twenty-four (24 specific program measures. The approved measures included such items as: Continued use of the existing Preferential Runway Use Program; Continuance of the existing Aircraft Engine Maintenance Run-up Restrictions; Continuation of existing efforts to discourage Military Transient Training Flights; Maintenance of existing Nighttime Flight Corridors for General Aviation departures on Runways 7 and 16L/R; Continuation of the usage of signs installed by the Airport Authority of Washoe County near the runway ends to notify pilots to use quiet flying techniques; Continuation of existing efforts to encourage the use of visual helicopter arrival and departure routes for noise abatement; Continuation and expansion of the existing acquisition of non-compatible land uses to be converted to compatible land uses within the 65 DNL contour; Continuation and update of Acoustical Treatment Program for dwelling units located within the2005 65 DNL; Sound insulation of two schools within the Squared-off 2005 65 DNL contour; Sound insulation of three places of worship within the 65 DNL contour; Update General/ Comprehensive Plans for the cities of Reno and Sparks, and the community of Truckee Meadows and Washoe County to reflect the Squared-off 2010 noise exposure contours from Part 150 Study as basis for noise compatibility planning; Amend General Comprehensive Plans for the cities of Reno and Sparks, and the community of Truckee Meadows to reflect existing compatible and existing lower density land uses within the Squared-off 2010 65 DNL Contour; Amend mixed use designations with the squared-off 2010 65 DNL contour to discourage residential land uses; Continue submission of development projects to the Reno/Tahoe International Airport (RON) area to the Airport Authority of Washoe County (AAWC) for review; Maintain existing compatible land uses within the Squared-off 65 DNL when possible; Revise Reno Airport Overlay Zoning to include the Squared-off 2010 Noise exposure contours and refinements to Land Use Standards; Enact Overlay Zoning in Sparks and Washoe County to provide Noise Compatibility Land Use Standards near the airport. Enact construction Standards within the Overlay Zoning Districts to establish specific construction standards for sound insulation to achieve a maximum interior noise level of 45 DNL; Pursue Airport Fair Disclosure legislation through lobbying the State of Nevada Legislation to enact specific legislation requiring fair disclosure of airport noise and over flight track monitoring system; Acquire Geographic Information System to Monitor Noise concerns and Program Implementation; Continue public Outreach and Noise Abatement Education Program; Monitor compliance with the noise abatement Element of the Noise Compatibility Program; Update Noise Exposure Maps and Review the NCP by Airport Management, as necessary, at minimum every seven to ten years to respond to the changing conditions in the local area and the aviation industry. These determinations are set forth in detail in the Record of Approval signed by the Associate Administrator for Airports on April 7, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Airport Authority of Washoe County. The Record of Approval also will be available online at: *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Dated: Issued in Hawthorne, California, on April 22, 2004.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 04–9923 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Integrated Modular Avionics (IMA)/ EUROCAE WG–60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Integrated Modular Avionics.

DATES: The meeting will be held on May 11–14, 2004 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at EUROCE, 17 rue Hamelin, Paris, France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.* (2) Mr. Christian Lefebvre; telephone +33 1 4505 7227; e-mail *christian.lefebvre@eurocae.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 200 meeting. The agenda will include:

- May 11
  - Editorial Team Meeting
  - Subgroup meet in working sessions
- May 12
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Summary of Previous Meeting)
  - Review Action Items
  - Review and Approve Subgroup Activities
  - Target for this Meeting
  - Subgroups Meet in Working Sessions
- May 13
  - Subgroups Meet in Working Sessions
- May 14
  - Review of Subgroup Meetings
  - Review of Consolidated Draft Document
  - Plans for Editorial Group Activities
  - Review of Action Items
  - Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 15, 2004.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 04–9925 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2004, there were two applications approved. This notice also includes information on two applications, approved in January 2004, inadvertently left off the January 2004 notice. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.

Application Number: 04–06–C–00–DBQ.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $253,795.

Earliest Charge Effective Date: June 1, 2004.

Estimated Charge Expiration Date: November 1, 2005.

Class of Air Carriers Not Required to Collect PFC's:

On-demand air taxi/commercial operations that enplane fewer than 500 passengers per year.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dubuque Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Environmental assessment and benefit cost analysis.

Rehabilitation of taxiway Charlie and lighting of Charlie and Delta taxiways.

Snow removal equipment.

Airport master plan.

Alpha southeast lighting.

Ground level loading brief.

Decision Date: January 14, 2004.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Waterloo Airport Commission, Waterloo, Iowa.

Application Number: 03–05–C–00–ALO.

Application type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $611,200.

Earliest Charge Effective Date: July 1, 2004.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

PFC annual audit and program administration.

Part 139 guidance signs.

Acquisition of snow removal equipment.

Perimeter fencing.

Acquisition of aircraft rescue and firefighting equipment.

Tappley meter.

Brief Description of Project Approved for Collection:
Reconstruction of terminal area ramp.
Brief Description of Withdrawn Project:
Overlay parking lot.
Determination: This project was withdrawn by the public agency on November 17, 2003.
Decision Date: January 15, 2004.
For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Monterey Peninsula Airport District, Monterey, California.
Application Number: 04–10–C–00–MRY.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $344,701.
Earliest Charge Effective Date: June 1, 2004.
Estimated Charge Expiration Date: March 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Unscheduled Part 135 air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.
Brief Description of Projects Approved for Collection and Use:
Replace airfield markings.
Security access control, phase II.
Terminal modernization improvements.
Brief Description of Withdrawn Project:
Upgrade airfield lighting.
Determination: This project was withdrawn by the public agency on February 24, 2004.
Decision Date: March 5, 2004.
For Further Information Contact: Joseph R. Rodriguez, San Francisco Airports District Officer, (650) 876–2805.

Public Agency: Port of Chelan County and Port of Douglas County, Wenatchee, Washington,
Application Number: 04–05–C–00–EAT.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $120,671.
Earliest Charge Effective Date: June 1, 2004.
Estimated Charge Expiration Date: February 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use: Taxiway overlay final phase. Improve terminal building (restrooms).
Decision Date: March 25, 2004.
For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District OFfice, (425) 227–2654.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*93–01–C–02–PFN, Panama City, FL	02/20/04	$8,238,499	$8,238,499	10/01/07	04/01/09
*94–01–C–01–MKG, Muskegon, MI	02/27/04	5,013,088	5,013,088	05/01/19	11/01/20
94–01–C–02–ALO, Waterloo, IA	03/11/04	516,549	467,775	09/01/97	09/01/97
97–02–C–01–ALO, Waterloo, IA	03/11/04	153,660	160,313	06/01/98	06/01/98
99–03–C–02–ALO, Waterloo, IA	03/11/04	763,830	784,036	05/01/03	05/01/03
01–05–C–01–JNU, Juneau, AK	03/31/04	650,000	540,196	07/01/02	07/01/02

(Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Panama City, FL and Muskegon, MI, this change is effective on May 1, 2004.)

Issued in Washington, DC on April 23, 2004.

JoAnn Horne,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 04–9926 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–04–C–00–GEG To Impose and Use and Impose Only the Revenue From a Passenger Facility Charge (PFC) at Spokane International Airport, Submitted by Spokane Airport Board, Spokane International Airport, Spokane, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Spokane International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before June 2, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John G. Morrison, CEO/Executive Director, at the following address: P.O. Box 19186, Spokane, WA 99219–9186.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Spokane International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 04–04–C–00–GEG to impose and use and impose only PFC revenue Spokane International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 23, 2004, the FAA determined that the PFC application to impose and use revenue on eight projects and impose collection authority for one project submitted by Spokane Airport Board, Spokane International Airport, Spokane, Washington, was substantially complete within the requirements of section 158.25 of Part

158. The FAA will approve or disapprove the application, in whole or in part, no later than July 20, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2005.

Proposed charge expiration date: August 1, 2008.

Total requested for collection approval: $13,361,711.

Brief description of proposed projects: Impose and Use projects—Planning Studies, Snow Removal Equipment, Taxiway F Construction, Security Access control Improvements, Terminal Modifications for Security Improvements, Safety Equipment, Taxiway G Construction, Terminal Capacity Improvements; Impose Only Project—Runway 3/21 Extension.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Spokane International Airport.

Issued in Renton, Washington on April 23, 2004.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 04–9922 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–17160]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Uniform Act Focused Certification Program for Right-of-Way Professionals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to conduct a new information collection for a market survey to assist in the assessment of the need for developing a Uniform Act Focused Certification for Right-of-Way Professionals. Additional background and information about the potential need for the certification and the proposed survey process are provided below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 2, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2004–17160 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Kendrick, (202) 366–2035, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:15 a.m. to 3:45 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Uniform Act Certification Needs Analysis.

Background: The demand for Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) compliant real estate services is growing rapidly. However, both public sector agencies and private sector firms are experiencing difficulty in recruiting new workers into the needed disciplines due to a lack of trained individuals. In response to these challenges, as the Lead Agency for the Uniform Act, FHWA is proposing to conduct research to examine and report upon training and certification options for right-of-way and other real estate service providers. In addition, FHWA would assess the market need for the establishment of a new certification program, which would have as a focus the development of a qualified workforce to assist agencies and private sector organizations operating under the Uniform Act.

To assess the need for a new certification program focused on the Uniform Act, the Office of Real Estate Services proposes to survey three groups as follows:

1. Licensing agencies in the 50 states, the District of Columbia, Puerto Rico, Virgin Islands and Pacific territories will be surveyed to confirm the licenses required and the associated educational and work requirements for each license. Secondary research through agency Internet web sites will be utilized to the extent possible. Primary research by telephone or e-mail to a specific agency will only be performed as required to obtain information not available on the web site, or to obtain a required clarification.

- *Respondents:* 27 agencies.
- *Frequency:* This is a one-time survey.
- *Estimated Burden:* It is estimated that the response time will be 15 minutes per agency, for a total response time of 6.75 hours.

2. Selected two and four year colleges in the 50 states, the District of Columbia, Puerto Rico, Virgin Islands and the Pacific Territories and major national organizations, associations and institutions will be surveyed to inventory and document existing Uniform Act focused real estate course offerings. Secondary research through the Internet will be used to identify institutions offering courses and to gather as much information about the courses through the institution's web site. Primary research by telephone or e-mail to institutions will be utilized only as required to obtain information not available on the institution's web site, or to obtain a required clarification.

- *Respondents:* 75 institutions, associations, and organizations.
- *Frequency:* This is a one-time survey.
- *Estimated Burden:* It is estimated that the response time will be 15

minutes per institution, for a total response time of 18.75 hours.

3. Right-of-way managers in the 50 state departments of transportation, selected city and county transportation agencies and selected private sector real estate services, engineering and consulting firms will be surveyed to assess market perception of the need for a Uniform Act focused right of way certification program. A brief survey form, with approximately 20 questions, will be utilized as an initial information gathering tool. A link to this survey form will be sent via e-mail to the respondent and the survey form will be completed on-line, with telephone follow-up only as required to obtain a clarification on information provided. In addition, as a follow-up and validation of the initial survey, a 90-minute focus group session will be held. Twenty individuals, selected from those who responded to the original survey, will meet in a focus group during, or in conjunction with a national or major regional meeting of right of way professionals, such as the American Association of State Transportation Officials (AASHTO) national right of way committee meeting.

- *Respondents:* 100 survey respondents (54 state or territory transportation agencies, and 46 selected other city and county and private sector respondents).
- *Frequency:* This will be a one-time survey and follow-up focus group meeting.
- *Estimated Total Annual Burden:* The average response time for the survey is estimated to be 30 minutes, for a total of 50 hours. In addition, it is estimated that survey follow-up by e-mail or telephone will be required of 25% of the respondents for a total of 25 respondents at an average of 10 minutes, for a total response time of 4.17 hours. Twenty individuals will attend the focus group for 90 minutes each for a total of 30 hours. The total response time for the survey, follow-up and focus group meeting will be approximately 84.2 hours. The total annual burden for the entire survey (all three groups) is estimated to be approximately 110 hours.

Regulatory Notices

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 20, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–9928 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on March 21, 2003 (68 FR 13979). No comments were received. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 2, 2004.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Penney, (202) 366–2698, Office of Planning, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Information on Tribal Government Transportation Programs.

Abstract: FHWA proposes to fund a Synthesis project through the National Cooperative Highway Research Program. The project goal is to gather information on tribal governments' transportation programs. The information will include funding information, staffing, and administration of transportation projects and programs. Information will also be requested from tribal governments on cooperative projects with state and local governments. The information will be used to prepare a summary of how tribal transportation programs are funded and staffed, and how tribal governments administer programs with the Bureau of Indian Affairs, FHWA, and state and local governments. The information will be evaluated and best practices will be identified. The information will be shared with tribal governments and states for their use in developing and enhancing effective transportation programs for tribal governments.

Affected Public: 100 tribal government transportation staff.

Estimated Total Annual Burden Hours: The estimated average burden is 2 hours per respondent. The FHWA goal is to get information from 100 tribal governments at a minimum. The estimated total annual burden is 200 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: April 20, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–9929 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Special Approval of Alternate Standard

In accordance with §238.21 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for approval of an Alternate Standard of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road and Metro-North Railroad Special Approval Petition Docket Number FRA–2004–17099

Long Island Rail Road (LIRR) and Metro-North Railroad (MNCW), further identified herein as the railroads seek approval for use of an alternate standard required to be used in accordance with the *Passenger Equipment Safety Standards,* 49 CFR part 238. Section 309, periodic maintenance of MU locomotive equipment brakes. Section 309(b)(2) requires periodic brake equipment maintenance to be performed at an interval not to exceed every 1,104 days. The railroads are requesting an alternate standard for M7–MU locomotives that would require that periodic brake equipment maintenance be performed at an interval not to exceed every 1,840 days.

The railroads state that the new M7 locomotive air brake equipment is supplied by Knorr Brake Corporation. The air brake system is integrated with the propulsion system, and a full pneumatic back up of the emergency brake application function is available through the emergency brake valve and conductors valve. The M7 utilizes various systems to monitor, diagnose, and report brake equipment functions to a centralized diagnostic system on board the equipment. The railroads submitted required technical documentation, a Preliminary Hazard Analysis, Failure Modes and Effect Analysis, and Maintainability Analysis, and has served a copy of the petition on designated representatives of its employees together with a list of the names and addresses of the persons served. This information is available at the DOT docket site contained in this notice.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Each comment shall set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2004–17099) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on April 27, 2004.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 04–9951 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 32]

Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: FRA is updating its announcement of RSAC's working group activities to reflect their current status. For additional details on completed activities see prior working group activity notices (68 FR 25677).

FOR FURTHER INFORMATION CONTACT: Patricia Butera, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of December 1, 2003, (68 FR 54777). The twenty-second full Committee meeting was held December 2, 2003. The twenty-third meeting is scheduled for April 27, 2004, at the Washington Plaza Hotel.

Since its first meeting in April of 1996, the RSAC has accepted eighteen tasks. Status for each of the tasks is provided below:

Open Tasks

Task 96–4—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen (202) 493–6302.

Task 97–1—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on June 24, 1997. On April 14, 2004, RSAC reached consensus on the NPRM. FRA is finalizing the accompanying regulatory analysis so it can be forwarded for review and clearance within the Executive Branch. The NPRM is a new standard to increase the crashworthiness of conventional wide- and narrow-nose locomotives and codifies requirements for monocoque locomotives. Contact: Charles Bielitz (202) 493–6314.

Task 97–2—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation) (Completed)

(Noise exposure) The Cab Working Conditions Working Group met most recently in Chicago, November 12–14, 2002. A tentative consensus was reached on the draft rule text. The Working Group approved the NPRM. On June 27, 2003, the full RSAC gave consensus by ballot on NPRM. The NPRM is in review at the Office of Management and Budget (OMB).

(Cab Temperature) (Completed)

Note: Additional related topics may be further considered by the Working Group in the future, including effect of vibrations and crew emergency egress. Contact: Jeffrey Horn (202) 493–6283.

Task 97–3—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. On November 12, 2003, the RSAC gave consensus by ballot on the NPRM. The NPRM is currently in review at OMB with a target date for issuance of April 30, 2004. The National Transportation Safety Board noted the loss of data from event recorders in several accidents due to fire, water and mechanical damage. NTSB requested performance standards for data survivability. Contact: Edward Pritchard (202) 493–6247.

Task 97–4 and *Task 97–5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group.

(Report to the Administrator.) A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. FRA enclosed the report with a letter Report to Congress signed May 17, 2000.

(Regulatory development.) The Standards Task Force, formed to develop PTC standards assisted in developing draft recommendations for performance-based standards for processor-based signal and train control systems. The NPRM was approved by consensus at the full RSAC meeting held on September 14, 2000. The NPRM was published in the **Federal Register** on August 10, 2001. A meeting of the Working Group was held December 4–6, 2001, in San Antonio, Texas to formulate recommendations for resolution of issues raised in the public comments. Agreement was reached on most issues raised in the comments. A meeting was held May 14–15, 2002, in Colorado Springs, Colorado at which the Working Group approved creation of teams to further explore issues related to the "base case" issue. Briefing of the full RSAC on the "base case" issue was completed on May 29, 2002, and consultations continued within the working group. The full Working Group met October 22–23, 2002, and again March 4–6, 2003. Resolution of the remaining issues was considered by the Working Group at the July 8–9, 2003, meeting. The Working Group achieved consensus on recommendations for resolution of a portion of the issues in the proceeding. The full Committee considered the Working Group recommendations by mail ballots scheduled for return on August 14, 2003; however, a majority of the members voting did not concur. FRA has proceeded with preparation of a final rule, which is currently being reviewed in the Executive Branch.

(Other program development activities.) Task forces on Human Factors and the Axiomatic Safety-Critical Assessment Process (risk assessment) continue to work toward development of a risk assessment toolkit, and the Working Group continues to meet to monitor the implementation of PTC and related projects. Contact: Grady Cothen (202) 493–6302.

Task 00–1—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection). The Working Group held its first meeting on October 16–18, 2000, and six meetings have been held since then. The Working Group significantly narrowed the issues, but did not reach full consensus on recommendations for regulatory action. The Administrator announced at the full RSAC meeting on December 2, 2003, that the task is withdrawn and the issue may be pursued at a later date. Contact: Doug Taylor (202) 493–6255.

Task 03–01 Passenger Safety. This Task was accepted May 20, 2003, and a Working Group was established. The Working Group held its first meeting September 9–10, 2003. At the second meeting held November 6–7, 2003, four task forces were established: mechanical; crashworthiness/glazing; emergency preparedness; and Track/Vehicle Interaction. Task forces to meet and report on activities for Working Group consideration at third meeting scheduled for May 11–12, 2004.

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on April 26, 2004.

Grady C. Cothen,

Acting Associate Administrator for Safety.

[FR Doc. 04–9930 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory 2004–01

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: The FRA is issuing Safety Advisory 2004–01 to address recommended safety practices and review existing requirements for the protection of roadway workers from traffic on adjacent tracks and to heighten awareness to prevent the inadvertent fouling of track when on-track safety is not provided.

FOR FURTHER INFORMATION CONTACT: Christopher F. Schulte, Specialist, Track Division, Office of Safety Assurance and Compliance, Federal Railroad Administration, U.S. Department of

Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590. Telephone: 202–493–6251; or Cynthia Walters, Office of Chief Counsel, FRA 1129 Vermont Avenue, NW., Washington, DC 20590. Telephone: 202–493–6064.

SUPPLEMENTARY INFORMATION:

Background

The Roadway Worker Protection regulation ("regulation" "rule" or "roadway worker rule") (Subpart C of 49 CFR part 214) has proven to be an effective tool for reducing roadway worker fatalities. Since the regulation became effective in 1997, roadway worker fatalities have declined significantly. However, in 2003, there were five roadway worker fatalities, compared with one fatality in 1999. This suggests that more needs to be done to protect roadway workers. FRA believes that increased awareness by railroads, contractors to railroads, and their employees of certain dangers and how to avoid or minimize them may save lives.

From 1997 to the present, 20 fatalities have been attributed to non-compliance with the regulation. Ten of the 20 fatalities occurred when workers entered fouling space and were struck by a train or on-track equipment. Four of the 10 fatalities involved workers fouling adjacent track in error, while the remaining six have been categorized as involved workers fouling any track in error or fouling a track when unnecessary to perform work duties. This Safety Advisory addresses the circumstances involved in these ten fatalities-inadvertent fouling of tracks or fouling of tracks when unnecessary to perform work.

FRA and other members of the railroad industry have become increasingly concerned about these two categories of roadway worker fatalities. The regulation addresses the first category by requiring on-track safety protection through watchman/lookouts on adjacent track outside working limits for large-scale maintenance or construction (§ 214.335). Accordingly, working limits is an acceptable form of on-track safety for adjacent tracks. The second concern is also addressed in part by the regulation. It prohibits a roadway worker from fouling the track unless necessary for the performance of the worker's duty (§ 214.313(b)). The regulation also encourages heightened awareness among workers of their surroundings. *See* 61 FR 65966. In light of the number of recent roadway worker fatalities, FRA believes additional attention and emphasis needs to be placed on worker protection in both situations cited above.

Protection of Workers on Adjacent Tracks

The concept of protecting roadway workers from the hazards of trains and other on-track equipment on adjacent tracks is an important element of the roadway worker rule. Section 214.335(c) of the rule requires that roadway work groups engaged in large-scale maintenance or construction be provided with train-approach warning for movements on adjacent tracks that are not included within working limits. As noted in the preamble of the rule, "this [P]aragraph c . . . details the conditions under which train approach warning must be used on adjacent tracks that are not within work limits. These are conditions in which the risk of distraction is significant, and which require measures to provide on-track safety on adjacent track." *See* 61 FR 65971. Although "large-scale construction or maintenance" is not specifically defined in the regulation, FRA quoted approvingly from a recommendation issued by the Federal Roadway Worker Advisory Committee. That committee described large-scale activities as those including "track maintenance and/or renovation, such as but not limited to, rail and tie gangs, production in-track welding, ballast distribution, and undercutting." *See* 61 FR 655971.

Although FRA focused on "large-scale" activities as those that can be distracting to the roadway worker, other activities that are not necessarily "large-scale," also may have the potential to be distracting. Maintenance-of-way work has become increasingly mechanized—inspection, light maintenance, or emergency repairs are often accomplished by work crews consisting of a small number of individuals. Such activities where workers are preoccupied, distracted by noise, or drawn away from the zone of protection by their project-related duties may make it more likely that roadway workers and roadway maintenance machines will foul the adjacent track and possibly be struck by approaching or passing trains.

The difficulty in determining when certain types of work should be classified as "large-scale" and the concern for potentially unsafe small-scale activities has prompted rail labor to request a regulation change mandating on-track safety for all roadway work groups on adjacent track, regardless of the scope of the work. Although FRA has decided not to pursue a regulation change at this time, FRA believes it may be prudent for railroads and contractors to evaluate, on a case-by-case basis, whether work has the potential to foul or intrude on the adjacent track and consider protecting such work, even when the work would not be considered "large-scale."

On-Track Safety on Adjacent Track

The roadway worker rule established requirements addressing on-track safety on adjacent track. A brief review of such existing requirements follows. Roadway work groups can utilize train-approach warning (§ 214.329) and working limits (§ 214.319). When using train-approach warning, the watchman/lookout "shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform." (§ 214.329(g)). Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, fusee (§ 214.7). This section further imposes a duty upon the employer to provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties.

When using working limits, the roadway worker in charge of the working limits has the authority to actually direct train movement on the adjacent track. For controlled track, trains or on-track equipment can only move through the working limits at restricted speed or a speed determined suitable for the situation by the roadway worker in charge (§ 214.321(d)). For non-controlled track, trains and on-track equipment may only move at restricted speed (§ 214.327). If working limits are established for an adjacent track, it is important to consider the risks that remain when trains are permitted to pass through. Any maintenance or construction activity that has the potential to intrude onto the track must cease before trains are permitted to pass through working limits on adjacent track. Otherwise, any work that may cause an employee to foul the adjacent track would be unprotected. Based on the foregoing, railroads should have detailed procedures for directing trains through adjacent working limits, including a requirement mandating that further activity will not cause workers or equipment to foul the adjacent track. However, train-approach warning must be provided if further work is performed that may result in workers intruding into an adjacent track after a train is directed through.

Inadvertent Fouling

The concept of not fouling the track unless necessary for the performance of duties is a core element of the regulation. This concept has been codified in § 214.313, which addresses the responsibility of individual roadway workers and imposes specific requirements on individual roadway workers. It is imperative that roadway workers comply with § 214.313 and refrain from purposefully encroaching on the fouling space, unless absolutely necessary to perform their duties. Compliance with this requirement prohibits walking in the fouling space after work is complete and requires that roadway workers remain alert at all times. As long as roadway workers are moving about the right-of-way under traffic (even if their work has been completed), there is a continuous risk of being struck by a train or maintenance-of-way equipment. We note that this section also imposes on each roadway worker the responsibility to ascertain that on-track safety is being provided before fouling a track, and provides the worker with the right to refuse any directive to violate an on-track safety rule.

A second critically important concept involves lone workers using individual train detection as their method of on-track safety. Individual train detection is only appropriate in limited circumstances, as outlined in § 214.337. It is not an appropriate form of on-track safety where there is a risk of distraction that may prevent the lone worker from being in a heightened state of awareness. Workers are more likely to inadvertently step into the fouling space when they are engrossed in their duties or are using individual train detection in locations that are inappropriate due to the geography or current physical conditions.

FRA believes that the focus on heightened awareness appears to have deteriorated, causing increased occurrences of inadvertent and careless fouling of the track. As noted above, FRA's fatality data attribute six fatalities in the past seven years to roadway workers mistakenly stepping into the fouling space, directly into the path of a train.

FRA realizes that throughout the course of a workday, roadway workers need to cross tracks and do so safely, since even tracks protected by a form of on-track safety can be dangerous. However, the roadway worker rule clearly prohibits unnecessary fouling and, by emphasizing roadway worker awareness, attempted to prevent careless and inadvertent encroachment of the fouling space.

To further enhance safety, it is suggested that railroads and contractors to railroads install and utilize, as appropriate, rotation stops on roadway maintenance machines to prevent equipment from inadvertently fouling adjacent tracks.

Recommended Action

It is important to note that, like many FRA railroad safety standards, the roadway worker regulation merely prescribes minimum standards. Railroads and railroad contractors are free to prescribe additional or more-stringent standards consistent with the rule. (§ 214.301(b)).

FRA recommends that railroads and contractors to railroads develop and implement basic risk assessment procedures for use by roadway workers to determine the likelihood of adjacent track intrusion prior to initiating work activities (whether large-scale or small-scale activities). For example, if the work can be conducted by individuals positioned between the rails of a protected track, they would not foul an adjacent track. Likewise, light work where there is a structure between the tracks to prevent intrusion might be safely conducted without adjacent track protection. Examples would include a fence between the tracks at a passenger train station and the tall beam of a through-plate girder bridge.

Work that requires employees to be on the field side of the protected track toward an adjacent track would have a much greater likelihood to foul that adjacent track. Under these circumstances, it is necessary to consider the nature of the work and the track-center distance. While the roadway worker regulation specifies a 25-foot center that triggers mandatory adjacent track protection for large-scale work, this number can serve as a guide when conducting a risk assessment for activities with minimal intrusion potential. For example, when a small crew is working and the activity requires an employee to be in a position between the tracks, it would be wise to determine which particular track-center distance would be safe. This determination will help to ensure that the adjacent track would not be fouled if a worker were to inadvertently trip and fall. Other risk factors to consider would be the nature of the work (inspection or repair), sight distances, and the speed of trains on the adjacent track. Upon completion of an on-site risk assessment, the on-track safety briefing required by § 214.315(a) is perhaps the ideal instrument to implement preventive measures concerning adjacent tracks.

In addition to the above recommendation concerning basic risk assessment, FRA is recommending that railroads and contractors to railroads consider taking the following actions:

- Use of working limits for activities where equipment could foul adjacent track (whether large-scale or small-scale activities);
- Use rotation stops to mitigate the dangers associated with on-track equipment and trains passing on adjacent tracks;
- Review procedures for directing trains through adjacent track working limits, and enhance such procedures when necessary;
- Install adjacent track warning signs/devices in the operating cab of on-track machines to remind roadway maintenance machine operators to not inadvertently depart the equipment onto a track where there may be trains and other on-track equipment passing;
- Provide additional training and monitoring to its employees, emphasizing the need to cross tracks in a safe manner (*i.e.*, single file and after looking in both directions);
- Reinforce to individual roadway workers that it is critical not to foul a track except in the performance of duty and only when on-track safety has been established. This training could be accomplished through training sessions, as well as daily job briefings; and
- Institute peer-intervention measures by which workers are encouraged to intervene when observing another roadway worker engaging in potentially noncompliant and unsafe activity.

Railroads are also reminded that it is necessary to provide appropriate warning equipment to watchmen/lookouts to enable them to effectively warning of approaching trains. Such equipment includes whistles, air horns, white disks, red flags, lanterns, and fusees (§ 214.7).

Issued in Washington, DC, on April 27, 2004.

Grady Cothen,

Acting Associate Administrator for Safety

[FR Doc. 04–9952 Filed 4–30–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1065, Schedule D, and Schedule K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1065, U.S. Return of Partnership Income, Schedule D, Capital Gains and Losses, and Schedule K–1, Partner's Share of Income, Credits, Deductions, etc.

DATES: Written comments should be received on or before July 2, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Return of Partnership Income (Form 1065), Capital Gains and Losses (Schedule D), and Partner's Share of Income, Credits, Deductions, etc. (Schedule K–1).

OMB Number: 1545–0099.

Form Number: 1065, Schedule D, and Schedule K–1.

Abstract: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partners' names, addresses, and distribution shares, and other information. This information is used by the IRS to verify correct reporting of partnership items and for general statistics. The information is used by partners to determine the income, loss, credits, etc., to report on their tax returns.

Current Actions: There are no changes being made to the form or schedules at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, and individuals or households.

Estimated Number of Respondents: 2,376,800.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 524,324,665.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–10012 Filed 4–30–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4506–T; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice and request for comments.

SUMMARY: This document contains a correction to a notice and request for comments, which was published in the **Federal Register** on Wednesday, February 18, 2004 (69 FR 7670). This notice relates to a comment request on proposed collection on form 4506–T.

FOR FURTHER INFORMATION CONTACT: Carol A. Savage (202) 622–3945 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice and request for comments that is the subject of this correction is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Need for Correction

As published, the comment request for Form 4506–T contains an error which may prove to be misleading and is need of clarification.

Correction of Publication

Accordingly, the publication of the comment request for Form 4506–T, which was the subject of FR Doc. 04–3465, is corrected as follows:

(1) On page 7670, column 1, under the caption **SUPPLEMENTARY INFORMATION,** the language, "*OMB Number:* 1545–1873." is corrected to read "*OMB Number:* 1545–1872."

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 04–10014 Filed 4–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2005 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package (Publication 3319) for parties interested in applying for a Low Income Taxpayer Clinic Grant for the 2005 grant cycle. The IRS will award a total of up to $6,000,000 (unless otherwise provided by specific Congressional appropriation) to qualifying organizations.

DATES: Grant applications for the 2005 grant cycle must be received by the IRS (not postmarked) by July 1, 2004. Applications may be transmitted by mail or electronically.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Taxpayer Advocate Service, LITC Program Office Mail Stop 211–D, 401 W. Peachtree St., NW., Atlanta, GA 30308. To transmit an application electronically, go to *www.grants.gov.* Copies of the grant application package (IRS Publication 3319) can be downloaded from the IRS Internet site at *www.irs.gov/advocate* or ordered by calling 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at 404–338–7185 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS and/or inform individuals for whom English is a second language of their tax rights and responsibilities. The IRS may award grants to qualifying organizations to fund one-year, two-year or three-year project periods.

The 2005 LITC Application Package and Guidelines, Publication 3319, includes several changes that are being implemented to improve IRS's involvement with the technical components of the LITC Program. Among the changes, IRS has established work groups, clarified the comprehensive program standards, improved communications, and increased the emphasis on education and outreach programs to taxpayers for whom English is a second language.

The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will mail notification letters to each applicant.

Selection Considerations

Applications that pass the eligibility screening process will be numerically ranked based on the information contained in their proposed program plan. Please note that the IRS Volunteer Income Tax Assistance (VITA) Program is a separate and distinct program from the LITC grant program. Organizations currently participating in the VITA Program may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the LITC Grant Application Package & Guidelines (Publication 3319). Organizations that seek to operate both VITA and LITC programs must maintain separate and distinct programs to ensure proper cost allocation for LITC grant funds and adherence to both VITA and LITC program rules and regulations. In addition to the criteria and qualifications outlined in the LITC Grant Application Package and Guidelines, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations as well as a proper balance of start-up and existing clinics.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis. Comments may be sent to Internal Revenue Service, Taxpayer Advocate Service, LITC Program Office Mail Stop 211–D, 401 W. Peachtree Street, NW., Atlanta, GA 30308.

Dated: April 9, 2004.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 04–9739 Filed 4–30–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice.

SUMMARY: This document contains a correction to an open meeting of the Taxpayer Advocacy Panel Earned IncomeTax Credit Issue Committee being conducted in Las Vegas, Nevada, which was published in the **Federal Register** on Monday, April 19, 2004 (69 FR 20964).

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free) or 718–488–2085.

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of this correction is pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988).

Need for Correction

As published, the notice contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice, which was the subject of FR Doc. 04–8829, is corrected as follows:

(1) On page 20964, column 1, under the caption **DATES,** the language, "The meeting will be held Friday, May 14, 2004 and Saturday, May 15, 2004." is corrected to read "The meeting will be held Thursday, May 13, 2004, until Saturday, May 15, 2004."

(2) On page 20964, column 2, under the caption **SUPPLEMENTARY INFORMATION,** the language, "Friday, May 14, 2004 from 1:30 p.m. to 5:30 p.m. p.t. and Saturday, May 15, 2004 from 8 a.m. to 12 p.m. p.t. in Las Vegas, Nevada at the Flamingo Las Vegas Hotel located at 3555 Las Vegas Blvd. South, Las Vegas, NV 89109–8919." is corrected to read "Thursday, May 13, 2004, from 8:30 a.m. p.t. until 5:30 p.m., Friday, May 14, 2004, from 9 a.m. p.t. to 5:30 p.m., and Saturday, May 15, 2004, from 8:30 a.m. p.t. until 12 p.m. p.t. in Las Vegas, Nevada, at the Flamingo Las Vegas Hotel located at 3555 Las Vegas Blvd. South, Las Vegas, NV 89109–8919. The meeting will be closed to the public on Thursday, May 13, 2004, from 8:30 a.m. p.t. until 5:30 p.m. p.t. and Friday, May 14, 2004, from 9 a.m. p.t. until 12:30 p.m. p.t. for administrative purposes. The meeting will be open to the public on Friday, May 14, 2004, from 1:30 p.m. p.t. until 5:30 p.m. p.t., and Saturday, May 15, from 8:30 a.m. p.t. until 12 p.m. The additional time has been added due to additional agenda items being added."

(3) On page 20964 column 2, last paragraph, the language "Note: Last minute changes to the agenda are possible and could prevent effective advance notice." is removed.

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–10011 Filed 4–28–04; 4:58 pm]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 69, No. 85

Monday, May 3, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17143; Airspace Docket No. 04–ACE–9]

Modification of Class E Airspace; Iowa City, IA

Correction

In rule document 04–9397 appearing on page 22395 in the issue of Monday, April 26, 2004, the docket number is corrected to read as set forth above.

[FR Doc. C4–9397 Filed 4–30–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–09–AD; Amendment 39–13587; AD 2004–08–17]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

Correction

In rule document 04–9115 beginning on page 22392 in the issue of Monday, April 26, 2004, make the following correction:

§39.13 [Corrected]

On page 22393, in §39.13, under the heading **What Must I do To Address This Problem?**, in the table, in the entry labled Compliance, in the first paragraph, the date "May 14, 2004" should read, "May 17, 2004".

[FR Doc. C4–9115 Filed 4–30–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
May 3, 2004

Part II

Department of Housing and Urban Development

24 CFR Part 81

HUD's Proposed Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for the Years 2005–2008 and Amendments to HUD's Regulation of Fannie Mae and Freddie Mac; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–4790–P–01]

RIN 2501–AC92

HUD's Proposed Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) for the Years 2005–2008 and Amendments to HUD's Regulation of Fannie Mae and Freddie Mac

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: Through this proposed rule, the Department of Housing and Urban Development is proposing new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs) for calendar years 2005 through 2008. The new housing goal levels are proposed in accordance with the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) and govern the purchase by Fannie Mae and Freddie Mac of mortgages financing low- and moderate-income housing, special affordable housing, and housing in central cities, rural areas and other underserved areas.

To increase homeownership opportunities for families targeted by the three housing goals, this rule also would establish new subgoals for the GSEs' acquisitions of home purchase loans that qualify for each of the housing goals. Under the proposed rule, performance under these subgoals would be calculated as percentages of the GSEs' total acquisitions of home purchase mortgages for single-family, owner-occupied properties located in metropolitan areas meeting each of the three housing goals.

The Department also proposes to revise the existing rule to provide enhanced requirements to ensure GSE data integrity by: codifying the existing authority that authorizes HUD to independently verify the accuracy and completeness of data, information and reports provided by the GSEs; establishing certification requirements for the submission of the GSEs' Annual Housing Activities Report (AHAR) and for such other report(s), data submission(s) or information for which certification is requested in writing by HUD; codifying a process for handling errors, omissions or discrepancies in a GSE's current year-end data submissions; clarifying that HUD may exercise its goal counting authority by adjusting a GSE's housing goals performance for a current year by deducting miscredits from a previous year caused by errors, omissions or discrepancies in a GSE's prior year data submissions (including the AHAR); and clarifying that HUD may take enforcement action against the GSEs, as authorized by FHEFSSA and as implemented by HUD's regulations at 24 CFR part 81, subpart G, for the submission of non-current, inaccurate or incomplete report(s), data or information.

In addition, HUD is proposing in this rulemaking to amend the definitions of "Underserved area", "Metropolitan area" and "Minority", and to add a new definition of the term "Home Purchase Mortgage'.

The rulemaking also invites comments on whether HUD should have a standard econometrically based method for imputing the distribution of GSE-purchased mortgages that lack income data, and whether HUD should revise its definitions or other rules (including the counting rules) to ensure that only those large scale GSE transactions that are consistent with the statute and its purposes qualify under the goals.

DATES: Comments must be submitted on or before: July 2, 2004.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. All communications should refer to the above docket number and title. Facsimile (FAX) comments and e-mail comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises, Office of Housing, Room 3150, telephone 202–708–2224. For questions on data or methodology, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8212, telephone (202) 708–1464. For legal questions, contact Kenneth A. Markison, Assistant General Counsel for Government Sponsored Enterprises/RESPA or Paul S. Ceja, Deputy Assistant General Counsel for Government Sponsored Enterprises/RESPA, Office of the General Counsel, Room 9262, telephone 202–708–3137. The address for all of these persons is Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410. Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. General

A. Statutory and Regulatory Background

In 1968, at the time Fannie Mae was chartered in its current form as a government sponsored enterprise (GSE), Congress assigned the Department of Housing and Urban Development ("HUD" or "the Department") regulatory authority over Fannie Mae pursuant to section 802(ee) of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968, 82 Stat. 476, 541) (HUD Act of 1968). In 1989, Congress granted the Department essentially identical authority over another GSE, Freddie Mac, pursuant to section 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73, approved August 9, 1989), which amended the Federal Home Loan Mortgage Corporation Charter Act, Pub. L. 91–351, approved July 24, 1970 (the "Freddie Mac Charter Act").

Under section 802(ee) of the HUD Act of 1968, HUD was authorized to require that a "reasonable portion" of Fannie Mae's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families. Accordingly, in 1978, the Department established by regulation two housing goals for Fannie Mae: a goal for mortgages on low- and moderate-income housing and a goal for mortgages on housing located in central cities (*see* 24 CFR 81.16(d) and 81.17 of HUD's former rules at 43 FR 39203, published August 15, 1978). HUD established each goal at the level of 30 percent of Fannie Mae's conventional mortgage purchases.

Similar housing goals for Freddie Mac were proposed by the Department in 1991 (at 56 FR 41022, published August 16, 1991) but were not finalized prior to October 1992, when Congress enacted FHEFSSA and revised the Department's GSE regulatory authorities, including establishing new requirements for the housing goals.

Specifically, FHEFSSA established the Office of Federal Housing Enterprise

Oversight (OFHEO) as the GSEs' safety and soundness regulator and affirmed, clarified and expanded the Secretary of Housing and Urban Development's GSE regulatory authority. FHEFSSA also provided that, except for certain exclusive authorities of the Director of OFHEO, and all other matters relating to the GSEs' safety and soundness, the Secretary had general regulatory power over the GSEs. (*See* section 1321 of FHEFSSA, 12 U.S.C. 4541.)

Further, FHEFSSA detailed and expanded the Department's responsibilities to establish, monitor, and enforce housing goals for the GSEs' purchases of mortgages that finance housing for low- and moderate-income families (the "Low- and Moderate-Income Housing Goal"), housing located in central cities, rural areas, and other underserved areas (the "Underserved Areas Housing Goal"), and special affordable housing, affordable to very low-income families and low-income families in low-income areas (the "Special Affordable Housing Goal") (collectively, the "Housing Goals" or, individually, the "Housing Goal"). (*See*, generally, sections 1331–1334 of FHEFSSA, 12 U.S.C. 4561–4564.) There is also a subgoal under the Special Affordable Housing Goal for multifamily housing.

Under FHEFSSA, the Department is required to establish each Housing Goal after consideration of certain factors that are relevant to the particular Housing Goal, including: (a) National housing needs; (b) economic, housing and demographic conditions; (c) the performance and efforts of the GSEs toward achieving the Housing Goal in previous years; (d) the size of the market for mortgages targeted by the Housing Goal relative to the overall conventional mortgage market; (e) the ability of the GSEs to lead the industry in making credit available for mortgages targeted by the Housing Goal; and (f) the need to maintain the sound financial condition of the GSEs. (*See* sections 1332(b), 1333(a)(2), 1334(b) of FHEFSSA; 12 U.S.C. 4562(b); 12 U.S.C. 4563(a)(2); and 12 U.S.C. 4564.) (There are slight differences among the three Housing Goals in the statutory specification of the factors. In particular, for the Special Affordable Housing Goal factors (b) and (d) are absent, and there is a factor for data submitted in previous years to the Secretary in connection with the Housing Goal.)

For the transition period of 1993–1994, FHEFSSA required HUD to establish interim Housing Goals, which HUD did in 1993 (at 53 FR 53048). In November 1994, HUD extended the 1994 interim Housing Goals for both GSEs through 1995 while the Department completed its development of post-transition Housing Goals (*see* 59 FR 61504).

In 1995, the Department issued a proposed rule (60 FR 9154, published February 16, 1995) and, several months later, a final rule (60 FR 61846, published December 1, 1995) (the "Housing Goals 1995 final rule") establishing the Housing Goals for the years 1996 through 1999, along with regulations implementing FHEFSSA. The Housing Goals 1995 final rule provided that the Housing Goals for 1999 would continue beyond 1999 if the Department elected not to change the Housing Goals, and that HUD could change the level of the Housing Goals for the years 2000 and beyond based upon HUD's experience and in accordance with HUD's statutory authority and responsibility.

The Housing Goals 1995 final rule established counting requirements to calculate performance under the Housing Goals. The Housing Goals 1995 final rule also: (1) Prohibited the GSEs from discriminating in any manner, on any prohibited basis, in their mortgage purchases; (2) implemented procedures for the exercise of HUD's new program review authority; (3) established reporting requirements and a public use data base of the GSEs' mortgage purchase activities; (4) provided protections for GSE confidential and proprietary information; and (5) established enforcement procedures.

On March 9, 2000, HUD published a proposed rule to establish new Housing Goal levels for Fannie Mae and Freddie Mac for calendar years 2000 through 2003 (*see* 65 FR 12632–12816). On October 31, 2000, after analyzing over 250 comments, HUD issued a final rule establishing the new Housing Goals (the "Housing Goals 2000 Final Rule," 65 FR 65044–65229).

The Housing Goals 2000 final rule increased the level of the Housing Goals for Fannie Mae and Freddie Mac. Specifically, this rule:

(1) Increased the level of the Housing Goals for calendar years 2001 through 2003 as follows:

- The Low- and Moderate-Income Housing Goal increased to 50 percent;
- The Underserved Areas Housing Goal increased to 31 percent;
- The Special Affordable Housing Goal increased to 20 percent;
- The Special Affordable Multifamily Subgoal increased to the respective average of one percent of each GSE's total mortgage purchases during the period of 1997 Through 1999; and
- Pending establishment of annual Housing Goals for the year 2004 and thereafter, the annual Housing Goals for each of those years were to be established at 50 percent, 31 percent, and 20 percent, respectively;

(2) Made temporary bonus points available for the GSEs' purchases of mortgages for small multifamily properties with 5 to 50 units, and, above a threshold, for single-family 2- to 4-unit owner-occupied rental properties, for calendar years 2001 through 2003 (but not for subsequent years, unless determined by HUD);

(3) Established a temporary adjustment factor ("TAF") for Freddie Mac's purchases of mortgages on large multifamily properties (over 50 units) for calendar years 2001 through 2003;

(4) Prohibited high-cost mortgage loans with predatory features from receiving Housing Goals credit;

(5) Established and clarified counting rules under the Housing Goals for the treatment of missing affordability data, purchases of seasoned mortgage loans, purchases of federally insured mortgage loans and purchases of mortgage loans on properties with expiring assistance contracts;

(6) Established procedures for HUD's review of transactions to determine appropriate Housing Goal treatment; and

(7) Made certain definitional and technical corrections to the Housing Goals 1995 final rule.

The Housing Goals 2000 final rule provided for the award of temporary bonus points (double credit) toward the Housing Goals for both GSEs' mortgage purchases that financed single-family, owner-occupied 2–4 unit properties and 5–50 unit multifamily properties. Under the TAF, the rule also awarded Freddie Mac 1.2 units credit for each multifamily unit in property over 50 units.[1] The Housing Goals 2000 final rule made clear, however, that both of these measures were temporary, intended to encourage the GSEs to ramp up their efforts to meet financing needs that had not been well served. During the three years for which the temporary bonus points and TAF were established, HUD expected the GSEs to develop new, sustainable business relationships and purchasing strategies for the targeted needs.

At the end of the three years (2001–2003), the Department determined not to extend the bonus points or the TAF, after careful review of the facts and circumstances of performance under the Housing Goals. Data indicate that both GSEs increased their financing of units

[1] Congress increased the level of the TAF to 1.35 per unit, section 1002 of Pub. L. 106–554 (December 21, 2000).

targeted by the bonus points and the TAF.

B. Background: Fannie Mae and Freddie Mac

Fannie Mae and Freddie Mac were chartered by the Congress as government sponsored enterprises. Pursuant to section 301 of the Federal National Mortgage Association Charter Act (the "Fannie Mae Charter Act", 12 U.S.C. 1716, *et seq.*) and section 301(b) of the Federal Home Loan Mortgage Corporation Act (the "Freddie Mac Charter Act", 12 U.S.C. 1451, *et seq.*), the GSEs were chartered expressly to:

(1) Provide stability in the secondary market for residential mortgages;

(2) Respond appropriately to the private capital market;

(3) Provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and

(4) Promote access to mortgage credit throughout the nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.

As a result of their status as GSEs, Fannie Mae and Freddie Mac receive significant explicit benefits that are not enjoyed by fully private shareholder-owned corporations in the mortgage market. These benefits include:

• Conditional access to a $2.25 billion line of credit from the U.S. Treasury (*see* section 306(c)(2) of the Freddie Mac Charter Act and section 304(c) of the Fannie Mae Charter Act);

• Exemption from the securities registration requirements of the Securities and Exchange Commission and the States (*see* section 306(g) of the Freddie Mac Charter Act and section 304(d) of the Fannie Mae Charter Act); [2] and

• Exemption from all State and local taxes except property taxes (*see* section 303(e) of the Freddie Mac Charter Act and section 309(c)(2) of the Fannie Mae Charter Act).

Fannie Mae and Freddie Mac engage in two principal businesses: purchasing and otherwise investing in residential mortgages and guaranteeing securities backed by residential mortgages.

While the securities that the GSEs guarantee, and the debt instruments they issue, are explicitly not backed by the full faith and credit of the United States, and nothing in this proposed rule should be construed otherwise, such securities and instruments trade at yields only a few basis points over those of U.S. Treasury securities with comparable terms. Moreover, these securities also offer yields lower than those for securities issued by fully private firms that are more highly capitalized but otherwise comparable.

These factors, in addition to the fact that the market does not require that individual GSE securities be rated by a national rating agency, evidence that investors perceive that GSE-guaranteed securities have inherent advantages over other types of guaranteed securities in light of the GSEs' relationship to the Federal Government, including their public purposes, their Congressional charters, and the explicit benefits provided in their charters as described above.

Consequently, the GSEs are able to fund their operations at lower cost than other private firms with similar financial characteristics. In a recent report, the Congressional Budget Office (CBO) estimated this funding advantage for the year 2003 to be a $19.6 billion annual combined subsidy for both GSEs. Of this amount, CBO estimated that the GSEs retained about $6.2 billion, or approximately one-third of the subsidy, for their officers and shareholders, while the remainder accrued to borrowers.[3]

C. Secretary's Approach To Regulating the GSEs

In return for the public benefits they receive, Congress has mandated in the GSEs' Charter Acts that the GSEs carry out public purposes not required of other private sector entities in the housing finance industry.

Specifically, as indicated, the GSEs' Charter Acts require them to continually assist in the efficient functioning of the secondary market for residential mortgages, including mortgages for low- and moderate-income families that may involve a reasonable economic return that is less than the economic return on other mortgages. The GSEs also are required to promote access to mortgage credit throughout the nation, including central cities, rural areas, and other underserved areas. These statutory mandates obligate the GSEs to work to ensure that everyone in the nation has a reasonable opportunity to enjoy access to the mortgage financing benefits resulting from the activities of these enterprises.

The GSEs have achieved an important part of their mission: providing stability and liquidity to large segments of the housing finance markets. They have also increased their purchases of loans affordable to low-income families over the past decade since the affordable housing goals were put in place under FHEFSSA. Through partnership efforts, new product offerings, and flexible underwriting and purchase standards, both enterprises have reached out to underserved borrowers, as discussed below in this preamble and in the appendices.

The major premise of this proposed rule is that the GSEs must further utilize their entrepreneurial talents and power in the marketplace to genuinely "lead the mortgage finance industry" and to "ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities." (*See*, S. Rep. No. 282, 102d Cong., 2d Sess. 34 (1992).)

For example, despite the record national homeownership rate of 67.9 percent in 2002, certain segments of the population clearly have not benefited to the same degree that others have from the advantages and efficiencies provided by Fannie Mae and Freddie Mac. Problems continue to persist for low-income families and certain minorities:

• Lower homeownership rates prevail for certain minorities, especially for African-American households (47.9 percent) and Hispanics (48.2 percent). These gaps are only partly explained by differences in income, age, and other socioeconomic factors. Disparities in mortgage lending are reflected in loan denial rates of minority groups when compared to white applicants. Denial rates for conventional home purchase mortgage loans (excluding manufactured housing loans) in 2002 were 19.9 percent for African Americans, 14.0 percent for Native

[2] Fannie Mae and Freddie Mac have both announced their intention voluntarily to register their common stock with the Securities and Exchange Commission (SEC) under section 12(g) of the Securities Exchange Act of 1934. Fannie Mae's registration became effective March 31, 2003. Freddie Mac has stated that it will complete the process of voluntarily registering its common stock once it resumes timely reporting of its financial results.

[3] "Updated Estimates of the Subsidies to the Housing GSEs", attachment to a letter from Douglas Holtz-Eakin, Director, Congressional Budget Office, to the Honorable Richard C. Shelby, Chairman, Committee on Banking, Housing, and Urban Affairs, United States Senate, April 8, 2004. A related recent study is Wayne Passmore, "The GSE Implicit Subsidy and Value of Government Ambiguity," Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series, FEDS Working Paper 2003–64, December 2003.

American applicants, 15.1 percent for Hispanic applicants, 8.9 percent for Asian applicants, and 7.9 percent for White applicants.

• While Fannie Mae and Freddie Mac cannot be expected to solve all these problems, they have both the resources and the expertise to improve credit access for low- and moderate-income families, minority families, and families in underserved areas. The GSEs also have the ability to increase the financing of affordable multifamily rental housing. Yet, studies by HUD and others show that the GSEs generally have been less active in historically underserved markets where there is a need for additional sources of financing to address persistent housing and credit needs, and fully private companies, operating without the benefits of GSE status, perform better in these markets.

• Between 1999 and 2002, special affordable housing borrowers accounted for 14.4 percent of Fannie Mae's acquisitions of home purchase mortgage loans and 14.5 percent of Freddie Mac's acquisitions, at the same time that such mortgages accounted for 16.4 percent of home purchase loans originated in the overall conventional, conforming market (excluding B&C loans) in metropolitan areas.

• During the same period, mortgage purchases on properties located in underserved areas accounted for 24.0 percent and 22.9 percent of Fannie Mae's and Freddie Mac's acquisitions of home purchase loans, respectively, and 25.8 percent of home purchase mortgages originated in the primary market.

• Both Fannie Mae and Freddie Mac have lagged the market in funding first-time homebuyers. Between 1999 and 2002, first-time homebuyers accounted for 27 percent of each GSE's purchases of home purchase loans, compared with 38 percent for home purchase loans originated in the conventional conforming market.

Fannie Mae and Freddie Mac have increased their role in providing financing for the low-income end of the mortgage market, but the GSEs need to increase their efforts further and demonstrate their capacity to be industry leaders. There are ample market opportunities for them to do so, including:

• Continuing to introduce new products, and providing greater flexibility in their purchase and underwriting guidelines, to better address the unique circumstances of low-income families;

• Continuing to look for sound investment opportunities in those lower-income sectors that have not yet received the benefits of mainstream lenders supported by an active secondary market;

• Expanding their penetration in the following market segments: (1) Borrowers with credit blemishes, or with little traditional credit history; (2) first-time homebuyers; (3) Community Reinvestment Act ("CRA")-related loans, which are loans to low- and moderate-income populations and neighborhoods in a financial institution's assessment area as established under the CRA; (4) the rental property market; and (5) the market for rehabilitation loans; and

• Increasing their outreach to, and achieving greater efficiency in, the above identified markets, as well as in other markets that serve low-income and moderate-income families and families living in underserved areas.

Under the present rulemaking, the Department is proposing new, higher levels for the Housing Goals, accompanied by subgoals under each of the Housing Goals for purchases of home purchase mortgages on owner-occupied properties in metropolitan areas. (The subgoals are hereafter referred to in this rule as "Home Purchase Subgoal" or "Subgoal".) The Department's purpose in proposing higher Housing Goals and in establishing new Home Purchase Subgoals in this rulemaking is to encourage the GSEs to facilitate greater financing and homeownership opportunities for families and neighborhoods targeted by the Housing Goals. In developing these regulations, the Department was guided by, and re-affirms, the following principles established in the Housing Goals 1995 final rule:

(1) The GSEs should fulfill FHEFSSA's intent that they lead the industry in ensuring that access to mortgage credit is made available for very low-, low- and moderate-income families and residents of underserved areas. HUD recognizes that, to lead the mortgage industry over time, the GSEs will have to stretch to reach certain Housing Goals and to close gaps between the secondary mortgage market and the primary mortgage market for various categories of loans. This approach is consistent with the Congress' directive that "the enterprises will need to stretch their efforts to achieve" the goals (*see* S. Rep. No. 282, 102d Cong., 2d Sess., 35 (1992)).

(2) The Department's role as a regulator is to set broad performance standards for the GSEs through the Housing Goals, but not to dictate the specific products or delivery mechanisms the GSEs will use to achieve a Housing Goal. Regulating two exceedingly large financial enterprises in a dynamic market requires that HUD provide the GSEs with sufficient latitude to use their innovative capacities to determine how best to develop products to carry out their respective missions. HUD's regulations are intended to allow the GSEs the flexibility to respond quickly to market opportunities. At the same time, the Department must ensure that the GSEs' strategies address national credit needs, especially as they relate to housing for low- and moderate-income families and housing located in underserved geographical areas. The addition of Home Purchase Subgoals to the regulatory structure provides an additional means of encouraging the GSEs' affordable housing activities to address identified, persistent credit needs while leaving to the GSEs the specific approaches to meeting these needs.

(3) Discrimination in lending—albeit sometimes subtle and unintentional—has denied racial and ethnic minorities the same access to credit to purchase a home that has been available to similarly situated non-minorities. As noted above, troublesome gaps in homeownership remain for minorities even after record growth in affordable lending and homeownership during the nineties. Studies indicate that, over the next few years, minorities will account for a growing share of the families seeking to buy their first home. HUD's analyses indicate, however, that Fannie Mae and Freddie Mac account for a relatively small share of the minority first-time homebuyer market. The GSEs have a responsibility to promote access to capital for minorities and others who are seeking their first homes, and to demonstrate the benefits of such lending to industry and borrowers alike. The GSEs also have an integral role in eliminating predatory mortgage lending practices.

(4) In addition to the GSEs' purchases of single-family home mortgages, the GSEs also must continue to assist in the creation of an active secondary market for mortgages on multifamily rental housing. Affordable rental housing is essential for those families who cannot afford to become, or who choose not to become, homeowners. For this reason, the GSEs must assist in making capital available to assure the continued development of single-family and multifamily rental housing.

With these principles in mind, the Department is proposing levels of the Housing Goals that will bring the GSEs to a position of market leadership in a range of foreseeable economic circumstances related to the future course of interest rates and consequent fluctuations in origination rates on home purchase and refinance mortgages—both multifamily and single-family. For each Goal, HUD has projected Goal-qualifying percentages of mortgage originations in terms of ranges that cover a variety of economic scenarios. The objective of HUD's proposed Housing Goals is to bring the GSEs' performance to the upper end of HUD's market range estimate for each Goal, consistent with the statutory criterion that HUD should consider the GSEs' ability to lead the market for each Goal. To enable the GSEs to achieve this leadership, the Department is proposing modest increases in Housing Goal levels for 2005 which will increase further, year-by-year through 2008, to achieve the ultimate objective for the GSEs to lead the market under a range of foreseeable economic circumstances by 2008. Such a program of staged increases is consistent with the statutory requirement that HUD consider the past performance of the GSEs in setting the Goals. Staged annual increases in the Goals will provide the enterprises with opportunity to adjust their business models and prudently try out business strategies, so as to meet the required 2008 levels without compromising other business objectives and requirements.

The Department believes that the Home Purchase Subgoals that it proposes to establish under this rulemaking are necessary and warranted. Increasing homeownership is a national priority. As detailed below, the GSEs must apply greater efforts to increasing homeownership for low- and moderate-income families, families living in underserved areas, and very-low income families and low-income families living in low-income areas. The addition of Home Purchase Subgoals to the regulatory structure will serve to better focus the GSEs' efforts in a clear and transparent manner and better allow the government and public alike to monitor the GSEs' efforts in meeting the nation's homeownership needs.

Moreover, the Department reaffirms its view that neither the award of bonus points for particular mortgage purchases nor the temporary adjustment factor for Freddie Mac's multifamily purchases are necessary. At this point, their continued use would only result in misleading information about the extent to which the GSEs are, in fact, meeting the Housing Goals. The decision to increase the levels of the Housing Goals substantially in a staged manner under this proposal and, at the same time, not to renew the bonus points or TAF, will ensure that the GSEs continue to address the areas formerly targeted by these measures. The business relationships that the GSEs established when these provisions were in place will be necessary to meet the higher Housing Goals.

The Department's proposals to increase the levels of the Housing Goals, and to establish new Home Purchase Subgoals, are predicated upon its recognition that the GSEs not only have the ability to achieve these Housing Goals but, also, that they are fully consistent with the statutory factors established under FHEFSSA. In addition, these proposals are supported by the Department's comprehensive analyses of the size of the mortgage market, the opportunities available to the GSEs, America's unmet housing needs, and identified credit gaps.

The Department anticipates that, as the GSEs' businesses grow, the increased level of the Housing Goals, and the new Home Purchase Subgoals, will enable the GSEs to continue to address new markets and persistent, unmet housing finance needs.

II. Implementation

A. Affordable Housing Goals

1. Proposed Changes to Housing Goal Levels

The current Housing Goal levels are 50 percent for the Low- and Moderate-Income Housing Goal, 31 percent for the Underserved Areas Housing Goal, and 20 percent for the Special Affordable Housing Goal. The Special Affordable Housing Goal includes a Subgoal for mortgage purchases financing dwelling units in multifamily housing which is 1.0 percent of the average annual dollar volume of mortgages (both single-family and multifamily) purchased by the respective GSE in 1997, 1998, and 1999—$2.85 billion annually for Fannie Mae and $2.11 billion annually for Freddie Mac.

The Department is proposing in this rulemaking to increase the Housing Goal levels as follows:

• The proposed level of the Low- and Moderate-Income Housing Goal is 52 percent in 2005, 53 percent in 2006, 55 percent in 2007, and 57 percent in 2008;

• The proposed level of the Underserved Areas Housing Goal is 38 percent in 2005, 39 percent in 2006, 39 percent in 2007, and 40 percent in 2008; and

• The proposed level of the Special Affordable Housing Goal is 22 percent in 2005, 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008.

• In addition, HUD is proposing to retain the Special Affordable Multifamily Subgoal for calendar years 2005–2008, at 1.0 percent of their respective average dollar volumes of mortgage purchases in calendar years 2000, 2001, and 2002. This would increase the dollar value to $5.49 billion annually for Fannie Mae and $3.92 billion annually for Freddie Mac.

The Housing Goal percentages that are proposed in this rule reflect the application of area median incomes and minority percentages based on 2000 Census data, the Census Bureau's specification of census tract boundaries for the 2000 Census, and the Office of Management and Budget's specification of metropolitan area boundaries based on the 2000 Census.

2. HUD's Consideration of Statutory Factors in Setting the Housing Goals

As discussed above, HUD considered six statutory factors before it decided upon the levels of the Housing Goals being proposed in this rulemaking, as described in Section III(B) of this preamble and proposed rule amendment numbers 3–5 of this proposed rule. A summary of HUD's findings relative to each factor follows. More detailed discussion of these points is included in Appendices A, B, and C.

a. Demographic, Economic, and Housing Conditions

(i) *Demographic Trends.* Changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information and other barriers that many immigrants and minorities face.

The U.S. Census Bureau has projected that the U.S. population will grow by an average of 2.5 million persons per year between 2000 and 2025, resulting in about 1.2 million new households per year. The aging of the baby-boom generation and the entry of the baby-bust generation into prime home-buying age will have a dampening effect on housing demand. Growing housing demand from minorities, immigrants and non-traditional homebuyers will help offset declines in the demand for housing caused by the aging of the population.

The continued influx of immigrants will increase the demand for rental housing, while those who immigrated during the 1980s and 1990s will be in the market for homeownership. Immigrants and minorities—who accounted for nearly 40 percent of the growth in the nation's homeownership rate over the past five years—will be responsible for almost two-thirds of the growth in the number of new households over the next ten years.

Non-traditional households have become more important, as overall household formation rates have slowed. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. By 2025, non-family households will make up a third of all households. The role of traditional 25-to-34 year-old married, first-time homebuyers in the housing market will be smaller in the current decade due to the aging of the population. Between 2000 and 2025, the Census Bureau projects that the largest growth in households will occur among householders 65 and over.

As these demographic factors play out, the overall effect on housing demand will likely be continued growth and an increasingly diverse household population from which to draw new renters and homeowners. A greater diversity in the housing market will, in turn, require greater adaptation by the primary and secondary mortgage markets.

(ii) *Economic and Housing Conditions.* While most other sectors of the economy were weak or declining during 2001 and 2002, the housing sector showed remarkable strength. The housing market continued at a record pace during 2003.

In 2002, the U.S. economy moved into recovery, with real Gross Domestic Product (GDP) growing 2.2 percent, although measures of unemployment continued to rise. In October 2002, the average 30-year home mortgage interest rate slipped below 6 percent for the first time since the mid-1960s. Favorable financing conditions and solid increases in house prices were the key supports to record housing markets during both 2002 and 2003. By the end of 2003, the industry had set new records in single-family permits, new home sales, existing home sales, interest rates, and homeownership. Other indicators—total permits, starts, completions, and affordability—reached levels that were among the highest in the past two decades.

Over the near term, the Administration's forecast for real GDP growth is 4.0 percent for 2004, while the Congressional Budget Office (CBO) projects that real GDP will grow at an average rate of 3.2 percent from 2005 through 2008. The ten-year Treasury rate is projected to average 5.5 percent between 2005 and 2008 compared to its average of 4.6 percent in 2002 and 4.0 percent in 2003. Standard & Poor's expects housing starts to average 1.8 million units in 2004–05. Fannie Mae projects existing home sales at 6.1 million units for 2004 and 5.8 million for 2005, compared to their record 6 million level in 2003.

(iii) *Mortgage Market Conditions.* Low interest rates and record levels of refinancing caused mortgage originations to soar from $2.2 trillion in 2001 to $2.9 trillion in 2002 and around $3.8 trillion in 2003. Fannie Mae projects that mortgage originations will drop to $2.4 trillion in 2004 and $1.7 trillion in 2005, as refinancing returns to more normal levels. The volume of home purchase mortgages was $910 billion to $1.1 trillion between 1999 and 2001 before jumping to $1.2 trillion in 2002 and $1.3 trillion in 2003. As with housing starts, the home purchase origination market is expected to exhibit sustained growth.

b. National Housing Needs

(i) *Affordability Problems.* Data from the 2000 Census and the American Housing Surveys demonstrate that there are substantial housing needs among low- and moderate-income families. Many of these households are burdened by high homeownership costs or rent payments and, consequently, are facing serious housing affordability problems.

There is evidence of persistent housing problems for Americans with the lowest incomes. HUD's analysis of American Housing Survey data reveals that, in 2001, 5.1 million households had "worst case" housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted very-low-income renter households. Among these households, 90 percent had a severe rent burden, 6 percent lived in severely inadequate housing, and 4 percent suffered from both problems. Among the 34 million renters in all income categories, 6.3 million (19 percent) had a severe rent burden and over one million renters (3 percent) lived in housing that was severely inadequate.

(ii) *Disparities in Housing and Mortgage Markets.* Despite the strong growth in affordable lending over the past ten years, there are families who are not being adequately served by the nation's housing and mortgage markets.

Serious racial and income disparities remain. The homeownership rate for minorities is 25 percentage points below that for whites. A major HUD-funded study of discrimination in the sales and rental markets found that while discrimination against minorities was generally down since 1989, it remained at unacceptable levels in 2000. The most prevalent form of discrimination against Hispanic and African-American home seekers observed in the study was Hispanics and African Americans being told that housing units were unavailable when non-Hispanic whites found them to be available. The study also found other worrisome trends of discrimination in metropolitan housing markets that persisted in 2000, for example, geographical steering experienced by African-American homebuyers, and real estate agents who provided less assistance in obtaining financing for Hispanic homebuyers than for non-Hispanic whites.[4] Racial disparities in mortgage lending are also well documented. HUD-sponsored studies of the pre-qualification process conclude that African Americans and Hispanics face a significant risk of unequal treatment when they visit mainstream mortgage lenders. Studies have shown that mortgage denial rates are substantially higher for African Americans and Hispanics, even after controlling for applicant income and a host of underwriting characteristics, such as the credit record of the applicant.[5]

The existence of substantial neighborhood disparities in homeownership and mortgage credit is also well documented for metropolitan areas. HUD's analysis of HMDA data shows that mortgage credit flows in metropolitan areas are substantially lower in high-minority and low-income neighborhoods and mortgage denial rates are much higher for residents of these neighborhoods. Studies have also documented that mainstream lenders often do not operate in inner-city minority neighborhoods, leaving their residents with only high-cost lenders as options. Too often, residents of these same neighborhoods have been subjected to the abusive practices of predatory lenders.

These troublesome disparities mostly affect those families (minorities and immigrants) who are projected to account for almost two-thirds of the growth in the number of new households over the next ten years.

(iii) *Single-Family Market: Trends in Affordable Lending and Homeownership.* Many younger, minority and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past ten years, economic expansion, accompanied by low interest rates and

[4] Margery Austin Turner, *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*, The Urban Institute Press, April 2002. Appendix A includes further discussion of this study.

[5] These studies are discussed in section B.1 of Appendix B.

increased outreach on the part of the mortgage industry, has improved affordability conditions for these families.

As this preamble and the appendices note, there has been a "revolution in affordable lending" that has extended homeownership opportunities to historically underserved households. The mortgage industry, including the GSEs, has offered more customized mortgage products, more flexible underwriting, and expanded outreach to low-income and minority borrowers.

HMDA data suggest that the industry and GSE initiatives are increasing the flow of credit to underserved borrowers. Between 1993 and 2002, conventional loans to low-income and minority families increased at much faster rates than loans to upper-income and non-minority families. Conventional home purchase originations to African-Americans more than doubled between 1993 and 2002 and those to Hispanic borrowers more than tripled during this period. Home loans to low-income borrowers and to low-income and high-minority census tracts also more than doubled during this period.

Thus, the 1990s and the early part of the current decade have seen the development of a strong affordable lending market. Homeownership statistics show similar trends. After declining during the 1980s, the homeownership rate has increased every year since 1994, reaching a record mark of 67.9 percent in 2002. The number of households owning their own home in 2002 was 10.6 million greater than in 1994. Gains in homeownership rates have been widespread over the last eight years, with the homeownership rate for African American households increasing from 42.5 percent to 47.9 percent, for Hispanic households from 41.2 percent to 48.2 percent, for non-Hispanic white households from 50.8 percent to 55.1 percent, and for central city residents from 48.5 percent to 51.8 percent from 1994 to 2002.

Despite the record gains in homeownership since 1994, a substantial gap in the homeownership rate of approximately 25 percentage points prevails for African-American and Hispanic households as compared to white non-Hispanic households. Studies show that these lower homeownership rates are only partly accounted for by differences in income, age, and other socioeconomic factors.

In addition to low income, barriers to homeownership that disproportionately affect minorities and immigrants include: lack of capital for down payment and closing costs; poor credit history; lack of access to mainstream lenders; little understanding of the home buying process; a limited supply of modestly priced homes; and continued discrimination in housing markets and mortgage lending. These barriers are discussed in Appendix A.

(iv) *Single-Family Market: Potential Homeowners.* As already noted, the potential homeowner population over the next decade will be highly diverse, as growing housing demand from immigrants (both those who are already in this country and those who are projected to arrive), minorities, and non-traditional homebuyers will help to offset declines in the demand for housing caused by the aging of the population.

Fannie Mae reports that, between 1980 and 1995, the number of new immigrant owners increased by 1.4 million and, between 1995 and 2010, that figure is expected to rise by more than 50 percent to 2.2 million. These trends do not depend on the future inflow of new immigrants, as immigrants do not, on average, enter the home purchase market until they have been in this country for eleven years. Fannie Mae staff note that there are enough immigrants already in this country to keep housing demand strong for several years.

Thus, the need for the GSEs and other industry participants to meet nontraditional credit needs, respond to diverse housing preferences, and to overcome the information barriers that many immigrants face will take on added importance. A new or recent immigrant may have no credit history or, at least, may not have a credit history that can be documented by traditional methods. In order to address these needs, the GSEs and the mortgage industry have been developing innovative products and seeking to extend their outreach efforts to attract these homebuyers, as discussed in Appendix A.

In addition, the current low homeownership rates in inner cities (as compared with the suburbs) also suggest that urban areas may be a potential growth market for lenders. As explained in Appendix A, lenders are beginning to recognize that urban borrowers and properties have different needs than suburban borrowers and properties. CRA-type lending will continue to be important in our inner cities.

Surveys indicate that these demographic trends will be reinforced by the fact that most Americans desire, and plan, to become homeowners. According to Fannie Mae's 2002 National Housing Survey, Americans rate homeownership as the best investment they can make, far ahead of 401(k)s, other retirement accounts, and stocks. Forty-two percent of African-American families reported that they were "very or fairly likely" to buy a home in the next three years, up from 38 percent in 1998 and 25 percent in 1997. Among Hispanics and Hispanic immigrants, the numbers reached 37 percent and 34 percent, respectively. The survey also reported that more than half of Hispanic renters cite homeownership as being "one of their top priorities."

In spite of these trends, potential minority and immigrant homebuyers see more obstacles to buying a home than does the general public. Typically, the primary barriers to homeownership are credit issues and a lack of funds for a downpayment and closing costs. However, other barriers also exist, such as a lack of affordable housing, little understanding of the home buying process, and language barriers. Thus, the new group of potential homeowners will have unique needs.

The GSEs can play an important role in tapping this potential homeowner population. Along with others in the industry, they can address these needs on several fronts, such as expanding education and outreach efforts, introducing new products, and adjusting current underwriting standards to better reflect the special circumstances of these new households. These efforts will be necessary if the Administration's goal of expanding minority homeownership by 5.5 million families by the end of the decade is to be achieved. (In this regard, the Joint Center for Housing Studies has stated that, if favorable economic and housing market trends continue, and if additional efforts to target mortgage lending to low-income and minority households are made, the homeownership rate could reach 70 percent by 2010.)

The single-family mortgage market has been very dynamic over the past few years, experiencing volatile swings in originations (with the 1998 and 2001–2003 refinancing waves), witnessing the rapid growth in new types of lending (such as subprime lending), incorporating new technologies (such as automated underwriting systems), and facing serious challenges (such as abusive predatory lending). Fannie Mae and Freddie Mac have played a major role in the ongoing changes in the single-family market and in helping the industry address the problems and challenges that have arisen.

The appendices to this proposed rule discuss the various roles that Fannie Mae and Freddie Mac have played in the single-family market. A wide range of topics is examined, including the GSEs' automated underwriting technology used throughout the industry, their many affordable lending partnerships and underwriting initiatives aimed at extending credit to underserved borrowers, their development of new targeted low-downpayment products, their entry into new markets such as subprime lending, and their attempts to reduce predatory lending. As that discussion emphasizes, the GSEs have the ability to bring increased efficiencies to a market and to attract mainstream lenders into markets. (Readers are referred to Appendices A–C for further discussion of the GSEs' role in different segments of the single-family mortgage market.)

(v) *Multifamily Mortgage Market.* The market for financing of multifamily apartments has reached record volume. The favorable long-term prospects for apartments, combined with record low interest rates, have kept investor demand for apartments strong and have also supported property prices.

Fannie Mae and Freddie Mac have been among those boosting their volumes of multifamily financing and both have introduced new programs to serve the multifamily market. Fannie Mae and, especially (considering its early withdrawal from the market), Freddie Mac have rapidly expanded their presence in the multifamily mortgage market under the Housing Goals.

Freddie Mac has successfully rebuilt its multifamily acquisition program, as shown by the increase in its purchases of multifamily mortgages: from $27 million in 1992 to $3 billion in 1997 and then to approximately $7 billion annually during the next three years (1998 to 2000), before rising further to $11.9 billion in 2001 and $13.3 billion in 2002. Multifamily units accounted for 8.4 percent of all dwelling units (both owner and rental) financed by Freddie Mac between 1999 and 2002.

Concerns regarding multifamily capabilities no longer constrain Freddie Mac's performance with regard to the Housing Goals. Although Fannie Mae never withdrew from the multifamily market, it has stepped up its activities in this area substantially, with multifamily purchases rising from $3.0 billion in 1992 to $9.4 billion in 1999, and $18.7 billion in 2001, and then declining slightly to $18.3 billion in 2002. Multifamily units accounted for 9.2 percent of all dwelling units (both owner and rental) financed by Fannie Mae between 1999 and 2002.

The increased role of Fannie Mae and Freddie Mac in the multifamily market has major implications for the Low- and Moderate-Income Housing and Special Affordable Housing Goals, since high percentages of multifamily units have affordable-level rents and can count toward one or both of these Housing Goals. However, the potential of the GSEs to lead the multifamily mortgage industry has not been fully developed. The GSEs' purchases between 1999 and 2002 accounted for only 30 percent of the multifamily units that received financing during this period. Certainly there are ample opportunities and room for expansion of the GSEs' share of the multifamily mortgage market.

The GSEs' size and market position between loan originators and mortgage investors make them the logical institutions to identify and promote needed innovations and to establish standards that will improve market efficiency. As their role in the multifamily market continues to grow, the GSEs will have the knowledge and market presence to push simultaneously for standardization and for programmatic flexibility to meet special needs and circumstances, with the ultimate goal of increasing the availability and reducing the cost of financing for affordable and other multifamily rental properties.

The long-term outlook for the multifamily rental market is sustained, moderate growth, based on favorable demographics. The minority population, especially Hispanics, provides a growing source of demand for affordable rental housing. "Lifestyle renters" (older, middle-income households) are also a fast-growing segment of the rental population.

At the same time, the provision of affordable housing units will continue to challenge suppliers of multifamily rental housing as well as policy makers at all levels of government. Low incomes, combined with high housing costs, define the difficult situation of millions of renter households. Housing cost reductions are constrained by high land prices and construction costs in many markets. Regulatory barriers at the state and local level have an enormous impact on the development of affordable rental housing. Government action—through land use regulation, building codes, and occupancy standards—is a major contributor to high housing costs.

Since the early 1990s, the multifamily mortgage market has become more closely interconnected with global capital markets, although not to the same degree as the single-family mortgage market. Loans on multifamily properties are still viewed as riskier by some than mortgages on single-family properties. Property values, vacancy rates, and market rents of multifamily properties appear to be highly correlated with local job market conditions, creating greater sensitivity in loan performance to economic conditions than may be experienced for single-family mortgages.

There is a need for an ongoing GSE presence in the multifamily secondary market, both to increase liquidity and to further affordable housing efforts. The potential for an increased GSE presence is enhanced by the fact that an increasing proportion of multifamily mortgages are now originated in accordance with secondary market standards. Small multifamily properties, and multifamily properties with significant rehabilitation needs, have historically experienced difficulty gaining access to mortgage financing, and the flow of capital into multifamily housing for seniors has been historically characterized by volatility. The GSEs can play a role in promoting liquidity for multifamily mortgages and increasing the availability of long-term, fixed rate financing for these properties.

c. GSEs' Past Performance and Effort Toward Achieving the Housing Goals

Both Fannie Mae and Freddie Mac have improved their affordable housing loan performance over the past ten years, since the enactment of FHEFSSA and HUD's establishment in 1993 of the Housing Goals. However, the GSEs' mortgage purchases have generally lagged, and not led, the overall primary market in providing financing for affordable housing to low- and moderate-income families and underserved borrowers and their neighborhoods, indicating that there is more that the GSEs can do to improve their performance.

(i) *Performance on the Housing Goals.* The year 2001 was the first year under the higher levels of the Housing Goals established in the Housing Goals 2000 final rule. Both GSEs met all three Housing Goals in 2001 and 2002. Their performance is discussed further in a later section of this preamble.

(ii) *The GSEs' Efforts in the Home Purchase Mortgage Market.* The Appendices include a comprehensive analysis of each GSE's performance in funding home purchase mortgages for borrowers and neighborhoods targeted by the three Housing Goals—special affordable and low- and moderate-income borrowers and underserved areas. The GSEs' role in the first-time homebuyer market is also analyzed. Because homeownership opportunities are integrally tied to the ready availability of affordable home purchase loans, the main findings from that analysis are provided below:

• Both Fannie Mae and Freddie Mac have increased their purchases of affordable loans since the Housing Goals were put into effect, as indicated by the increasing share of their business going to the three Goals-qualifying categories. Between 1992 and 2002, the special affordable share of Fannie Mae's purchases of home purchase loans in metropolitan areas more than doubled, rising from 6.3 percent to 16.3 percent, while the underserved areas share increased more modestly, from 18.3 percent to 26.7 percent. The figures for Freddie Mac are similar. The special affordable share of Freddie Mac's business rose from 6.5 percent to 15.8 percent, while the underserved areas share increased more modestly, from 18.6 percent to 25.8 percent.

• While both GSEs improved their performance, they have lagged the primary market in providing affordable loans to low-income borrowers and underserved neighborhoods. Freddie Mac's average performance, in particular, fell far short of market performance during the 1990s. Fannie Mae's performance was better than Freddie Mac's during 1993–2002, as well as during 1996–2002, which covers the period under HUD's currently-defined Housing Goals. For the 1996–2002 period, 21.7 percent of Freddie Mac's purchases financed properties in underserved neighborhoods, compared with 23.5 percent of Fannie Mae's purchases, 24.9 percent of loans originated by depository institutions (*i.e.*, banks and savings associations), and 25.4 percent of loans originated in the conventional conforming market (*i.e.*, loans below the conforming loan limit that are not government insured or guaranteed).

• During the more recent 1999-to-2002 period, both Fannie Mae and Freddie Mac fell significantly below the market in funding special affordable loans. During that period, special affordable loans accounted for 14.4 percent of Fannie Mae's purchases, 14.5 percent of Freddie Mac's purchases, and 16.4 percent of loans originated in the market. Thus, the "Fannie Mae-to-market" ratio was 0.88 (14.4/16.4), as was the "Freddie Mac-to-market" ratio. Between 1999 and 2002, underserved area loans accounted for 24.0 percent of Fannie Mae's purchases, 22.9 percent of Freddie Mac's purchases, and 25.8 percent of loans originated in the market, resulting in a "Fannie Mae-to-market" ratio of 0.93 and a "Freddie Mac-to-market" ratio of 0.89.

• Both GSEs, but particularly Fannie Mae, markedly improved their performance during 2001 and 2002, the first two years under HUD's higher Housing Goal targets. Evaluating their activity relative to the market depends, to some extent, on the way in which GSE activity is measured. Under the purchase-year approach for measuring GSE activity (in which characteristics of mortgages purchased by a GSE in a particular year, including mortgages originated in prior years, are compared with characteristics of mortgages originated just within the year), Fannie Mae's average performance during 2001 and 2002 matched the market in the low- and moderate-income category and approached the market in the special affordable and underserved areas categories. For example, during 2001 and 2002, loans for special affordable borrowers accounted for 15.6 percent of Fannie Mae's purchases, compared with 16.0 percent of market originations. As explained in Appendix A, conclusions about Fannie Mae's recent performance relative to the market depend significantly on whether GSE activity is measured on a "purchase year" basis or on an "origination year" basis (in which characteristics of mortgages originated in a particular year are compared with characteristics of mortgages that were originated in that year and purchased by a GSE in that year or a subsequent year). Fannie Mae matched the market in the low- and moderate-income category in 2002, using the more consistent "origination year" approach. (*See* Appendix A for further discussion.)

• While Freddie Mac has consistently improved its performance relative to the market, it continued to lag the market in all three Housing Goal categories during 2001 and 2002. For example, during 2001 and 2002, loans financing properties in underserved areas accounted for 24.1 percent of Freddie Mac's purchases, compared with 25.9 percent of market originations.

• Appendix A to this rule compares the GSEs' funding of first-time homebuyers with that of primary lenders in the conventional conforming market. Both Fannie Mae and Freddie Mac lag the market in funding first-time homebuyers, and by a rather wide margin. Between 1999 and 2002, first-time homebuyers accounted for 27 percent of each GSE's purchases of home loans, compared with 38 percent for home loans originated in the conventional conforming market.

• The GSEs account for a small share of the market for important groups such as minority first-time homebuyers. Considering all mortgage originations (both government and conventional) between 1999 and 2001, it is estimated that the GSEs purchased only 14 percent of all loans originated for African-American and Hispanic first-time homebuyers, or one-third of their share (42 percent) of all home purchase loans originated during that period. Considering conventional conforming originations during the same time period, it is estimated that the GSEs purchased only 31 percent of loans for African-American and Hispanic first-time homebuyers, or about one-half of their share (57 percent) of all home purchase loans in that market. A large percentage of the lower-income loans purchased by the GSEs had relatively low loan-to-value ratios and consequently high down payments, which may explain the GSEs' limited role in the first-time homebuyer market.

d. Size of the Mortgage Market That Qualifies for the Housing Goals

The Department estimates the size of the conventional, conforming market for loans that would qualify under each Housing Goal category. The market estimates (which reflect 2000 Census data and geography) are as follows:

• 51–57 percent for the Low- and Moderate-Income Housing Goal

• 24–28 percent for the Special Affordable Housing Goal

• 35–40 percent for the Underserved Areas Housing Goal (based on 2000 Census geography).

These market estimates exclude the B&C (subprime loans that are not A minus grade) portion of the subprime market. The estimates, expressed as ranges, allow for economic and market affordability conditions that are more adverse than recent conditions. The market estimates are based on several mortgage market databases such as Home Mortgage Disclosure Act (HMDA) and American Housing Survey data. The Department's estimates of the size of the conventional mortgage market for each Housing Goal are discussed in detail in Appendix D.

The GSEs have substantial room for growth in serving the affordable housing mortgage market. The Department estimates that the two GSEs' mortgage purchases accounted for 49 percent of the total (single-family and multifamily) conventional, conforming mortgage market between 1999 and 2002. In contrast, GSE purchases comprised 42 percent of the low- and moderate-income market, 41 percent of the underserved areas market, and a still smaller 35 percent of the special affordable market. Thus, 58–65 percent of the Goals-qualifying markets have not yet been touched by the GSEs.

The GSEs' presence in mortgage markets for rental properties, where much of the nation's affordable housing is concentrated, is below that in the single-family-owner market. The GSEs' share of the rental market (including both single-family and multifamily) was only 30 percent during the 1999-to-2002 period. Obviously, there is room for the GSEs to increase their presence in the single-family rental and multifamily rental markets.

Table 1 summarizes the Department's findings regarding GSE performance relative to HUD's market estimates for 1999–2002, market projections for 2005–2008, and the proposed Housing Goal levels for 2005–2008.

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Table 1

Market Estimates, Baseline Performance and HUD's Proposed Housing Goals

	2001-2004 Housing Goals	2005-2008 Proposed Housing Goals				GSEs' Average Baseline Performance 1999-2002 (Fannie Mae/ Freddie Mac)	HUD's Estimated 1999-2002 Market Average[1]	HUD's Projected Market Estimate
		2005	2006	2007	2008			
Low- and Moderate-Income	50%	52%	53%	55%	57%	49% 47%	57%	51-57%
Underserved Areas	31%*	38%	39%	39%	40%	35% 33%	39%	35-40%
Special Affordable	20%	22%	24%	26%	28%	20% 19%	28%	24-28%

[1] See Appendix D for reasons why the 1999-2002 average market estimate for special affordable loans is at the top end of the market range projected for the years 2005-2008.

* Equivalent to 36% based on 2000 census tract geography, Metropolitan Statistical Areas as specified in 2003, and 2000 census data on area median income and minority concentrations.

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The analysis reflected in Table 1 is based on 2000 Census data on area median incomes and minority concentrations, with the metropolitan area boundaries specified in June 2003 by the Office of Management and Budget. This affects the market percentages for all three Housing Goals, as well as the figures on area median incomes and minority percentage figures that will be used to measure GSE performance on the Housing Goals beginning in 2005. For example, expressing the Underserved Areas Housing Goal in terms of 2000 Census data adds approximately 5 percentage points to the Housing Goal and market levels, compared with analysis using 1990 Census data with Metropolitan Statistical Areas as defined prior to 2000.

The GSEs' baseline performance figures in Table 1 exclude the effects of the bonus points for small multifamily and single-family 2–4 unit owner-occupied properties and the Temporary Adjustment Factor for Freddie Mac which were applied in official scoring toward the Housing Goals in 2001–2003. The Department did not extend these adjustments beyond 2003.

Table 1 reveals several features of HUD's proposed Housing Goals. First, the high end of the range for HUD's 2005–2008 market projections is the same as or within one percentage point of the 1999–2002 average of the market levels for the Housing Goals.

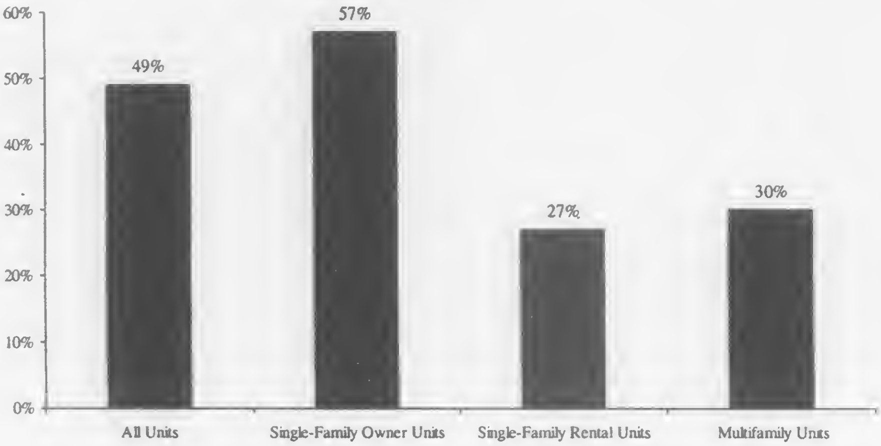
Second, it is evident from this table that the proposed initial new level for the Special Affordable Housing Goal (22 percent) is below the low end of HUD's projected market range for 2005–2008 (24 percent). The proposed initial level of the Low- and Moderate-Income Housing Goal (52 percent) is at the low-end of HUD's market estimate range.

Third, the proposed initial Underserved Areas Housing goal level is more consistent than the current Goal level with the market range now projected by HUD for the Housing Goals using 2000 Census data.

Fourth, the GSEs' performance on all of the Housing Goals was significantly below the market average for 1999–2002. The higher Housing Goals are intended to move the GSEs closer to or within the market range for 2005 and to the upper end of the market range projection by 2008.

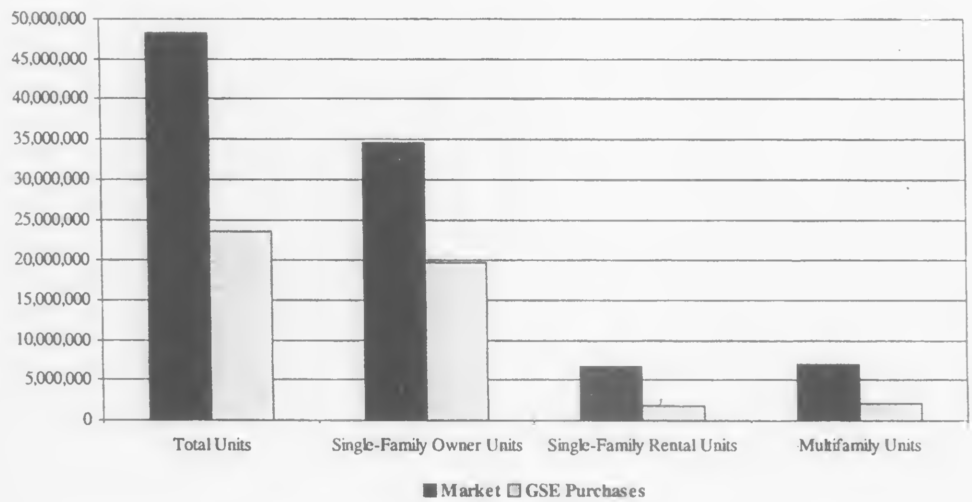
An analysis of the GSEs' mortgage purchases by property type shows that they have had much less presence in the "Goals-rich" rental segments of the market, as compared with the "less-Goals-rich" owner segment of the market. As shown in Figure 1, GSE mortgage purchases represented only 27 percent of single-family rental units financed between 1999 and 2002, and only 30 percent of multifamily units financed during that time period—both figures are much lower than their 57 percent market share for single-family owner-occupied properties. (Figure 2 provides unit-level detail comparing the GSEs' purchases with originations in the conventional conforming market.) Typically, about 90 percent of rental units in single-family rental and multifamily properties qualify for the Low- and Moderate-Income Housing Goal, compared with about 44 percent of owner units. Corresponding figures for the Special Affordable Housing Goal are approximately 60 percent of rental units and 16.4 percent of owner units. Thus, one reason that the GSEs' performance under the Low- and Moderate-Income Housing and Special Affordable Housing Goals has fallen short of HUD's market estimates is that the GSEs have had a relatively small presence in the two rental market segments, notwithstanding that these market segments are important sources of affordable housing and important components in HUD's market estimates.

Figure 1
GSEs' Share of the Conventional Conforming Market by Property Type, 1999-2002



Source: See Table A.30. Appendix A.

Figure 2
Units in the Conventional Conforming Mortgage Market Compared to GSE Purchases by Property Type, 1999-2002



Source: See Table A.30, Appendix A.

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In the overall conventional conforming mortgage market, rental units in single-family properties and in multifamily properties are expected to represent approximately 30 percent of the overall mortgage market, 45 percent of the units that collateralize mortgages qualifying for the Low- and Moderate-Income Housing Goal, and 60 percent of the units that collateralize mortgages qualifying for the Special Affordable Housing Goal. Yet between 1999 and 2002, units in such properties accounted for only 17 percent of the GSEs' overall purchases, 31 percent of the GSEs' purchases meeting the Low- and Moderate-Income Housing Goal, and 44 percent of the GSEs' purchases meeting the Special Affordable Housing Goal.[6] The continuing weakness in GSE purchases of mortgages on single-family rental and multifamily properties is a significant factor explaining the shortfall between GSE performance and that of the primary mortgage market.

e. Ability of the GSEs To Lead the Industry

An important factor in determining the overall Housing Goal level is the ability of the GSEs to lead the industry in making mortgage credit available for Housing Goals-qualifying populations and areas.

The legislative history of FHEFSSA reflects Congress's strong concern that the GSEs need to do more to benefit low- and moderate-income families and residents of underserved areas that lack access to credit. (*See, e.g.*, S. Rep. 102–282 at 34.) The Senate Report on FHEFSSA emphasized that the GSEs should "lead the mortgage finance industry in making mortgage credit available for low- and moderate-income families." (*See* S. Rep. 102–282 at 34.)

Thus, FHEFSSA specifically requires that HUD consider the ability of the GSEs to lead the industry in establishing the level of the Housing Goals. FHEFSSA also clarified the GSEs' responsibility to complement the requirements of the CRA (*see* section 1335(a)(3)(B) of FHEFSSA, 12 U.S.C. 4565(a)(3)(B)), and fair lending laws (*see* section 1325 of FHEFSSA, 12 U.S.C. 4545) in order to expand access to capital to those historically underserved by the housing finance market.

While leadership may be exhibited through the GSEs' introduction of innovative products, technology, and processes, and through their establishment of partnerships and alliances with local communities and community groups, leadership must always involve increasing the availability of financing for homeownership and affordable rental housing. Thus, the GSEs' obligation to "lead the industry" entails leadership in facilitating access to affordable credit in the primary market for borrowers at different income levels, and with different housing needs, as well as in underserved urban and rural areas.

Because the GSEs' market presence varies significantly by property type, the Department examined whether the GSEs have led the industry in three different market sectors served by the GSEs: single-family-owner, single-family rental (those with at least one rental unit and no more than four units in total), and multifamily rental.

The GSEs' purchases between 1999 and 2002 financed almost 60 percent of the approximately 35 million owner-occupied units financed in the conventional conforming market during that period. The GSEs' state-of-the-art technology, staff resources, share of the total conventional conforming market, and financial strength strongly suggest that they have the ability to lead the industry in making home purchase credit available for low-income families and underserved neighborhoods. From the analysis in Appendices A–D, it is clear that the GSEs are able to improve their performance and lead the primary market in financing Housing Goals-qualifying home purchase mortgages.

As discussed in Appendix A, there are a wide variety of quantitative and qualitative indicators that demonstrate that the GSEs have ample, indeed robust, financial strength to improve their affordable lending performance. For example, the combined net income of the GSEs has risen steadily over the last 15 years, from $677 million in 1987 to $10.4 billion in 2002. This financial strength provides the GSEs with the resources to lead the industry in making mortgage financing available for families and neighborhoods targeted by the Housing Goals.

The GSEs have been much less active in providing financing for the multifamily rental housing market. Between 1999 and 2002, the GSEs financed 2.2 million multifamily dwelling units, which represented approximately 30 percent of the 7.0 million multifamily dwelling units that were financed in the conventional market during this period. Thus, the GSEs' share of the multifamily mortgage market was just slightly over one-half of their share of the market for mortgages on single-family owner-occupied properties.

Similarly, HUD estimates that Fannie Mae and Freddie Mac accounted for only 27 percent of single-family rental units financed between 1999 and 2002. In this case, the GSEs' presence in the single-family rental mortgage market was less than one-half their presence in the market for mortgages on single-family owner-occupied properties.

Clearly there is room for the GSEs to increase their presence in the single-family rental and multifamily rental markets. As explained above, these markets are an important source of low- and moderate-income housing since these units qualify for the Housing Goals in a greater proportion than do single-family owner-occupied properties. Thus, Fannie Mae and Freddie Mac can improve their performance on each of the three Housing Goals if they increase their purchases of mortgages on rental properties.

As discussed in Section B below with respect to the Home Purchase Subgoals, the GSEs should be able to lead the market for single-family owner-occupied properties. The GSEs are already dominant players in this market which, unlike the rental markets, is their main business activity. However, as already discussed, research studies conducted by HUD and academic researchers conclude that the GSEs have not been leading this market, but have historically lagged behind the primary market in financing owner-occupied housing for low-income families, first-time homebuyers, and housing in underserved areas.

f. Need To Maintain the Sound Financial Condition of the GSEs

Based on HUD's economic analysis and review by the Office of Federal Housing Enterprise Oversight, the Department has concluded that the proposed levels of the Housing Goals will not adversely affect the sound financial condition of the GSEs. Further discussion of this issue is found in the economic analysis that accompanies this rule.

3. Other Factors Considered by HUD in Proposing the New Housing Goals

HUD considered a number of additional factors in connection with its proposal to establish the new Housing Goals described in this rule. These additional factors also were relevant to HUD's proposal to establish the new Home Purchase Subgoals. The Department describes these additional factors in Section B of this preamble (*see*, "Home Purchase Subgoals" immediately below).

[6] These percentage shares are computed from Table A.30 in Appendix A. Note that B&C loans are excluded from these data.

B. Home Purchase Subgoals

Given the need for, and the Administration's emphasis on, increasing homeownership opportunities, including those for low- and moderate-income and minority borrowers, HUD is proposing also to set Subgoals for GSE mortgage purchase activities to increase financing opportunities for low- and moderate-income, underserved, and special affordable borrowers who are purchasing single-family homes.

Specifically, the Department is proposing Subgoals for home purchase loans that qualify for the Housing Goals. The purpose of the Home Purchase Subgoals is to assure that the GSEs focus on financing home purchases for the homeowners targeted by the Housing Goals. The Department believes that the establishment of Home Purchase Subgoals will place the GSEs in an important leadership position in the Housing Goals categories, while also facilitating homeownership. The GSEs have years of experience in providing secondary market financing for single-family properties and are fully capable of exerting such leadership.

The focus of these Subgoals on home purchase loans meeting the Housing Goals will also help address the racial and income disparities in homeownership that exist today. Although minority homeownership has grown, the homeownership rate for African Americans and Hispanic families is still approximately 25 percentage points below that for non-Hispanic white families. The focus of the Subgoals on home purchase will also increase the GSEs' support of first-time homebuyers, a market segment where they have lagged primary lenders.

The Department's analysis suggests that the GSEs have not been leading the market in purchasing single-family, owner-occupied loans that qualify for the Housing Goals. Although Fannie Mae's average performance during 2001 and 2002 matched the market in the low- and moderate-income category, and approached the market in the special affordable and underserved areas categories, the Department's analysis shows that there is ample room for both Fannie Mae and Freddie Mac to improve their performance in purchasing home loans that qualify for these Housing Goals, particularly in important market segments such as the minority, first-time homebuyer market.

As detailed in Appendix A, evidence suggests that there is a significant population of potential homebuyers who are likely to respond well to increased homeownership opportunities produced by increased GSE purchases in this area. Immigrants and minorities, in particular, are expected to be a major source of future homebuyers. Furthermore, studies indicate the existence of a large untapped pool of potential homeowners among the rental population. Indeed, the GSEs' recent experience with new outreach and affordable housing initiatives confirms the existence of this potential.

Thus, the Department is proposing to establish Subgoals for home purchase loans that qualify for the three Housing Goals to encourage the GSEs to take a leadership position in creating homeownership financing opportunities within the categories that Congress expressly targeted with the Housing Goals.

1. Proposed Home Purchase Subgoals

Under this proposed rule, performance on the Home Purchase Subgoals would be calculated as Housing Goal-qualifying percentages of the GSEs' total purchases of mortgages that finance purchases of single-family, owner-occupied properties located in metropolitan areas, based on the owner's income and the location of the property. Specifically, for each GSE the following proposed Subgoals would apply. (A "home purchase mortgage" is defined as a residential mortgage for the purchase of an owner-occupied single-family property.)

- 45 percent of home purchase mortgages purchased by the GSE in metropolitan areas must qualify under the Low- and Moderate-Income Housing Goal in 2005, with this share rising to 46 percent in 2006 and 47 percent in both 2007 and 2008;
- 33 percent of home purchase mortgages purchased by the GSE in metropolitan areas must qualify under the Underserved Areas Housing Goal in 2005, with this share rising to 34 percent in 2006 and 35 percent in both 2007 and 2008; and
- 17 percent of home purchase mortgages purchased by the GSE in metropolitan areas must qualify under the Special Affordable Housing Goal in 2005, with this share rising to 18 percent in 2006 and 19 percent in both 2007 and 2008.

Counting toward the Subgoals will be in terms of numbers of mortgages, not numbers of units. This is consistent with the basis of reporting in HMDA data, which were HUD's point of reference in establishing the Subgoal levels. HMDA data are reported in terms of numbers of mortgages.

These proposed Subgoals are shown in Table 2, along with information on what the GSEs' performance on the Subgoals would have been if they had been in effect for 1999–2002 (under the proposed scoring rules for 2005–08). Table 2 also presents HUD's estimates of the average shares of mortgages on owner-occupied single-family properties in metropolitan areas that were originated in 1999–2002 that would have qualified for these Subgoals.

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Table 2

Shares of GSEs' Acquisitions of Home Purchase Mortgages Qualifying for the Subgoals, 1999-2002, and Proposed Subgoals for 2005-08

	Subgoal-Qualifying Mortgage Purchases*				Proposed Subgoals				Market**				
Subgoal Catetory	1999	2000	2001	2002	2005	2006	2007	2008	1999	2000	2001	2002	Average
Low- and Moderate-Income													
Fannie Mae	39.2%	40.1%	41.7%	43.6%	45%	46%	47%	47%					
Freddie Mac	40.0%	41.7%	39.8%	42.1%									
Market									44.0%	43.7%	41.6%	43.1%	43.1%
Underserved Areas													
Fannie Mae	25.7%	29.1%	29.8%	32.3%	33%	34%	35%	35%					
Freddie Mac	26.1%	27.4%	27.4%	31.7%									
Market									30.2%	32.0%	30.7%	32.1%	31.2%
Special Affordable													
Fannie Mae	12.5%	13.4%	14.7%	15.8%	17%	18%	19%	19%					
Freddie Mac	12.8%	14.5%	13.9%	15.1%									
Market									17.1%	17.0%	15.4%	15.7%	16.3%

* Based on proposed counting rules for 2005-08. Projected subgoals would apply to metropolitan areas only. See text for definition of subgoal-qualifying mortgages.

** Conventional conforming market for home purchase mortgages in metropolitan areas (excluding the B&C portion of the subprime market.)

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2. HUD's Determinations Regarding the Home Purchase Subgoal Levels

Current law does not require that HUD consider the statutory factors set forth in FHEFSSA prior to establishing or setting the level of Subgoals. FHEFSSA authorizes HUD to establish Subgoals within the Low- and Moderate-Income Housing Goal and the Underserved Areas Housing Goal. However, under current law, Subgoals under these two Goals are not enforceable. Also, FHEFFSA authorizes HUD to establish Subgoals within the Special Affordable Housing Goal and these Subgoals are enforceable. The Administration has proposed, as part of GSE regulatory reform, that Congress authorize HUD to establish a separate Home Purchase Goal that would include enforceable components. Pending the enactment of any such legislation, HUD is proposing the Subgoals described in this proposed rule under its current statutory authority.

The following sections provide an overview of HUD's reasons for establishing the Subgoals, which are detailed in the Appendices.

(a) *The GSEs Have the Ability to Lead the Market.* The GSEs have the ability to lead the primary market for mortgages on single-family owner-occupied properties, which are the "bread-and-butter" of their business. Both GSEs have long experience in the home purchase mortgage market, and therefore there is no issue of the degree to which they have penetrated the market, as there is with the single-family rental and multifamily mortgage markets. In addition, because the Subgoals focus on homeownership opportunities and, thus, do not include refinance loans, there is no issue regarding potentially large year-to-year changes in refinance mortgage volumes, which affect the magnitude of the denominator in calculating performance percentages under the Housing Goals, as experienced in the heavy refinance years of 1998 and 2001–2003.

Both GSEs have not only been operating in the single-family owner mortgage market for years, they have been the dominant players in that market, funding 57 percent of mortgages on single-family owner-occupied residences financed between 1999 and 2002. As discussed in Section G of Appendix A, their underwriting guidelines are industry standards and their automated mortgage systems are widely used in the mortgage industry.

Through their new low-downpayment products and various underwriting initiatives, and through their various partnership and outreach efforts, the GSEs have shown that they have the capacity to operate in underserved neighborhoods and to reach out to lower-income families seeking to buy a home. Both Fannie Mae and Freddie Mac have the staff expertise and financial resources to make the extra effort to lead the primary market in funding single-family-owner mortgages for low- and moderate-income, special affordable, and underserved area mortgages.

(b) *The GSEs Have Lagged the Market.* Even though the GSEs have the ability to lead the market, they have not done so under the Housing Goals. As noted earlier, the Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of funding loans that qualify for the three Housing Goals. While the GSEs have significantly improved their performance, they have lagged the primary market in funding Housing Goals-qualifying loans since FHEFSSA was enacted in 1992.

As also noted above, the type of improvement needed to meet the new Subgoals was demonstrated by Fannie Mae during 2001 and 2002, when its average performance matched the primary market in funding low- and moderate-income families and approached the market in funding special affordable families and properties in underserved areas.

(c) *Disparities in Homeownership and Credit Access Remain.* There remain troublesome disparities in our housing and mortgage markets, even after the "revolution in affordable lending" and the growth in homeownership that has taken place since the mid-1990s. The homeownership rate for African-American and Hispanic households remains 25 percentage points below that of white households. In 2002, the mortgage denial rate for African-American borrowers was over twice that for white borrowers, even after controlling for the income of the borrower.

There is growing evidence that inner city neighborhoods are not always being adequately served by mainstream lenders. Some have concluded that a dual mortgage market has developed in our nation, with conventional mainstream lenders serving mainly white families living in the suburbs and FHA and subprime lenders serving minority families concentrated in inner city neighborhoods. In addition to the unavailability of mainstream lenders, families living in high-minority neighborhoods generally face many additional hurdles, such as lack of cash for a downpayment, credit problems, and discrimination.

Immigrants and minorities are projected to account for almost two-thirds of the growth in the number of new households over the next ten years. As emphasized throughout this preamble and the Appendices, changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information and other barriers that many immigrants and minorities face. The GSEs must increase their efforts towards providing financing for these families.

(d) *There Are Ample Opportunities for the GSEs to Improve Their Performance in the Home Purchase Market.* Home purchase loans that qualify for the Housing Goals are available for the GSEs to purchase, which means they can improve their performance and lead the primary market in purchasing loans for lower-income borrowers and properties in underserved areas. Three indicators of this have already been discussed.

First, the affordable lending market has shown an underlying strength over the past few years that is unlikely to vanish (without a significant increase in interest rates or a decline in the economy). Since 1999, the shares of the home purchase market accounted for by the three Housing Goal categories are as follows: 16.4 percent for special affordable, 32.3 for underserved areas, and 44.2 percent for low- and moderate-income.

Second, market share data reported in Section G of Appendix A show that over half of newly-originated loans that qualify for the Housing Goals are not purchased by the GSEs. As noted above, the situation is even more extreme for special sub-markets, such as the minority first-time homebuyer market where the GSEs have only a minimal presence. In terms of the overall mortgage market (both conventional and government), the GSEs funded only 24 percent of all first-time homebuyers and 17 percent of minority first-time homebuyers between 1999 and 2001. Similarly, during the same period, the GSEs funded only 40 percent of first-time homebuyers in the conventional conforming market, and only 33 percent of minority first-time homebuyers in that market.

Finally, the GSEs' purchases that can count toward the Subgoal are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance. In fact, based on Fannie Mae's recent experience, the purchase of seasoned loans appears to be one useful strategy for purchasing Housing Goals-qualifying loans.

The current low homeownership rate of minorities and others living in inner cities suggests that there will be considerable growth in the origination of CRA loans in urban areas. For banks and thrifts, selling their CRA originations will free up capital to make new CRA loans. As a result, the CRA market segment provides an opportunity for the GSEs to expand their affordable lending programs. As explained in Appendix A, Fannie Mae and Freddie Mac have already started developing programs to purchase CRA-type loans on a flow basis as well as after they have seasoned.

While the GSEs can choose any strategy for leading the market, this leadership role can likely be accomplished by building on the many initiatives and programs that the enterprises have already started, including: (1) Their outreach to underserved markets and their partnership efforts that encourage mainstream lenders to move into these markets; (2) their incorporation of greater flexibility into their purchase and underwriting guidelines, (3) their development of new products for borrowers with little cash for a downpayment and for borrowers with credit blemishes or non-traditional credit histories; (4) their targeting of important markets where they have had only a limited presence in the past, such as the markets for minority first-time homebuyers; (5) their purchases of both newly-originated and seasoned CRA loans; and (6) their use of automated underwriting technology to qualify creditworthy borrowers that would have been deemed not creditworthy under traditional underwriting rules.

The experience of Fannie Mae and Freddie Mac in the subprime market indicates that they have the expertise and experience to develop technologies and new products that allow them to enter new markets in a prudent manner. Given the innovativeness of Fannie Mae and Freddie Mac, other strategies will be available as well. In fact, a wide variety of quantitative and qualitative indicators suggest that the GSEs have the expertise, resources and financial strength to improve their affordable lending performance enough to lead the home purchase market for special affordable, low- and moderate-income, and underserved areas loans. The recent improvement in the affordable lending performance of the GSEs, and particularly Fannie Mae, further demonstrates the GSEs' capacity to lead the home purchase market.

3. Counting of Mortgages for the Home Purchase Subgoals

The Department is proposing to amend § 81.15 to add a new paragraph (i) that would clarify that the procedures in § 81.15 generally govern the counting of home purchase mortgages toward the Home Purchase Subgoals in §§ 81.12, 81.13 and 81.14. The new paragraph provides, however, that the numerator and denominator for purposes of counting performance under the Subgoals are comprised of numbers of home purchase *mortgages* in metropolitan areas, rather than numbers of *dwelling units*. Paragraph (i) also provides that, for purposes of addressing missing data or information for each Subgoal, the procedures in § 81.15(d) shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units. Finally, the new paragraph provides that where a single home purchase mortgage finances the purchase of two or more owner-occupied units, the mortgage shall count once toward each Subgoal that applies to the GSE's mortgage purchase.

C. Definition of Underserved Area for Rural Areas

The rule proposes to change the definition of "Underserved Area" for purposes of determining whether a "Rural Area" is an "Underserved Area." The definition of a "Rural Area" that is an "Underserved Area" would be a census tract, Federal or State American Indian Reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having: (i) A median income at or below 120 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income and a minority population of 30 percent or greater, or (ii) a median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan income.

This is essentially the same definition that was established in HUD's Housing Goals 2000 final rule, except that census tracts, rather than counties, are the basic spatial unit for determining whether an area is underserved. Because HUD's proposed amendment would establish uniform standards for determining whether a rural area qualifies as an underserved area, there is no longer any need to distinguish underserved areas located in New England from underserved areas in other areas of the country. For this reason, the Department is proposing to eliminate from the definition of "Underserved area" the current distinct regulatory treatment for New England.

D. Adequacy of Borrower Income Data

Accurate measurement of the GSEs' performance under the three Housing Goals depends on the completeness of data on borrower income (or, in the case of non-owner-occupied units, the rent) and property location. As between these two, property location is reported by the GSEs on most of the mortgages they purchase—a less than one percent incidence of missing or incomplete geographical data between 2000 and 2002 for each GSE. The incidence of missing borrower income data has been greater—on the order of several percentage points each year.

One reason for the increase in missing income data is the recent increased use of mortgages for which the borrower is not required to provide income information. For some of these mortgages the borrower presents information on assets but not income because of circumstances that make assets easier to document. Other mortgages are originated entirely on the basis of a credit report, property appraisal, and cash for the downpayment. These mortgages typically require relatively large downpayments and often require a higher interest rate than fully documented mortgages.

The Housing Goals 2000 Final Rule provided that the GSEs may exclude from the denominator owner-occupied units lacking mortgagor income data which are located in low-or moderate-income census tracts, *i.e.*, tracts whose median income is no greater than the median income of the metropolitan area or, for properties located outside of metropolitan areas, the larger of the median incomes of the county or the statewide non-metropolitan area (*see* 24 CFR 81.15(d)).[7]

In view of the increasing use of loans made without obtaining income information from the borrower, there is a question whether HUD's existing counting rules for missing-data

[7] For rental units, the 2000 Housing Goals Final Rule also established counting rules which allow the GSEs to estimate rents or exclude units from the denominator when rent data are missing. *See* 24 CFR 81.15(e)(6)(i) on the rules applicable to multifamily units and 24 CFR 81.15(e)(6)(ii) on the rules for single-familly rental units.

situations are adequately reliable and create no more than a negligible statistical bias in the GSEs' Housing Goals performance figures relative to the values that they would have if complete income data could be obtained, and whether a more precise method for imputing incomes could be employed. In order to inform HUD's consideration of this issue, HUD requests comments from the public on the following question: Would it be desirable for HUD to have a standard, econometrically-based method for imputing the income distribution of mortgages purchased by each GSE that lack income data, based on known characteristics of the loan and the tract? Income distribution information would be needed that shows proportions of units that are in the very-low-income range (below 60 percent of area median), low- but not very-low income (60–80 percent) and moderate income (80–100 percent), to support estimating proportions of missing-data loans for both the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal. For example, the mortgage amount as a percentage of average loan amounts in the tract, or home prices in the local market, might be used in the estimation process. Depending on the type of methodology that is developed, such a procedure might be applied on a geographical level from census tracts up to the United States as a whole. In the latter case one national estimate would be created for the proportion of owner-occupied units lacking income data that qualify for each Goal, for each GSE.

E. Possible Changes to GSE Counting Rules

FHEFSSA establishes housing goals for the GSEs' purchases of mortgages for low- and moderate-income families, special affordable housing (very-low income families and low-income families in low-income areas) and families with properties in underserved areas (*see* sections 1332–1334) in order to ensure that the GSEs increase the availability to these borrowers of the lower cost financing available through the GSEs. With increasing frequency, the GSEs have entered into large-scale transactions with lenders involving seasoned mortgages to achieve the housing goals. It is possible that some of these transactions may include broad buyback arrangements with the seller for the transaction.

HUD's rules at 24 CFR 81.2 define a "mortgage purchase" to mean a transaction in which a GSE bought or otherwise acquired with cash or other thing of value a mortgage for its portfolio or securitization. HUD counts the GSEs' performance under the Housing Goals pursuant to HUD's counting rules under 24 CFR 81.15 and 81.16. Both the counting rules and definitions are designed to ensure consistency with the statute and its purposes of increasing the availability of financing for homeowners targeted by the Goals.

In light of HUD's interest in ensuring that transactions are appropriately counted under the law and in accordance with its purposes, HUD asks whether the definition of "mortgage purchase" in § 81.2 should be revised in the final rule. Should HUD, for example, further define "transactions in which a GSE bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization" for purposes of ensuring appropriate counting of large transactions and, if so, how? HUD also asks what changes, if any, to HUD's regulations (including, but not limited to, changes to the counting rules at §§ 81.15 and 81.16) are warranted to ensure that the GSEs' large scale transactions further the requirements and purposes of the Housing Goals. Do commenters believe HUD's current rules are sufficiently specific to determine which seasoned mortgage transactions, including large-scale transactions, are substantially equivalent to mortgage purchases? If commenters believe the rules are not sufficiently specific, how should the rules be changed?

F. Verification and Enforcement of GSE Data Integrity—Revised § 81.102

1. Summary

The Department's ability to monitor effectively the GSEs' performance under the Housing Goals, and otherwise to carry out its regulatory functions, depends in large measure upon the submission of accurate, complete and current data, information and reports by Fannie Mae and Freddie Mac. The GSEs' Charter Acts require Fannie Mae and Freddie Mac to submit data, information and reports on Housing Goals performance under subsections 307(e) and (f) of the Freddie Mac Charter Act and subsections 309(m) and (n) of the Fannie Mae Charter Act. FHEFSSA also requires the GSEs to submit reports (*see* section 1327 of FHEFSSA, 12 U.S.C. 4547), and other authorities necessitate that the GSEs submit information for HUD's review (*see*, for example, section 1325 of FHEFSSA, 12 U.S.C. 4545).

HUD's current GSE regulations at 24 CFR 81.102 make clear that HUD may verify the accuracy and completeness of data, information and reports submitted by the GSEs, but as a practical matter most verification of data, information and reports occurs well after their submission to the Department, which renders this current verification provision a useful but not immediately effective regulatory control. Indeed, in the case of data and information needed to calculate Housing Goals performance, verification occurs only after such Housing Goals performance has been calculated. Likewise, the information provided in reports ordinarily would not be verified until well after the report is submitted.

For these reasons, the Department has concluded that, to ensure the integrity of the report(s), data submission(s) and other information provided to the Department, additional measures are necessary. Accordingly, as described more fully below, the Department is proposing to revise § 81.102 to: (1) Re-codify in paragraph (a) the existing authority under § 81.102 which authorizes HUD to independently verify the accuracy and completeness of data, information and reports provided by the GSEs; (2) establish in paragraph (b) certification requirements for the submission of the GSEs' Annual Housing Activities Report (AHAR) and for such other report(s), data submission(s) or information for which certification is requested in writing by HUD; (3) codify in paragraph (c) HUD's process for handling errors, omissions or discrepancies in the GSEs' current year-end data submissions (including the AHAR); (4) clarify in paragraph (d) that HUD may exercise its Housing Goal counting authority by adjusting Goals performance for a current year by deducting miscredits from a previous year caused by errors, omissions or discrepancies in a GSE's prior year data submissions (including the AHAR); and (5) clarify in paragraph (e) that HUD may take enforcement action against the GSEs under section 1341 of FHEFSSA (12 U.S.C. 4581) and section 1345 of FHEFSSA (12 U.S.C. 4585), as implemented by subpart G ("Procedures for Actions and Review of Actions") of HUD's regulations at 24 CFR part 81 for the submission of non-current, inaccurate or incomplete information or data.

2. Background

Under section 1336 of FHEFSSA (12 U.S.C. 4566), HUD is required to monitor and enforce compliance with the Housing Goals. The GSEs each submit quarterly information and semi-annual loan-level data on their mortgage purchases pursuant to their Charters and the requirements of 24 CFR part 81. To fulfill its monitoring responsibility, HUD conducts two types of verification procedures for this data and information.

The first procedure is a recalculation process whereby HUD, using the loan-level data provided by the GSEs, reconstructs each GSE's Housing Goals performance for the reporting period by applying current counting rules and Housing Goal eligibility criteria to the data provided. These recalculations are conducted immediately upon receipt of the GSEs' loan-level data. If adjustments in performance data are necessary because a GSE has improperly applied counting rules, or HUD discovers some other error during the recalculation process, the Department makes these adjustments at the time recalculation work is done and calculates the GSE's official Housing Goals performance based on the adjustment. HUD publishes the GSEs' official Housing Goal performance figures for the year on its Web site, usually within six months of the end of the reporting year, and includes these figures in other published HUD management and performance reports.

The second type of verification procedure consists of performance reviews, including audit procedures, which occur after the reporting year is closed and Housing Goal results have been announced. Performance reviews evaluate the GSEs' internal controls and related business practices relative to the accuracy, completeness, and appropriateness of the information and data that were provided to HUD and upon which Housing Goals performance was based. These reviews also include sampling tests of source documents and data testing to determine the accuracy of reported data and to review the transactions a GSE relied upon to develop the data. Due to the timing of these reviews, which can begin no earlier than the close of a reporting year, and the extensive sampling work involved, it may take up to 24 months from the date of the report under review for HUD to develop its findings on a reporting year.

3. Independent Verification Authority—§ 81.102(a)

As indicated, the Department is first proposing to recodify existing § 81.102 as paragraph (a) in the revised § 81.102. Paragraph (a) would retain HUD's current regulatory authority to independently verify the accuracy and completeness of data, information and reports submitted by a GSE, thereby retaining the Department's authority to conduct on-site verifications, and to carry out performance reviews.

As the Department noted in the preamble to its Housing Goals 1995 final rule, the authority to verify information is derived in part from section 1321 of FHEFSSA (12 U.S.C. 4541), which accords the Secretary "general regulatory power over each enterprise." The Secretary's general regulatory power is in addition to the enumerated powers conferred on the Secretary by FHEFSSA and the GSEs' Charter Acts. The Department also regards verification authority as necessary and incidental to its authority under section 1336 of FHEFSSA to monitor and enforce compliance with the Housing Goals.

Accordingly, the rule would retain in paragraph (a) of § 81.102 its existing regulatory authority to independently verify the accuracy and completeness of data, information and reports submitted by a GSE.

4. Certification—§ 81.102(b)

The Department is proposing in this rule to require the GSEs to provide a certification in connection with their AHARs submitted under sections 309 (m) and (n) of the Fannie Mae Charter Act or section 307(e) and (f) of the Freddie Mac Charter Act, as applicable, that, among other things, the AHAR is current, complete and does not contain any untrue statement of a material fact as detailed below. The rule would also make clear that the Department could require such certification for such other report(s), data submission(s) or information for which certification is requested in writing by HUD.

Because of the post facto nature of performance reviews, such reviews cannot be the sole means of preventing the submission of incorrect data. HUD believes that certification requirements better serve the end of assuring the integrity of data, information and report(s) (including the AHAR) submitted at the outset and such requirements are consistent with current practice.

Pursuant to its regulatory authority, HUD has in the past, with regard to certain specific matters, required that Fannie Mae and Freddie Mac certify the accuracy, currency and completeness of information and data submitted to the Department. Other financial regulators, such as the Office of Federal Housing Enterprise Oversight (OFHEO), the Securities and Exchange Commission (SEC), and the Federal Deposit Insurance Corporation (FDIC) require similar certifications to ensure the accuracy of information submitted to them. Similarly as the GSEs register their stock with the SEC, they will be required to certify financial statements and other information submitted to the SEC. Moreover, the recently enacted Sarbanes-Oxley Act of 2002 (P.L. 107–204, approved July 30, 2002) requires certification as a means of ensuring corporate accuracy in, and accountability for, the financial information provided by a corporation to its regulators and to the public (*see* 15 U.S.C. 7241).

The Department's proposal requiring the GSEs to submit a certification in connection with their AHARs and such other report(s), data submission(s) or information for which certification is requested in writing by the Department, is reasonably related to the Department's performance of its statutory duties under FHEFSSA and is well supported by both statutory and regulatory authority.

Specifically, as stated, section 1321 of FHEFSSA grants the Secretary "general regulatory power" over the GSEs and directs the Secretary to "make such rules and regulations as shall be necessary and proper" to carry out the purposes of FHEFSSA and the GSEs' Charter Acts. The Supreme Court has repeatedly held that a grant to an agency of "general regulatory authority" extends to the agency those unenumerated powers that are "reasonably related to the purposes of the enabling legislation." (*See Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) (quoting *Thorpe* v. *Housing Authority of City of Durham*, 393 U.S. 268, 280–281 (1969).) This standard has been accepted by every Federal Court of Appeals. (*See, e.g., Action on Smoking and Health* v. *CAB*, 699 F.2d 1209, 1212 (D.C. Cir. 1983).)

Moreover, under section 1336 of FHEFSSA, the Secretary is expressly mandated by Congress to "monitor and enforce [the GSEs'] compliance with the housing goals established under * * * [FHEFSSA]" and the GSEs' Charter Acts require the GSEs to submit a report to designated Congressional committees and to the Secretary "on [their] activities under subpart B of * * * [FHEFSSA]." (*See* section 309(n) of the Fannie Mae Charter Act, 12 U.S.C. 1723a(n); section 307(f) of the Freddie Mac Charter Act, 12 U.S.C.1456(f).) Also, section 309(n)(2)(L) of the Fannie Mae Charter Act and section 307(f)(2)(L) of the Freddie Mac Charter Act expressly grant the Secretary the discretion to require the GSEs to submit in their AHARs "*any other information that the Secretary considers appropriate*" with respect to their activities under subpart B of FHEFSSA. (Emphasis added.)

The Secretary also is accorded by statute a number of fact finding functions. These include the authority to require reports (see section 1327 of FHEFSSA), to gather data from the GSEs on their mortgage purchases (see sections 309(m) and (n) of the Fannie Mae Charter Act and sections 307(e) and (f) of the Freddie Mac Charter Act), to monitor and enforce compliance with the housing goals (see section 1336 of FHEFSSA), and to issue subpoenas (see section 1348 of FHEFSSA). These functions in turn permit the Secretary to make factual determinations, such as: (1) Whether a GSE is complying with the Housing Goals; (2) whether a GSE has made a good-faith effort to comply with a housing plan; and (3) whether a GSE has submitted the mortgage information and reports required under sections 309(m) and (n) of the Fannie Mae Charter Act, sections 307(e) and (f) of the Freddie Mac Charter Act and section 1327 of FHEFSSA. The Secretary also is charged with the authority to initiate enforcement actions upon determining that the law has been violated.

Since all of these functions necessitate the submission of current, complete and accurate information, data and reports, a certification requirement is necessary to carrying out these functions.

For these reasons, the Department is proposing to amend § 81.102 by adding a new paragraph (b) that requires the GSE senior officer responsible for submitting to HUD the AHAR and such other report(s), data submission(s) or information for which a certification is requested in writing by HUD (referred to in the rule as the "GSE Certifying Official") to submit a certification in connection with such documents.

The rule would require that the GSE certification provide: (1) The GSE Certifying Official has reviewed the particular AHAR, other report(s), data submission(s) or information; (2) to the best of the GSE Certifying Official's knowledge and belief, the particular AHAR, other report(s), data submission(s) or information are current, complete and do not contain any untrue statement of a material fact; (3) to the best of the GSE Certifying Official's knowledge and belief, the AHAR or other report(s), data submission(s) and information fairly present in all material respects the GSE's performance, as required to be reported by section 309(m) or (n) of the Fannie Mae Act, section 307(e) or (f) of the Freddie Mac Charter Act, or other applicable legal authority; and (4) to the best of the GSE Certifying Official's knowledge and belief, the GSE has identified in writing any areas in which the GSE's particular AHAR, other report(s), data submission(s) or information may differ from HUD's written articulations of its counting rules including, but not limited to, the regulations under 24 CFR part 81, and any other areas of ambiguity.

5. Adjustment To Correct Current Year-End Errors, Omissions or Discrepancies—§ 81.102(c)

The Department is proposing to add a new paragraph (c) to § 81.102 that would largely codify its administrative practice regarding errors, omissions or discrepancies it discovers relative to HUD's regulations and/or other guidance concerning how current year data are reported by a GSE and provide the GSEs with a mechanism upon which to comment.

Under this paragraph, the Department is proposing to notify the GSE initially by telephone or e-mail transmission of errors, omissions or discrepancies in current year-end data reporting relative to HUD's regulations and other guidance. The GSE has five business days to respond to such notification. If each error, omission or discrepancy is not resolved to the Department's satisfaction, HUD will then notify the GSE in writing and seek clarification or additional information to correct the error, omission or discrepancy. The GSE will have 10 business days from the date of HUD's written notice to respond in writing to the request (or such longer time as HUD may establish, not to exceed 30 business days). If the GSE fails to submit a written response to HUD within the 10-day (or longer) time period, or if HUD determines that the GSE's written response fails to explain or correct the error, omission or discrepancy in its current year-end reported data submissions (including the AHAR) to HUD's satisfaction, the Department will determine the appropriate adjustments to the numerator and the denominator to calculate performance under the applicable Housing Goal(s) and/or Subgoal(s). The Department's determination may involve excluding the unit(s) or mortgage(s) from the numerator and including them in the denominator of the applicable Housing Goal(s) and/or Subgoal(s). The Department may also pursue additional enforcement actions against the GSE under § 81.102(e), if it determines that such action is warranted.

The Department's legal authority to implement this provision also is based upon its general regulatory power over each enterprise pursuant to section 1321 of FHEFSSA and its explicit statutory authority under section 1336 of FHEFSSA to monitor and enforce the GSE's compliance with the Housing Goals. In addition, this provision is predicated upon the Department's existing regulatory authority under 24 CFR 81.102 to independently verify the accuracy and completeness of data, information and reports submitted by a GSE.

6. Adjustment To Correct Prior Year Reporting Errors—§ 81.102(d)

The Department is proposing to add a new paragraph (d) to § 81.102 that would provide for effective regulatory oversight and enforcement when it determines that a GSE has, in a prior year, improperly calculated its performance under one or more Housing Goals and/or Subgoals as a result of errors, omissions or discrepancies in its data submissions (including its AHAR).

As background for this proposal, notably unlike financial reporting where results are cumulative from year to year and the results of adjustments in prior years carry forward to the current year, the GSEs' Housing Goal performance reports (the Annual Housing Activity Reports) impact only the current reporting year. This means that, unlike financial reporting, if corrections are not made prior to release of HUD's official performance data for the reporting year, any subsequent corrections to that data for that year are likely to go unnoticed by the public and policy makers.

In addition, if a correction is such that it would have caused failure under a Housing Goal that was previously reported as having been achieved, HUD's enforcement remedies under section 1336 of FHEFSSA would have little relevance as they only require a GSE to submit a housing plan to ensure compliance with the Housing Goals in the current or subsequent calendar year.

For these reasons, it is not practical to correct overstatements in performance data that were reported in previous years by adjusting performance for a prior year. On the other hand, adjustments to current year performance are an effective means of assuring accuracy in counting under the Housing Goals in a manner that makes the public aware of the adjustment. Accordingly, the Department is proposing to add a new paragraph (d) to § 81.102 that would enable it to reduce a GSE's current year credit toward its Housing Goals performance based on errors, omissions or discrepancies that the Department discovers in a GSE's prior year's data submissions (including its AHAR).

This procedure, to be known as an "adjustment to correct prior year reporting errors, omissions or discrepancies," would provide the

Department with a mechanism for ensuring the continued accuracy, completeness and currency of each GSE's performance results. The Department anticipates that the procedure would be used infrequently. Even so, given the increasing complexity of each GSE's business as well as the complexity of many of the transactions that the GSEs use to meet their Housing Goals, the Department believes that the proposed procedure is both reasonable and necessary. Should its use become necessary, the proposed procedure will provide a means for HUD to effect corrections in a manner that is appropriate and obvious to those who track the GSEs' performance annually, and it will help to ensure that the GSEs continue to exercise appropriate diligence in their Housing Goals reporting.

The Department's proposed procedure would provide that the Department may adjust a GSE's current year Housing Goal performance to correct for any overstatement in Housing Goals reporting discovered in the course of performance reviews or otherwise of any previous year's Annual Housing Activity Report that were the result of errors, omissions or discrepancies. Should the Department determine that an adjustment to current year data for a prior year error, omission or discrepancy in Housing Goal reporting is warranted, the Department would communicate its initial findings and determinations in writing to the GSE within 24 months of the end of the relevant reporting year. The GSE would have 30 days from the date of HUD's initial letter to respond in writing, with supporting documentation, to contest the determination. Within 60 days of the date of the GSE's written response, the Department would issue a final determination letter to the GSE (unless HUD determines that good cause exists to extend this period for an additional 30 days.)

If the GSE fails to submit a written response to HUD within the 30-day period, or if the Department otherwise determines that an adjustment is warranted, the GSE would be required to reflect an adjustment in its Annual Housing Activity Report for the current year, as directed by HUD. The adjustment would be reflected in the GSE's year-end performance under the applicable Housing Goal(s) or Subgoal(s) for the current reporting year by deducting the number of units or mortgages that HUD has determined were erroneously counted in a previous year from the numerator (but not the denominator) for the relevant Housing Goal or Subgoal.

The Department proposes that this provision will become effective upon publication of the final rule for reporting periods occurring on or after the rule's effective date. It will not be retroactive to reporting periods that preceded publication of the final rule. Should any adjustment cause a failure under a Housing Goal in the current year, then current year Housing Goals performance would be subject to enforcement under sections 1336, 1341, and 1345 of FHEFSSA, and subpart G of part 81.

As noted, section 1321 of FHEFSSA grants the Secretary "general regulatory power over each enterprise" which includes the authority to "make such rules and regulations as shall be necessary and proper to ensure that [Part 2, Subtitle A, of FHEFSSA] and the purposes of [the GSEs' Charter Acts] are accomplished." The Secretary's general regulatory power under section 1321 is in addition to the specific enumerated powers conferred on the Secretary by FHEFSSA and the GSEs' Charter Acts.

Moreover, also as noted, section 1336 of FHEFSSA—under which the Secretary is mandated by Congress to "monitor and enforce compliance with the housing goals established under sections 1332, 1333, and 1334, as provided in this section * * *"—expressly authorizes HUD to establish guidelines to measure the extent of compliance with the Housing Goals. Section 1336 further authorizes HUD to "assign full credit, partial credit, or no credit toward achievement of the Housing Goals to different categories of mortgage purchase activities of the enterprises, *based on such criteria as the Secretary deems appropriate.*" (Emphasis added.)

The Department's proposal to grant only partial credit to a GSE in its current year performance report to correct for a prior year's error constitutes an appropriate counting criterion to assure the accuracy of data used to assess GSE performance under the Housing Goals.

7. Additional Enforcement Provisions—§ 81.102(e)

Finally, the rule would make clear that a GSE's submission of data, information, or reports required by section 307(e) or (f) of the Freddie Mac Charter Act, section 309(m) or (n) of the Fannie Mae Charter Act or subpart E of part 81 that are incomplete, not current, or contain an untrue statement of material fact shall be regarded by the Department as equivalent to failing to submit such data, information or reports. For such a non-submission, the Department may bring under subpart G of part 81 an order to cease and desist and/or to levy civil money penalties in connection with a GSE's failure to comply with its statutory obligations under its Charter Act and FHEFSSA.

III. Discussion of Proposed Regulatory Changes

A. Subpart A—General

Section 81.2—Definitions

The proposed regulation would change several current definitions in § 81.2, and add a new definition to this section. First, to conform HUD's regulations to changes in data collection practices made by the Office of Management and Budget (OMB), HUD's proposed regulation would change the current definitions of "Metropolitan area" and "Minority." Second, the proposed regulation would modify the current definition of "Underserved area." Finally, the proposed regulation would add a new definition for "Home Purchase Mortgage" consistent with this proposal.

"Metropolitan area"—The proposed regulation would change the current definition of "metropolitan area" to remove the term "primary metropolitan statistical area ("PMSA")" since this is a term that is no longer used by the Office of Management and Budget (OMB) in defining "metropolitan area." *See* Office of Management and Budget, *Standards for Defining Metropolitan and Micropolitan Statistical Areas,* 65 FR 82228–82238 (December 27, 2000).

"Minority"—The proposed regulation would also change the definition of the term "minority" in light of significant changes in reporting conventions for race and ethnicity, in accordance with OMB guidance.

Currently, "minority" is defined in HUD regulations as "any individual who is included within *any one*" of the following list of racial and ethnic categories (emphasis added). The proposed regulation would change the definition of minority to "any individual who is included within any one *or more*" of the following list of racial and ethnic categories (emphasis added). This change is consistent with a decision made by OMB in 1997, revising federal data classification standards on race and ethnicity, to allow individuals, in federal data collection, to identify themselves in more than one category. *See* Office of Management and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,* 62 FR 58781–58790 (October 30, 1997).

Also, consistent with OMB determinations, the proposed regulation would change the current definition of "minority" so that: (1) "American

Indian'' would be defined to include persons with origins in any of the original peoples of South and Central America; (2) ''Asian or Pacific Islander'' would be divided into separate categories—''Asian,'' which would include examples of countries of origin, and ''Pacific Islander'' which would be included in a new definition with ''Native Hawaiian'' (which would include ''peoples having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;'' (3) ''African-American'' would be changed to ''Black or African American;'' and (4) ''Hispanic'' would be changed to ''Hispanic or Latino.''

''Underserved area''—As discussed more fully above (*see* section II.C), the proposed regulation would change the definition of ''Underserved area'' for purposes of determining whether a ''Rural area'' is an underserved area.

''Home Purchase Mortgage''—Consistent with the proposed establishment of Home Purchase Subgoals, the proposed regulation would add a definition for ''Home Purchase Mortgage,'' which would be defined to mean a residential mortgage for the purchase of an owner-occupied single-family property.

B. Subpart B—Housing Goals

1. Background

The Department is required to establish, by regulation, annual Housing Goals for each GSE. The Goals include a Low- and Moderate-Income Housing Goal, a Special Affordable Housing Goal, and a Central Cities, Rural Areas, and Other Underserved Areas Housing Goal (the Underserved Areas Housing Goal). Section 1331(a) of FHEFSSA requires HUD to establish these Goals in a manner consistent with sections 301(3) of the Fannie Mae Charter Act and 301(b)(3) of the Freddie Mac Charter Act, which require the GSEs ''to provide ongoing assistance to the secondary market for residential mortgages (including * * * mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities).'' Under section 1331(c) of FHEFSSA, HUD may, by regulation, adjust any Housing Goal from year to year.

In October 2000, HUD established Housing Goals for the GSEs for 2001–2003, revising and restructuring the Goals that had been in effect for 1996–2000. The current Housing Goal levels, which were in place for 2001–2003 and extended through 2004 without the bonus points and Temporary Adjustment Factor, are:

- A Low- and Moderate-Income Housing Goal, which focuses on mortgages on housing for families with incomes no greater than area median income (as defined by HUD),[8] and which is set at 50 percent of total units financed by each of the GSEs' mortgage purchases;
- An Underserved Areas Housing Goal, which focuses on mortgages on properties located in ''underserved areas,'' defined as low-income and/or high-minority census tracts and rural counties (excluding high-income, high-minority tracts), and which is set at 31 percent of total units financed by each of the GSEs' mortgage purchases in 2001–2004;
- A Special Affordable Housing Goal, which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, and which is set at 20 percent of total units financed by each of the GSEs' mortgage purchases in 2001–2004; and
- A Special Affordable Multifamily Subgoal, which focuses on mortgages on housing for very low-income families and low-income families living in low-income areas, in multifamily properties (defined as properties with five or more units), and which is set at a fixed amount of 1.0 percent of the average total dollar volume of mortgages purchased by each GSE in the years 1997, 1998, and 1999. This formula results in a Subgoal of special affordable multifamily mortgage purchases totaling $2.85 billion per year for Fannie Mae and $2.11 billion per year for Freddie Mac for each calendar year from 2001 through 2004.

These Housing Goals, excluding the Special Affordable Multifamily Subgoal, share common characteristics: (1) The Goal levels are the same for both GSEs; (2) they are percentage based Goals defined in terms of percentages of housing units financed; and (3) one unit may qualify for one or more Goals. In addition, under the current regulation, Goals were established based on consideration of the statutory factors and set for a three-year period from 2001 through 2003 to allow the GSEs time to develop long-range strategies.

A key factor in determining the level of the Goals was and is the estimated size of the conventional market for each Goal. This determination is discussed above and in Appendix D. HUD estimates that the low- and moderate-income market accounted for 54–59 percent of all mortgages originated during the 1997 to 2002 period, and for 54–55 percent in 2001 and 2002. The special affordable market accounted for 26–30 percent for 1997–2002, and 26–27 percent for 2001–2002. The underserved areas market defined in terms of 1990 Census data and pre-2003 metropolitan area boundaries accounted for 31–35 percent for 1997–2002 and 32–33 percent for 2001–2002. With 2000 Census data and the metropolitan area boundaries established in June, 2003, these figures become 37–40 percent for 1999–2002 and 37–39 percent for 2001–2002.

In accordance with FHEFSSA, HUD has re-estimated the market shares of the mortgages in the primary conventional market that would qualify for each of the GSEs' Housing Goals for the years 2005 through 2008.[9] HUD estimates that for the years 2005 through 2008 the low- and moderate-income share of the conventional market will be 51–57 percent, the underserved areas share of the market will be 35–40 percent, and the special affordable share will be 24–28 percent. Appendix D, ''Estimating the Size of the Conventional Conforming Market for Each Housing Goal,'' provides an extensive analysis of the Department's market share estimates.

The gaps between the current Goal levels and HUD's latest market estimates indicate that the Goals should be higher and that there are ample opportunities available for the GSEs to meet the new initial Goals in 2005 as they institute measures to ensure that they will attain the increased goal levels in 2006–2008. Moreover, HUD's new market estimates allow for more adverse economic and affordability conditions than recently experienced. For example, the lower end—51 percent—of the range for the low- and moderate-income market estimate is consistent with low- and moderate-income borrowers accounting for 38 percent of home purchase loans in the single-family owner-occupied market. (The remainder of the low- and moderate-income market share estimate includes multifamily and single-family rental properties.) Since the 1995–2002 average for the low- and moderate-income share of the home purchase market was 43.5 percent, and the more recent 1999–2002 average was 44.6 percent, the initial Goals for 2005 allow leeway for more adverse income and interest rate conditions.

[8] 24 CFR 81.2.

[9] The Goal-qualifying market shares are estimated for the years 2005–2008 under several projections about the relative sizes of the single-family and multifamily markets. Numerous sensitivity analyses that consider alternative market and economic conditions are examined in Appendix D.

2. Low- and Moderate-Income Housing Goal, § 81.12

This section discusses the Department's consideration of the statutory factors in arriving at the new Housing Goal level for the Low- and Moderate-Income Housing Goal, which targets mortgages on housing for families with incomes at or below the area median income. After analyzing the statutory factors, this proposed rule would establish (a) a Goal of 52 percent for the percentage of the total number of dwelling units financed by each GSE's mortgage purchases for housing affordable to low- and moderate-income families for 2005, rising to 53 percent in 2006, 55 percent in 2007, and 57 percent in 2008, and (b) a Subgoal of 45 percent of the total number of owner-occupied dwelling units financed by each GSE's purchases of home purchase mortgages in metropolitan areas that are for housing affordable to low- and moderate-income families for 2005, rising to 46 percent in 2006, 47 percent in 2007, and 47 percent in 2008.

A short discussion of the statutory factors reviewed to establish the Goal follows. More detailed information analyzing each of the statutory factors is provided in Appendix A, "Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for each Housing Goal."

a. Market Estimate for the Low- and Moderate-Income Housing Goal

The Department estimates that dwelling units serving low- and moderate-income families will account for 51–57 percent of total units financed in the overall conventional conforming mortgage market during the period 2005 through 2008. HUD has developed this range, rather than a specific point estimate, to account for the projected effects of different economic and affordability conditions that can reasonably be anticipated. HUD estimates that low- and moderate-income share of the market averaged 57 percent between 1999 and 2002.

b. Past Performance of the GSEs under the Low- and Moderate-Income Housing Goal

As discussed above, a number of changes in Goal-counting procedures were adopted as part of HUD's Housing Goals 2000 final rule. Thus, it is necessary to provide information using several different measures in order to track performance on the Low- and Moderate-Income Housing Goal over the 1996–2002 period. Table 3 shows performance under these measures.

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Table 3

GSE Performance on the Low- and Moderate-Income Housing Goal, 1996-2002, and Proposed Goals for 2005-08

	1996	1997	1998	1999	2000	2001*	2002*	2005-08 Proposed Goals			
								2005	2006	2007	2008
Goal Levels: Actual	40%	42%	42%	42%	42%	50%	50%				
Proposed								52%	53%	55%	57%
Fannie Mae Goal Performance											
Official	45.6%	45.7%	44.1%	45.9%	49.5%	51.5%	51.8%				
2001-03 Baseline**	46.8%	47.5%	45.1%	46.8%	51.3%	49.2%	49.0%				
With 2005 Assumptions***				46.3%	51.2%	48.7%	47.9%				
Freddie Mac Goal Performance											
Official	41.1%	42.6%	42.9%	46.1%	49.9%	53.2%	51.4%				
2001-03 Baseline**	41.2%	42.7%	43.2%	46.6%	50.6%	47.7%	46.5%				
With 2005 Assumptions***				46.0%	50.2%	47.0%	45.0%				

* Goal level and official performance in 2001-03 are not directly comparable with goal level and performance in 1996-2000, because the goal performance counting rules for 2001-03 differ from those that were in effect for 1996-2000, as discussed in the text. Goal performance is based on official HUD results.

** "2001-03 Baseline" represents performance under current scoring rules (which exclude bonus points and Freddie Mac temporary adjustment factor), without any use of 2000 census data in estimating area median incomes; census tract boundaries as of the 1990 census; and metropolitan area boundaries prior to their re-specification by the Office of Management and Budget in June, 2003.

*** "2005 Assumptions" represents performance under current scoring rules (which are proposed to continue for 2005-2008) with 2000 census data used in estimating area median incomes; census tract boundaries as of the 2000 census; and the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003.

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Specifically, the following changes were made in counting procedures for measuring performance on the Low- and Moderate-Income Housing Goal for 2001–03. HUD:

(a) Established "Bonus points" (awarding double credit) for purchases of low- and moderate-income mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties;

(b) Established a "temporary adjustment factor" (1.35 units credit, as revised by Congress for 2001–03 from HUD's 1.2 unit credits in the 2000 rule) that applied to Freddie Mac's purchases (but not Fannie Mae's purchases) of low- and moderate-income mortgages on large (more than 50-unit) multifamily properties; and

(c) Revised procedures that HUD had instituted regarding the treatment of missing data on unit affordability, the use of imputed or proxy rents for determining Goal credit for multifamily mortgages, and the eligibility for Goals credit for certain qualifying government-backed loans.

Based on the counting rules in effect at that time for 1996–2000, as shown under "official performance" for 1996–2000 in Table 3, Low- and Moderate-Income Housing Goal performance for Fannie Mae was consistently in the 44–46 percent range over the 1996–1999 period, before jumping to a peak of 49.5 percent in 2000. Freddie Mac's performance started at a lower level, but then increased in several steps, from 41–43 percent in 1996–98 to 46.1 percent in 1999, and a record level of 49.9 percent in 2000. That was the only year prior to 2001 in which Freddie Mac's performance has exceeded Fannie Mae's performance on this Goal.

Based on the then current counting rules, including the bonus points and TAF, as shown under "official performance" in Table 3, Low- and Moderate-Income Housing Goal performance in 2001 was 51.5 percent for Fannie Mae and 53.2 percent for Freddie Mac. Low- and Moderate-Income Housing Goal performance in 2002 was 51.8 percent for Fannie Mae and 51.4 percent for Freddie Mac.

Immediately beneath the official Low- and Moderate-Income Housing Goal performance percentages in Table 3 are figures showing the GSEs' low- and moderate-income purchase percentages on a consistent basis for the entire 1996–2002 period. The assumptions used were the scoring rules established in HUD's Housing Goals 2000 Final Rule except that bonus points and the Freddie Mac Temporary Adjustment Factor (which were terminated at the end of 2003) are not applied. These figures are termed the "2001–03 baseline assumptions." For 1996–2000 these figures differ from the official performance figures because they incorporate the revised counting procedures described under point (c), above, which were not reflected in the official performance figures at that time. For 2001 and 2002 both sets of figures incorporate the revised counting procedures, but the baseline does not incorporate the bonus points and the Freddie Mac Temporary Adjustment Factor.

In terms of the 2001–2003 baseline measure, both Fannie Mae and Freddie Mac's low- and moderate-income performance reached its maximum in 2000 (Fannie Mae at 51.3 percent and Freddie Mac at 50.6 percent) before declining somewhat in 2001 and 2002. Both GSEs' baseline performance in 2001 exceeded the level attained in 1999. However, Freddie Mac's baseline performance fell further in 2002, to approximately the same level as in 1999. Fannie Mae's baseline performance was essentially unchanged in 2002.

Overall, both GSEs' performance exceeded HUD's Low- and Moderate-Income Housing Goals by significant margins in 1996–99, and by wide margins in 2000. New, higher Goals were established for 2001–03, and despite somewhat lower performance than the level attained in 2000, both GSEs' official performance exceeded the new goal levels in 2001 and 2002, with the inclusion of the bonus points and the TAF.

The decline in baseline performance in 2001 and 2002 can be attributed in large measure to the mortgage refinance wave that occurred in those years. Fannie Mae's overall volume of mortgage purchases (in terms of numbers of housing units) rose from 2.2 million in 2000 to 4.7 million in 2001, and then to 6.0 million in 2002. Similarly, Freddie Mac's volume rose from 1.6 million in 2000 to 3.3 million in 2001, and then to 4.3 million in 2002. For each GSE the increase in volume each year can be largely attributed to increases in purchase volumes for refinance mortgages relative to home purchase mortgages. For each GSE, the fraction of mortgages that qualified as Low- and Moderate-Income was less for refinance mortgages than for home purchase mortgages.

For 2005–2008 HUD does not propose to change the current procedures regarding the treatment of missing data on unit affordability, the use of imputed or proxy rents for determining Goal credit for multifamily mortgages, or the eligibility for Goal credit of certain qualifying government-backed loans. That is, the Department does not plan to change the 2001–03 baseline assumptions for scoring loans under the Low- and Moderate-Income Housing Goal.

Beneath the 2001–03 baseline figures in Table 3 is another row of figures designated "With 2005 Assumptions." These figures show the effects of applying 2000 Census data and the new specification of Metropolitan Statistical Areas released by the Office of Management and Budget in 2003 to the measurement of Low- and Moderate-Income purchase percentages with the same counting rules that were used for the 2001–03 baseline. The effect is to reduce the Goal-qualifying percentage by an average of 0.5 percentage points for Fannie Mae and 0.8 percentage points for Freddie Mac, over the four-year period.

c. Proposed Low- and Moderate-Income Home Purchase Subgoal for 2005–2008

The Department proposes to establish a Subgoal of 45 percent of each GSE's purchases of home purchase mortgages on single-family owner-occupied properties in metropolitan areas which are for low- and moderate-income families in 2005, with this Subgoal rising to 46 percent in 2006 and 47 percent in both 2007 and 2008. The purpose of this Subgoal is to encourage the GSEs to increase their acquisitions of home purchase loans for low- and moderate-income families, many of whom are expected to enter the homeownership market over the next few years. If the GSEs meet this Subgoal, in 2005 they will be leading the primary market by approximately one percentage point, based on the income characteristics of home purchase loans reported in HMDA. Between 1999 and 2002, HMDA data show that low- and moderate-income families accounted for an average of 44.3 percent of single-family-owner loans originated in the conventional conforming market of metropolitan areas. Loans in the B&C portion of the subprime market are not included in these averages. To reach the 45-percent Subgoal for 2005, both GSEs must improve their average performance, as shown in Table 2—Fannie Mae by about one percentage point over its average performance of 44.2 percent during 2001 and 2002, and Freddie Mac by 2.4 percentage points over its average performance of 42.6 percent; these required improvements will increase further by one percentage point in 2006 and an additional one percentage point in 2007–08 under HUD's proposal.

As explained above, HUD will be re-benchmarking its median incomes for metropolitan areas and non-metropolitan counties based on 2000 Census median incomes, and will be incorporating the effects of the new OMB metropolitan area definitions. HUD projected the effects of these two changes on the low- and moderate-income shares of the single-family-owner market for the years 1999–2002. These estimates will be referred to as "projected data" while the 1990-based data reported above will be referred to as "historical data." The average low-mod share of the home purchase market (without B&C loans) was 43.1 percent based on projected data, as compared with 44.3 percent based on historical data. Thus, based on projected data, the proposed 45-percent Home Purchase Subgoal for 2005 is approximately two percentage points above the 1999–2002 market average. Fannie Mae's average low-mod performance between 1999 and 2002 based on the projected data was 41.4 percent, compared with 42.5 percent based on historical data. To reach the 45-percent Subgoal based on projected data, Fannie Mae would have to improve its performance in 2005 by 2.3 percentage points over its projected average performance of 42.7 percent in 2001 and 2002, or by 1.4 percentage points over its projected 2002 low-mod performance of 43.6 percent. Freddie Mac's average low-mod performance between 1999 and 2002 based on the projected data was 40.9 percent, compared with 42.3 percent based on historical data. To reach the 45-percent Subgoal based on projected data, Freddie Mac would have to improve its performance in 2005 by 4.0 percentage points over its projected average performance of 41.0 percent in 2001 and 2002, or by 2.9 percentage points over its projected 2002 low-mod performance of 42.1 percent.

Section II.B.2 of this preamble and Section I of Appendix A discuss the reasons why the Department is establishing the Subgoal for low- and moderate-income loans, as follows: (1) The GSEs' have the resources and the ability to lead the market in providing mortgage funding for low- and moderate-income families; (2) the GSEs have generally not led the market, even though they have the ability to do so; (3) troublesome disparities in our housing and mortgage markets indicate a continuing need for increased GSE activity; and (4) there are ample opportunities for the GSEs to improve their low- and moderate-income performance in the home purchase market. Although single-family-owner mortgages comprise the "bread-and-butter" of their business, the GSEs have historically lagged behind the primary market in financing mortgages for low- and moderate-income families. Because home purchase loans account for a major share of the GSEs' purchases, the establishment of this Subgoal will aid their performance under the overall Low- and Moderate-Income Housing Goal.

For the foregoing reasons, the Department believes that the GSEs can do more to raise the share of their home loan purchases serving low- and moderate-income families. This can be accomplished by building on efforts that the enterprises have already started, including their new affordable lending products, their many partnership efforts, their outreach to inner city neighborhoods, their incorporation of greater flexibility into their underwriting guidelines, and their purchases of seasoned CRA loans. A wide variety of quantitative and qualitative indicators indicate that the GSEs' have the resources and financial strength to improve their affordable lending performance enough to lead the market serving low- and moderate-income families.

d. Proposed Goal Levels for 2005–2008

The Department is proposing to increase the Low- and Moderate-Income Housing Goal to 52 percent for 2005, 53 percent in 2006, 55 percent in 2007, and 57 percent in 2008. The reasons for increasing the Low- and Moderate-Income Housing Goal are discussed in Section a, above. While the GSEs have lagged the primary market in funding low- and moderate-income loans, they appear to have ample room to improve their performance in that market. The GSEs' mortgage purchases between 1999 and 2002 accounted for 49 percent of the total (single-family and multifamily) conforming mortgage market, but they accounted for only 42 percent of the low- and moderate-income market. A wide variety of quantitative and qualitative indicators demonstrate that the GSEs' have the expertise, resources and financial strength to improve their low- and moderate-income lending performance and close their gap with the market.

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

This section discusses the Department's consideration of the statutory factors in arriving at the proposed new housing goal level for the Underserved Areas Housing Goal.

The Underserved Areas Housing Goal focuses on areas of the nation currently underserved by the mortgage finance system. The 1995 rule provided that mortgage purchases count toward the Underserved Areas Housing Goal if such purchases finance properties that are located in underserved census tracts. At 24 CFR 81.2 of HUD's current rules, HUD defines "underserved areas" for metropolitan areas (in central cities and other underserved areas) as census tracts where either: (1) the tract median income is at or below 90 percent of the area median income (AMI); or (2) the minority population is at least 30 percent and the tract median income is at or below 120 percent of AMI. The AMI ratio is calculated by dividing the tract median income by the MSA median income. The minority percent of a tract's population is calculated by dividing the tract's minority population by its total population.

For properties in non-metropolitan (rural) areas, mortgage purchases count toward the Underserved Areas Housing Goal where such purchases finance properties that are located in underserved counties. These are defined as counties where either: (1) the median income in the county does not exceed 95 percent of the greater of the median incomes for the non-metropolitan portions of the state or of the nation as a whole; or (2) minorities comprise at least 30 percent of the residents and the median income in the county does not exceed 120 percent of the greater of the median incomes for the non-metropolitan portions of the state or of the nation as a whole.

This proposed rule bases its proposed level for the Underserved Areas Housing Goal on 2000 Census data on area median incomes and minority percentages for census tracts, counties, MSAs, and the non-metropolitan portions of states and of the entire nation. HUD's analysis, which is sketched below and described in greater detail in Appendix B, has revealed that the effect of using 2000 Census data rather than 1990 data to determine whether areas are underserved increase the percentages of the GSEs' mortgage purchases in underserved areas by an estimated average of 5 percentage points for Fannie Mae and 4 percentage points for Freddie Mac, based on the geographic locations of the GSEs' mortgage purchases in 1999 through 2002. This change reflects geographical shifts in population concentrations by income and minority status from 1990 to 2000. It is for this reason that HUD's proposed level of the Underserved Areas Housing Goal is greater than the existing level by several percentage points more than the increase in the other two Goals.

After analyzing the statutory factors, this proposed rule would: (a) Establish a Goal of 38 percent for the percentage of the total number of dwelling units financed by each GSE's mortgage purchases for properties located in underserved areas for 2005, 39 percent for 2006 and 2007, and 40 percent for 2008; (b) establish census tracts as the spatial basis for establishing whether properties in non-metropolitan (rural) areas count toward the Underserved Areas Housing Goal, in place of counties as in the definition stated above, for the reasons described below; and (c) also establish a Subgoal of 33 percent of the total number of dwelling units financed by each GSE's purchases of home purchase mortgages in metropolitan areas for properties located in underserved areas of metropolitan areas for 2005, rising to 34 percent for 2006, and 35 percent for 2007 and 2008;

A short discussion of the statutory factors reviewed in establishing the Goal follows. Additional information analyzing each of the statutory factors is provided in Appendix B, "Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

a. Market Estimate for the Underserved Areas Housing Goal

The Department estimates that dwelling units in underserved areas will account for 35–40 percent of total units financed in the overall conventional conforming mortgage market during the period 2005 through 2008. HUD has developed this range, rather than a specific point estimate, to accommodate the projected effects of different economic and affordability conditions that can reasonably be anticipated. HUD estimates that the underserved areas market averaged 39 percent between 1999 and 2002.

b. Past Performance of the GSEs under the Underserved Areas Housing Goal

As discussed above, a number of changes in goal-counting procedures were adopted as part of HUD's Housing Goals 2000 final rule. Thus it is necessary to provide information using several different measures in order to track changes in the GSEs' performance on the Underserved Areas Housing Goal over the 1996–2002 period. These are shown in Table 4. The same changes in counting rules described for the Low- and Moderate-Income Housing Goal are applicable to the Underserved Areas Housing Goal.

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Table 4

GSE Performance on the Underserved Areas Housing Goal, 1996-2002, and Proposed Goals for 2005-08

	1996	1997	1998	1999	2000	2001*	2002*	2005-08 Proposed Goals			
								2005	2006	2007	2008
Goal Levels: Actual	21%	24%	24%	24%	24%	31%	31%				
Proposed								38%	39%	39%	40%
Fannie Mae Goal Performance											
Official	28.1%	28.8%	27.0%	26.8%	31.0%	32.6%	32.8%				
2001-03 Baseline**	28.2%	28.9%	27.1%	26.8%	31.0%	30.4%	30.2%				
With 2005 Assumptions (Counties)***				32.5%	38.2%	36.4%	35.7%				
With 2005 Assumptions (Tracts)***				31.6%	37.5%	35.7%	35.0%				
Freddie Mac Goal Performance											
Official	25.0%	26.3%	26.1%	27.5%	29.2%	31.7%	31.9%				
2001-03 Baseline**	25.0%	26.3%	26.1%	27.6%	29.2%	28.2%	28.4%				
With 2005 Assumptions (Counties)***				32.4%	34.8%	33.3%	33.5%				
With 2005 Assumptions (Tracts)***				31.6%	34.1%	32.5%	32.8%				

* Goal level and official performance in 2001-03 are not directly comparable with goal level and performance in 1996-2000, because the goal performance counting rules for 2001-03 differ from those that were in effect for 1996-2000, as discussed in the text. Goal performance is based on official HUD results.

** "2001-03 Baseline" represents performance under current scoring rules (which exclude bonus points and Freddie Mac temporary adjustment factor), with 1990 census data used to determine underserved areas; census tract boundaries as of the 1990 census; and metropolitan area boundaries prior to their re-specification by the Office of Management and Budget in June, 2003.

*** "2005 Assumptions (Counties)" represents performance under current scoring rules (which are proposed to continue for 2005-2008); 2000 census data used to determine underserved areas; census tract boundaries as of the 2000 census; and the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003. "2005 Assumptions (Tracts)" incorporates the effects of the Departments's proposal to begin using tracts rather than counties to define non-metropolitan underserved areas in 2005.

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Based on the counting rules in effect at that time, as shown under "official performance" for 1996–2000 in Table 4, Underserved Areas Housing Goal performance for Fannie Mae generally fluctuated in the range between 27 and 29 percent over the 1996–99 period, before rising to a peak of 31.0 percent in 2000. Freddie Mac's performance started at a lower level, but then increased in several steps, from 25–26 percent in 1996–98 to 27.5 percent in 1999, and a record level of 29.2 percent in 2000. Freddie Mac's performance in 1999 was the only year prior to 2001 in which it exceeded Fannie Mae's performance on this Goal.

Based on current counting rules, including the bonus points and the TAF, as shown under "official performance" for 2001 in Table 4, Underserved Areas Housing Goal performance in 2001 was 32.6 percent for Fannie Mae and 31.7 percent for Freddie Mac. Underserved Areas Housing Goal performance in 2002 was 32.8 percent for Fannie Mae and 31.9 percent for Freddie Mac.

Immediately beneath the official Underserved Areas Housing Goal performance percentages in Table 4 are figures showing the GSEs' purchase percentages under this Goal on a consistent basis for the entire 1996–2002 period. The assumptions used were the scoring rules established in HUD's Housing Goals 2000 Final Rule, except that bonus points and the Freddie Mac Temporary Adjustment Factor (which terminated at the end of 2003) are not applied. These figures are termed the "2001–03 baseline" assumptions. For 1996–2000 these figures differ from the official performance figures because they incorporate the revised counting procedures, which were not reflected in the official performance figures at that time. For 2001 and 2002 both sets of figures incorporate the revised counting procedures, but the baseline does not incorporate the bonus points and Freddie Mac Temporary Adjustment Factor.

In terms of the 2001–2003 baseline measure, both Fannie Mae and Freddie Mac's Underserved Areas Housing Goal performance reached its maximum in 2000 (Fannie Mae at 31.0 percent and Freddie Mac at 29.2 percent) before declining somewhat in 2001 and 2002. Both GSEs' baseline performance in 2001 and 2002 exceeded the level attained in 1999.

Overall, both GSEs' official performance exceeded their Underserved Areas Housing Goal by significant margins in 1996–99, and by wide margins in 2000. New, higher Goals were established for 2001–03, and despite somewhat lower performance than the level attained in 2000 (largely due to the 2001–02 refinance wave), both GSEs' performance exceeded the new Goal levels in 2001 and 2002.

Appendix B includes a comprehensive analysis of the GSEs' performance in funding mortgages for single-family-owner properties in underserved areas. (The data reported there are based on 2000 Census geography, which produces underserved area figures slightly over five percentage points higher than 1990-based geography.) Between 1999 and 2002, 28.3 percent of Freddie Mac's purchases and 29.5 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 31.5 percent home purchase loans originated in the conventional conforming market (excluding B&C loans). Thus, Freddie Mac performed at 90 percent of the market level, while Fannie Mae performed at 94 percent of the market level—both results similar to those reported in Appendix B for underserved areas based on 1990 Census geography. The 2000-based results also show that Fannie Mae has improved its performance and matched the primary market in funding underserved areas during 2002. The share of Fannie Mae's purchases going to underserved areas increased from 25.7 in 1999 to 32.3 percent in 2002, which placed it at the market level of 32.3 percent. However, the 2000-based results show that, like Freddie Mac, Fannie Mae's longer-term performance (since 1996) as well as its recent average performance (1999 to 2001) has consistently been below market levels. But, it is encouraging that Fannie Mae significantly improved its performance relative to the market during the first two years of HUD's higher Housing Goal levels.

In evaluating the GSEs' past performance, it should be noted that while borrowers in underserved metropolitan areas tend to have much lower incomes than borrowers in other areas, this does not mean that GSE mortgage purchases in underserved areas must necessarily be mortgages on housing for lower income families. Between 1999 and 2001, housing for above median-income households accounted for nearly 60 percent of the single-family owner-occupied mortgages the GSEs purchased in underserved areas.

Beneath the 2001–03 baseline figures in Table 4 are two additional rows of figures designated "2005 Assumptions." These figures show the effects of applying 2000 Census data and the new specification of Metropolitan Statistical Areas released by the Office of Management and Budget in 2003 to the identification of underserved areas for purposes of measuring historical GSE goal performance. The second of the two lines also incorporates the effects of the Department's proposed change from counties to census tracts as the basis for identifying underserved areas outside of metropolitan areas beginning in 2005.

HUD's determination of underserved areas for purposes of computing the GSEs' performance on the Underserved Areas Housing Goal has through 2002 been based on area median incomes and area minority percentages from the 1990 Census. HUD applied the existing numerical thresholds for minority percentages and median incomes to 2000 Census data and ascertained that the proportion of underserved census tracts and the proportion of housing units in underserved census tracts in metropolitan areas increases significantly from 1990 levels: from 47.5 percent to 54.9 percent of census tracts underserved and from 44.3 percent to 52.5 percent of population in underserved census tracts (including the effects of the 2003 re-specification of Metropolitan Statistical Areas). Comparable shifts at the county level in non-metropolitan areas were found to be of much smaller magnitude. Further, HUD estimated the spatial distribution of GSE mortgage purchases across metropolitan census tracts and non-metropolitan counties for recent years. The findings were that for 2000, 2001, and 2002, Fannie Mae's performance figures are an estimated 7.2 percent, 6.0 percent, and 5.5 percent higher in terms of 2000 Census geography than with 1990 Census geography. The corresponding figures for Freddie Mac are 5.6 percent, 5.1 percent, and 5.1 percent larger, respectively. With a further shift to tract-based definitions the figures for Fannie Mae are reduced by 0.7 percentage points in each of the three years, and for Freddie Mac 0.7, 0.8, and 0.7 percentage points, respectively. HUD has taken account of these shifts in establishing the level of the Underserved Areas Housing Goal for 2005 and beyond.

HUD originally adopted its current county-based definition for targeting GSE purchases to underserved non-metropolitan areas primarily based on information that rural lenders did not perceive their market areas in terms of census tracts, but rather, in terms of counties. A further concern was an apparent lack of reliability of geocoding software applied to non-metropolitan areas. Recent research summarized in Appendix B indicates that a tract-based system would improve the extent to which the underserved area definition distinguishes areas by key socioeconomic and demographic characteristics such as median family income, poverty, unemployment, school dropout rates, and minority populations. Under a tract-based definition underserved areas stand out more as areas of lower income and low economic activity and as having somewhat larger minority population proportions. A tract-based definition would also improve the targeting of the goal to areas with relatively greater housing needs. Based on these findings, which are detailed in Appendix B, HUD is proposing to re-specify the definition of underserved areas within non-metropolitan (rural) areas to be based on census tracts rather than counties.

c. Proposed Underserved Areas Home Purchase Subgoal for 2005–2008

The Department believes the GSEs can play a leadership role in underserved markets. To facilitate this leadership, the Department is proposing a Subgoal of 33 percent for each GSE's acquisitions of home purchase mortgages on properties located in the underserved census tracts of metropolitan areas for 2005, rising to 34 percent in 2006 and 35 percent in 2007 and 2008. The purpose of this Subgoal is to encourage the GSEs to improve their purchases of mortgages for homeownership in underserved areas, thus providing additional credit and capital for neighborhoods that historically have not been adequately served by the mortgage industry. If the GSEs meet this Subgoal, they will be leading the primary market, based on the census tract characteristics of home purchase loans reported in HMDA. Between 1999 and 2002, HMDA data show that underserved areas accounted for 32.3 percent of single-family-owner loans originated in the conventional conforming market of metropolitan areas. To reach the 33 percent Subgoal for 2005, both GSEs would have to improve their performance, as shown in Table 2—Fannie Mae by 1.9 percentage points over its average performance of 31.1 percent, and Freddie Mac by 3.5 percentage points over its average performance of 29.5 percent during 2001 and 2002. These required improvements would increase further by one percentage point in 2006 and by an additional one percentage point in 2007–08 under HUD's proposal. The Subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas.

Section II.B.2 of this preamble and Section I of Appendix B discuss the reasons why the Department is establishing a Subgoal for home purchase mortgages in underserved areas namely: (1) The GSEs' have the resources and the ability to lead the market in providing funding in underserved neighborhoods; (2) the GSEs have not led the market, even though they have the ability to do so; (3) troublesome disparities in our housing and mortgage markets indicate a continuing need for increased GSE activity; and (4) there are ample opportunities for the GSEs to improve their underserved area performance in the home purchase market. Although single-family-owner mortgages comprise the "bread and butter" of the GSEs' business, the GSEs have lagged behind the primary market in financing properties in underserved areas. For the foregoing reasons, the Secretary believes that the GSEs can do more to raise the share of their home loan purchases in underserved areas. This can be accomplished by building on efforts that the enterprises have already started, including their new affordable lending products, their many partnership efforts, their outreach to inner city neighborhoods, their incorporation of greater flexibility into their underwriting guidelines, and their purchases of seasoned CRA loans. A wide variety of quantitative and qualitative indicators demonstrate that the GSEs have the resources and financial strength to improve their affordable lending performance enough to lead the market in underserved areas.

d. Proposed Goal Levels for 2005–2008

The Department is proposing to increase the Underserved Areas Housing Goal to 38 percent for 2005, 39 percent for 2006 and 2007, and 40 percent for 2008. The reasons for increasing the Underserved Areas Housing Goal are discussed in Sections I.C and II.A of this preamble. While the GSEs have lagged the primary market in funding loans in underserved areas, they appear to have ample room to improve their performance in that market. The GSEs' mortgage purchases between 1999 and 2002 accounted for 49 percent of the total (single-family and multifamily) conforming mortgage market, but they accounted for only 41 percent of the underserved areas market. A wide variety of quantitative and qualitative indicators demonstrate that the GSEs have the expertise, resources and financial strength to improve their performance in underserved areas and to close their gap with the market.

4. Special Affordable Housing Goal, § 81.14

This section discusses the Department's consideration of the statutory factors in arriving at the proposed Housing Goal level for the Special Affordable Housing Goal, which counts mortgages on housing for very low-income families and low-income families living in low-income areas.

After analyzing the statutory factors, this proposed rule would establish: (a) A Goal of 22 percent for the percentage of the total number of dwelling units financed by each GSE's mortgage purchases that are for special affordable housing, affordable to very low-income families and families living in low-income areas for 2005, rising to 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008; (b) a Subgoal of 1 percent of each GSE's combined annual average mortgage purchases in 2000, 2001, and 2002, for each GSE's special affordable mortgage purchases that are for multifamily housing in 2005–2008; and (c) a Subgoal of 17 percent of the total number of each GSE's purchases of home purchase mortgages in metropolitan areas that are for housing affordable to very low income families and low-income families in low-income areas for 2005, rising to 18 percent in 2006, 19 percent in 2007, and 19 percent in 2008.

A short discussion of the statutory factors for establishing the Goal follows. Additional information analyzing each of the statutory factors is provided in Appendix C, "Departmental Considerations to Establish the Special Affordable Housing Goal," and Appendix D, "Estimating the Size of the Conventional Conforming Market for Each Housing Goal."

a. Market Estimate for the Special Affordable Housing Goal

The Department estimates that dwelling units serving very low-income families and low-income families living in low-income areas will account for 24–28 percent of total units financed in the overall conventional conforming mortgage market during the period 2005 through 2008. HUD has developed this range, rather than a point estimate, to account for the projected effects of different economic conditions that can reasonably be anticipated. HUD also estimates that the special affordable market averaged 28 percent between 1999 and 2002.

b. Past Performance of the GSEs Under the Special Affordable Housing Goal

As discussed above, a number of changes in Goal-counting procedures were adopted as part of HUD's Housing Goals 2000 final rule. Thus, it is necessary to provide information using several different measures in order to track changes in performance on the Special Affordable Housing Goal over the 1996–2002 period. These are shown in Table 5.

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Table 5

GSE Performance on the Special Affordable Housing Goal and Multifamily Subgoals, 1996-2002, and Proposed Goals for 2005-08

								2005-08 Proposed Goals			
	1996	1997	1998	1999	2000	2001*	2002*	2005	2006	2007	2008
Goal Levels: Actual	12%	14%	14%	14%	14%	20%	20%				
Proposed								22%	24%	26%	28%
Fannie Mae Goal Performance											
Official	15.4%	17.0%	14.3%	17.6%	19.2%	21.6%	21.4%				
2001-03 Baseline**	16.7%	19.3%	16.3%	18.5%	21.4%	20.2%	19.9%				
With 2005 Assumptions***				18.6%	21.7%	20.1%	19.4%				
Freddie Mac Goal Performance											
Official	14.0%	15.2%	15.9%	17.2%	20.7%	22.6%	21.4%				
2001-03 Baseline**	14.0%	15.2%	16.0%	17.4%	21.0%	19.3%	18.6%				
With 2005 Assumptions***				17.4%	20.8%	19.1%	17.8%				
Multifamily Subgoals ($ billions):											
Fannie Mae Subgoal	$1.29	$1.29	$1.29	$1.29	$1.29	$2.85	$2.85	$5.49	$5.49	$5.49	$5.49
Fannie Mae Performance	$2.37	$3.19	$3.53	$4.04	$3.79	$7.36	$7.57				
Ratio, Performance/Subgoal	1.84	2.47	2.74	3.13	2.94	2.58	2.66				
Freddie Mac Subgoal	$0.99	$0.99	$0.99	$0.99	$0.99	$2.11	$2.11	$3.92	$3.92	$3.92	$3.92
Freddie Mac Performance	$1.06	$1.21	$2.69	$2.26	$2.40	$4.65	$5.22				
Ratio, Performance/Subgoal	1.07	1.22	2.72	2.28	2.42	2.20	2.47				

* Goal level and official performance in 2001-03 are not directly comparable with goal level and performance in 1996-2000, because the goal performance counting rules for 2001-03 differ from those that were in effect for 1996-2000, as discussed in the text. Goal performance is based on official HUD results. Multifamily subgoal figures for 2001-03 are comparable with figures for 1996-2000.

** "2001-03 Baseline" represents performance under current scoring rules (which exclude bonus points and Freddie Mac temporary adjustment factor), with 1990 census data used to determine low-income areas; no use of 2000 census data in estimating area median incomes; census tract boundaries as of the 1990 census and metropolitan area boundaries prior to their re-specification by the Office of Management and Budget in June, 2003.

*** "2005 Assumptions" represents performance under current scoring rules (which are proposed to continue for 2005-2008) with 2000 census data used to determine low-income areas and in estimating area median incomes; census tract boundaries as of the 2000 census; and the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003.

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Based on the counting rules in effect at that time, as shown under "official performance" for 1996–2000 in Table 5, Special Affordable Housing Goal performance for Fannie Mae generally fluctuated in the range between 14 and 17 percent over the 1996–99 period, before rising to a peak of 19.2 percent in 2000. Freddie Mac's performance started at a lower level, but then increased in several steps, from 14–16 percent in 1996–98 to 17.2 percent in 1999, and to a record level of 20.7 percent in 2000. That was the only year prior to 2001 in which Freddie Mac's performance exceeded Fannie Mae's performance on this Goal.

Based on current counting rules, as shown under "official performance" for 2001 in Table 5, Special Affordable Housing Goal performance in 2001 was 21.6 percent for Fannie Mae and 22.6 percent for Freddie Mac. Special Affordable Housing Goal performance in 2002 was 21.4 percent for Fannie Mae and 21.4 percent for Freddie Mac.

Immediately beneath the official Special Affordable Housing Goal performance percentages in Table 5 are figures showing the GSEs' special affordable purchase percentages on a consistent basis for the entire 1996–2002 period. The assumptions used were the scoring rules established in HUD's Housing Goals 2000 Final Rule except that bonus points and the Freddie Mac Temporary Adjustment Factor (which were terminated at the end of 2003) are not applied. These are termed the "2001–03 baseline" assumptions. In terms of this measure, both Fannie Mae and Freddie Mac's special affordable performance reached its maximum in 2000 (Fannie Mae at 21.4 percent and Freddie Mac at 21.0 percent) before declining somewhat in 2001 and then declining further in 2002. Both GSEs' baseline performance in 2002 exceeded the level attained in 1999.

Overall, both GSEs' performance exceeded HUD's Special Affordable Housing Goals by significant margins in 1996–99, and by wide margins in 2000. New, higher Goals were established for 2001–03, and despite somewhat lower performance than the level attained in 2000 (largely due to the 2001–02 refinance wave, as discussed under the Low- and Moderate-Income Housing Goal), both GSEs' performance exceeded the new Goal levels in 2001–02.

The Special Affordable Housing Goal is designed, in part, to ensure that the GSEs maintain a consistent focus on serving the low- and very low-income portion of the housing market where housing needs are greatest. Appendices A and B use HMDA data and GSE loan-level data for home purchase mortgages on single-family owner-occupied properties in metropolitan areas to compare the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market. There are two main findings with respect to the special affordable category. First, Fannie Mae and Freddie Mac have historically lagged depositories and the overall market in providing mortgage funds for special affordable housing. Between 1993 and 2002, 11.8 percent of Freddie Mac's mortgage purchases, 12.7 percent of Fannie Mae's purchases, 15.4 percent of loans originated by depositories, and 15.4 percent of loans originated in the conventional conforming market (without estimated B&C loans) were for special affordable housing.

Second, while both GSEs have improved their performance over the past few years, Fannie Mae has made more progress than Freddie Mac in closing its gap with the market. The share of Fannie Mae's purchases going to special affordable loans increased from 12.5 percent in 1999 to 16.3 percent in 2002, the latter figure being at the 2002 market level of 16.3 percent. The share of Freddie Mac's purchases going to special affordable loans increased from 12.8 percent in 1999 to 15.8 percent in 2002, the latter figure being below the 2002 market level of 16.3 percent.

Section G in Appendix A discusses the role of the GSEs both in the overall special affordable market and in the different segments (single-family owner, single-family rental, and multifamily rental) of the special affordable market. The GSEs' special affordable purchases accounted for 35 percent of all special affordable owner and rental units that were financed in the conventional conforming market between 1999 and 2002. The GSEs' 35-percent share of the special affordable market was below their 49-percent share of the overall market. Even in the owner market, where the GSEs account for 57 percent of the market, their share of the special affordable market was only 49 percent. While the GSEs improved their market shares during 2002, the analysis suggests that the GSEs are not leading the single-family market in purchasing loans that qualify for the Special Affordable Housing Goal. There is room and ample opportunity for the GSEs to improve their performance in purchasing affordable loans at the lower-income end of the market.

The multifamily market is especially important in the establishment of the Special Affordable Housing Goal for Fannie Mae and Freddie Mac because of the relatively high percentage of multifamily units meeting the Special Affordable Housing Goal. For example, between 1999 and 2002, 53 percent of units financed by Fannie Mae's multifamily mortgage purchases met the Special Affordable Housing Goal, representing 27 percent of units counted toward the Special Affordable Housing Goal, during a period when multifamily units represented only 10 percent of its total purchase volume. For Freddie Mac, 49 percent of units financed by multifamily mortgage purchases met the Special Affordable Housing Goal, representing 23 percent of units counted toward the Special Affordable Housing Goal, during a period when multifamily units represented only 9 percent of its total purchase volume.

c. Proposed Special Affordable Home Purchase Subgoal for 2005–2008

The Secretary believes the GSEs can play a leadership role in the special affordable market generally and the home purchase special affordable market in particular. Thus, the Department is proposing a Subgoal of 17 percent for each GSE's purchases of home purchase mortgages for special affordable housing located in metropolitan areas for 2005, rising to 18 percent in 2006, and 19 percent in 2007 and 2008. The purpose of this Subgoal is to encourage the GSEs to improve their purchases of home purchase mortgages on special affordable housing, thus expanding homeownership opportunities for very-low-income borrowers and low-income borrowers in low-income areas, including minority first-time homebuyers who are expected to enter the housing market over the next few years. If the GSEs meet this Subgoal, they will be leading the primary market, based on the income characteristics of home purchase loans reported in HMDA. Between 1999 and 2002, HMDA data show that special affordable housing accounted for an average of 16.4 percent of single-family-owner home purchase loans originated in the conventional conforming market in metropolitan areas. Loans in the B&C portion of the subprime market are not included in these averages. To reach the 17 percent Subgoal, both GSEs would have to improve their performance in 2005, as shown in Table 2—Fannie Mae by 1.4 percentage points over its average performance of 15.6 percent during 2001 and 2002, and Freddie Mac by 1.9 percentage points over its performance of 15.1 percent during the same period. These required improvements would increase further by one percentage point in 2006 and by an additional one percentage point in 2007–08 under HUD's proposal. As discussed previously, the Subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas.

Section II.B.2 of this preamble and Section D of Appendix C discuss reasons why the Department set the Subgoal for special affordable loans.

d. Special Affordable Housing Goal: Multifamily Subgoals

Based on the GSEs' past performance on the Special Affordable Multifamily Subgoals, and on the outlook for the multifamily mortgage market, HUD is proposing that these Subgoals be retained for the 2005–2008 period. Unlike the overall Goals, which are expressed in terms of minimum Goal-qualifying percentages of total units financed, these Subgoals for 2001–03 and in prior years have been expressed in terms of minimum dollar volumes of Goal-qualifying multifamily mortgage purchases. Specifically, each GSE's special affordable multifamily Subgoal is currently equal to 1.0 percent of its average total (single-family plus multifamily) mortgage volume over the 1997–99 period. Under this formulation, in October 2000 the Subgoals were set at $2.85 billion per year for Fannie Mae and $2.11 billion per year for Freddie Mac, in each of calendar years 2001 through 2003. These Subgoals are also in effect for 2004. These represented increases from the Goals for 1996–2000, which were $1.29 billion annually for Fannie Mae and $0.99 billion annually for Freddie Mac.

HUD's Determination. The multifamily mortgage market and both GSEs' multifamily transactions volume grew significantly over the 1993–2002 period, indicating that both enterprises have provided increasing support for the multifamily market, and that they have the ability to continue to provide further support for the market.

Specifically, Fannie Mae's total eligible multifamily mortgage purchase volume increased from $4.6 billion in 1993 to $12.5 billion in 1998, and then jumped sharply to $18.7 billion in 2001 and $18.3 billion in 2002. Its special affordable multifamily mortgage purchases followed a similar path, rising from $1.7 billion in 1993 to $3.5 billion in 1998 and $4.0 billion in 1999, and also jumping sharply to $7.4 billion in 2001 and $7.6 billion in 2002. As a result of its strong performance, Fannie Mae's purchases have been at least twice its minimum subgoal in every year since 1997—247 percent of the Subgoal in that year, 274 percent in 1998, 313 percent in 1999, 294 percent in 2000, and, under the new Subgoal level, 258 percent in 2001, and 266 percent in 2002.

Freddie Mac's total eligible multifamily mortgage purchase volume increased even more sharply, from $0.2 billion in 1993 to $6.6 billion in 1998, and then jumped further in 2001 to $11.8 billion and $18.3 billion in 2002. Its special affordable multifamily mortgage purchases followed a similar path, rising from $0.1 billion in 1993 to $2.7 billion in 1998, and also jumping sharply to $4.6 billion in 2001 and $5.2 billion in 2002. As a result of its strong performance, Freddie Mac's purchases have also been at least twice its minimum Subgoal in every year since 1998—272 percent of the Subgoal in that year, 229 percent in 1999, 243 percent in 2000, and, under the new Subgoal level, 220 percent in 2001, and 247 percent in 2002.

The Special Affordable Multifamily Subgoals set forth in this proposed rule are reasonable and appropriate based on the Department's analysis of this market. The Department's decision to retain these Subgoals is based on HUD's analysis which indicates that multifamily housing still serves the housing needs of lower-income families and families in low-income areas to a greater extent than single-family housing. By retaining the Special Affordable Multifamily Subgoal, the Department ensures that the GSEs continue their activity in this market, and that they achieve at least a minimum level of special affordable multifamily mortgage purchases that are affordable to lower-income families. The Department proposes to retain each GSE's Special Affordable Multifamily Subgoal at 1.0 percent of its average annual dollar volume of total (single-family and multifamily) mortgage purchases over the 2000–2002 period. In dollar terms, the Department's proposal is $5.49 billion per year in special affordable multifamily mortgage purchases for Fannie Mae, and $3.92 billion per year in special affordable multifamily mortgage purchases for Freddie Mac. These Subgoals would be less than actual special affordable multifamily mortgage purchase volume in 2001 and 2002 for both GSEs. Thus, the Department believes that they would be feasible for the 2005–2008 period.

e. Proposed Special Affordable Housing Goal Levels for 2005–2008

The Department is proposing to increase the Special Affordable Housing Goal to 22 percent for 2005, 24 percent for 2006, 26 percent for 2007, and 28 percent for 2008. The reasons for increasing the Special Affordable Housing Goal are discussed above in this preamble. Since the GSEs have historically lagged the primary market in funding special affordable loans, they have ample room to improve their performance in that market. The GSEs' mortgage purchases between 1999 and 2002 accounted for 49 percent of the total (single-family and multifamily) conforming mortgage market, but they accounted for only 35 percent of the special affordable market. A wide variety of quantitative and qualitative indicators demonstrate that the GSEs have the expertise, resources and financial strength to improve their special affordable lending performance and close their gap with the market.

C. Subpart I—Other Provisions

Section 81.102—Independent verification authority.

See Section II of this preamble for a complete discussion of the Department's proposal to amend § 81.102 to provide additional means of verifying and enforcing GSE data submissions.

IV. Findings and Certifications

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* which the President issued on September 30, 1993. This rule was determined to be economically significant under E.O. 12866. Any changes made to this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. The Economic Analysis prepared for this rule is also available for public inspection in the Office of the Rules Docket Clerk and on HUD's Web site at *http://www.hud.gov.*

Congressional Review of Major Proposed Rules

This rule is a "major rule" as defined in Chapter 8 of 5 U.S.C. At the final rule stage, the rule will be submitted for Congressional review in accordance with this chapter.

Paperwork Reduction Act

HUD's collection of information on the GSEs' activities has been reviewed and authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The OMB control number is 2502–0514.

Environmental Impact

This proposed rule would not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction; nor would it establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1) of HUD's regulations, this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule is applicable only to the GSEs, which are not small entities for purposes of the Regulatory Flexibility Act. Therefore, the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Executive Order 13132, Federalism

Executive Order 13132 ("Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1531—1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 81

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

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 81 as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

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

2. In § 81.2, revise the definitions of "Metropolitan area," "Minority," and paragraph (2) of the definition of "Underserved area," and add a new definition of the term "Home Purchase Mortgage," in alphabetical order, to read as follows:

§ 81.2 Definitions.

* * * * *

Home Purchase Mortgage means a residential mortgage for the purchase of an owner-occupied single-family property.

* * * * *

Metropolitan area means a metropolitan statistical area ("MSA"), or a portion of such an area for which median family income estimates are published annually by HUD.

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

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

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

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

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

* * * * *

Underserved area means * * *

(2) For purposes of the definition of "Rural area," a whole census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

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

(ii) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

* * * * *

3. In § 81.12, revise the last sentence of paragraph (b) and revise paragraph (c), to read as follows:

§ 81.12 Low- and Moderate-Income Housing Goal.

* * * * *

(b) Factors. * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Low- and Moderate-Income Housing Goal," was published in the **Federal Register** on date of publication of final rule in the **Federal Register**].

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

(1) For the year 2005, 52 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 45 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal in the year 2005 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For the year 2006, 53 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 46 percent of the total number of home purchase mortgages in

metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal in the year 2006 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(3) For the year 2007, 55 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 47 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal in the year 2007 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(4) For the year 2008, 57 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 47 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal in the year 2008 unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(5) For the year 2009 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2009 and thereafter, the annual goal for each of those years shall be 57 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years. In addition, as a Low and Moderate Income Housing Home Purchase Subgoal, 47 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA.

4. In § 81.13, revise the last sentence of paragraph (b) and revise paragraph (c), to read as follows:

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

* * * * *

(b) *Factors.* * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal," was published in the **Federal Register** on [date of publication of final rule in the **Federal Register**].

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

(1) For the year 2005, 38 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 33 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal in the year 2005 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For the year 2006, 39 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 34 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal in the year 2006 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(3) For the year 2007, 39 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 35 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal in the year 2007 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(4) For the year 2008, 40 percent of the total number of dwelling units financed by that GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 35 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal in the year 2008 unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(5) For the year 2009 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2009 and thereafter, the annual goal for each of those years shall be 40 percent of the total number of dwelling units financed by that GSE's mortgage purchases in each of those years. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 35 percent of the total number of home purchase mortgages in metropolitan areas financed by that GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA.

* * * * *

5. In § 81.14, revise the last sentence of paragraph (b) and revise paragraph (c), to read as follows:

§ 81.14 Special Affordable Housing Goal.

* * * * *

(b) * * * A statement documenting HUD's considerations and findings with respect to these factors, entitled "Departmental Considerations to Establish the Special Affordable Housing Goal," was published in the **Federal Register** on [date of publication of final rule in the **Federal Register**].

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

(1) For the year 2005, 22 percent of the total number of dwelling units financed by each GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for the year 2005 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the average annual dollar volume of combined (single family and multifamily) mortgages purchased by the respective GSE in 2000, 2001, and 2002, unless otherwise adjusted by HUD in

accordance with FHEFSSA. In addition, as a Special Affordable Housing Home Purchase Subgoal, 17 percent of the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal in the year 2005 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(2) For the year 2006, 24 percent of the total number of dwelling units financed by each GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for the year 2006 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the average annual dollar volume of combined (single-family and multifamily) mortgages purchased by the respective GSE in 2000, 2001, and 2002, unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Special Affordable Housing Home Purchase Subgoal, 18 percent of the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal in the year 2006 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(3) For the year 2007, 26 percent of the total number of dwelling units financed by each GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for the year 2007 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the average annual dollar volume of combined (single-family and multifamily) mortgages purchased by the respective GSE in 2000, 2001, and 2002, unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Special Affordable Housing Home Purchase Subgoal, 19 percent of the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal in the year 2007 unless otherwise adjusted by HUD in accordance with FHEFSSA;

(4) For the year 2008, 28 percent of the total number of dwelling units financed by each GSE's mortgage purchases unless otherwise adjusted by HUD in accordance with FHEFSSA. The goal for the year 2008 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the average annual dollar volume of combined (single-family and multifamily) mortgages purchased by the respective GSE in 2000, 2001, and 2002, unless otherwise adjusted by HUD in accordance with FHEFSSA. In addition, as a Special Affordable Housing Home Purchase Subgoal, 19 percent of the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal in the year 2008 unless otherwise adjusted by HUD in accordance with FHEFSSA; and

(5) For the year 2009 and thereafter HUD shall establish annual goals. Pending establishment of goals for the year 2009 and thereafter, the annual goal for each of those years shall be 28 percent of the total number of dwelling units financed by each GSE's mortgage purchases in each of those years. The goal for each such year shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single-family and multifamily) mortgages purchased by the respective GSE in the years 2000, 2001, and 2002. In addition, as a Special Affordable Housing Home Purchase Subgoal, 19 percent of the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal in each of those years unless otherwise adjusted by HUD in accordance with FHEFSSA.

* * * * *

6. Add § 81.15(i), to read as follows:

§ 81.15 General requirements.

* * * * *

(i) *Counting mortgages toward the Home Purchase Subgoals.* (1) *General.* The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§ 81.12–81.14. However, performance under the Subgoals shall be counted using a fraction that is converted into a percentage for each Subgoal and the numerator of the fraction for each Subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each GSE's mortgage purchases in a particular year. For purposes of each Subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit.* For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each Subgoal that applies to the GSE's mortgage purchase.

7. Remove and reserve § 81.16(c)(1) and (c)(11).

8. Revise § 81.102 to read as follows:

§ 81.102 Verification and enforcement to ensure GSE data integrity.

(a) *Independent verification authority.* The Secretary may independently verify the accuracy and completeness of the data, information, and reports provided by each GSE, including conducting on-site verification, when such steps are reasonably related to determining whether a GSE is complying with 12 U.S.C. 4541'4589 and the GSE's Charter Act.

(b) *Certification.* The senior officer of each GSE who is responsible for submitting to HUD the AHAR under section 309(m) and (n) of the Fannie Mae Act or section 307(e) and (f) of the Freddie Mac Charter Act, as applicable, or for submitting to HUD such other report(s), data submission(s), or information for which certification is requested in writing by HUD ("GSE Certifying Official") shall certify in connection with each such report(s), data submission(s) or information that:

(1) The GSE Certifying Official has reviewed the particular AHAR, other report(s), data submission(s) or information;

(2) To the best of the GSE Certifying Official's knowledge and belief, the particular AHAR, other report(s), data submission(s) or information are current, complete and do not contain any untrue statement of a material fact;

(3) To the best of the GSE Certifying Official's knowledge and belief, the particular AHAR, other report(s), data submission(s) or information fairly present in all material respects the GSE's performance, as required to be reported by section 309(m) or (n) of the

Fannie Mae Act or section 307(e) or (f) of the Freddie Mac Charter Act, or other applicable legal authority; and

(4) To the best of the GSE Certifying Official's knowledge and belief, the GSE has identified in writing any areas in which the GSE's particular AHAR, other report(s), data submission(s) or information may differ from HUD's written articulations of its counting rules including, but not limited to, the regulations under this part, and any other areas of ambiguity.

(c) *Adjustment to correct current year-end errors, omissions or discrepancies.* If HUD finds errors, omissions or discrepancies in a GSE's current year-end data submissions (including data reported in the GSE's AHAR under section 309(m) and (n) of the Fannie Mae Act or section 307(e) and (f) of the Freddie Mac Charter Act, as applicable) relative to HUD's regulations or other guidance, HUD will first notify the GSE by telephone or e-mail transmission of each such error, omission or discrepancy. The GSE must respond within five business days of such notification. If each error, omission or discrepancy is not resolved to HUD's satisfaction, HUD will then notify the GSE in writing and seek clarification or additional information to correct the error, omission or discrepancy. The GSE shall have 10 business days (or such longer period as HUD may establish, not to exceed 30 business days) from the date of this written notice to respond in writing to the request. If the GSE fails to submit a written response to HUD within this period, or if HUD determines that the GSE's written response fails to explain or correct each error, omission or discrepancy in its current year-end reported data to HUD's satisfaction, HUD will determine the appropriate adjustments to the numerator and the denominator of the applicable housing goal(s) and Subgoal(s). Should the Department determine that additional enforcement action against the GSE is warranted, it may pursue additional remedies under paragraph (e) of this section.

(d) *Adjustment to correct prior year reporting errors, omissions or discrepancies.*

(1) *General.* HUD may, in accordance with its authority in 12 U.S.C. 4566(a) to measure the extent of compliance with the housing goals, adjust a GSE's current year-end performance under a housing goal to deduct credit under the current goals and/or Subgoals to the extent caused by errors, omissions or discrepancies in a GSE's prior year's data submissions (including the AHAR under section 309(m) and (n) of the Fannie Mae Act or section 307(e) and (f) of the Freddie Mac Charter Act, as applicable) that result in an overstatement of GSE housing goal performance.

(2) *Applicability.* This paragraph applies to errors, omissions or discrepancies in a GSE's data submissions, including its AHAR, as provided in this section. It does not apply to the process applicable to HUD's review of current year performance, as described in paragraph (c) of this section.

(3) *Limitations.* This paragraph applies only to GSE reporting periods occurring on or after [effective date of final rule].

(4) *Procedural requirements.* In the event HUD determines that an adjustment to correct an error, omission or discrepancy in a GSE's prior year's data submissions (including data reported in the AHAR), as provided in paragraph (d)(1) of this section is warranted, it will provide the GSE with an initial letter containing its written findings and determinations within 24 months of the end of the relevant GSE reporting year. The GSE shall have an opportunity, not to exceed 30 days from the date of HUD's initial letter, to respond in writing, with supporting documentation, to contest the initial determination that there were errors in a prior year's data submissions (including the AHAR). HUD shall then issue a final determination letter within 60 days of the date of the GSE's written response. HUD may, upon a determination of good cause, extend the period for issuing a final determination letter by an additional 30 days.

(5) *Adjustments.* If the GSE failed to submit a written response to HUD's initial determination letter within the 30-day time period, or if, after reviewing a GSE's written response to the initial determination letter, HUD determines that a GSE's prior year's data submissions (including data reported in the AHAR as provided in paragraph (d)(1) of this section) resulted in an overstatement of its performance under one or more housing goals or Subgoals for a previous reporting period, HUD will direct the GSE to correct the overstatement by adjusting its level of performance under the applicable housing goal(s) and/or Subgoal(s) in the current year AHAR prior to submitting such report to HUD. The adjustment will be made by excluding the number of units or mortgages that HUD has determined were erroneously counted in a previous year from the numerator (but not the denominator) of each applicable housing goal and/or Subgoal. The GSE shall reflect the adjustment in its AHAR for the current year, as directed by HUD.

(6) *Effect of failure to meet a housing goal, or substantial probability of such failure.*

(i) *Procedural requirements.* In the event HUD determines that a GSE has failed, or that there is a substantial probability that the GSE will fail, to meet any housing goal(s) in the current reporting year as a result of an adjustment under paragraph (d) (5) of this section for previously overstated housing goals performance, HUD shall provide written notice to the GSE and otherwise comply with the procedural requirements set forth in 12 U.S.C. 4566(b).

(ii) *Remedies.* If HUD determines pursuant to 12 U.S.C. 4566(b) that a GSE has failed, or that there is a substantial probability that the GSE will fail, any housing goal(s) in the current reporting year as a result of an adjustment under paragraph (d) (5) of this section to correct for an overstatement of a prior year's goals performance, and that the achievement of the housing goal was or is feasible, it may pursue one or both of the following remedies:

(A) *Housing plan.* HUD may require the GSE to submit a housing plan for approval by the Secretary pursuant to 12 U.S.C. 4566(c) and § 81.22; and

(B) *Additional enforcement options.* HUD may, after complying with the procedural requirements set forth in subpart G of this part, seek a cease-and-desist order or civil money penalties against the GSE as described in paragraph (e) of this section.

(e) *Additional enforcement options.* (1) *General.* In the event the Secretary determines, either as a result of its independent verification authority described in paragraph (a) of this section or by other means, that the data submissions, information or report(s) submitted by a GSE to HUD pursuant to subpart E of this part, section 309(m) or (n) of the Fannie Mae Charter Act, or section 307(e) and (f) of the Freddie Mac Charter Act, as applicable, are not current, are incomplete or otherwise contain an untrue statement of material fact, the Secretary may regard this as equivalent to the GSE's failing to submit such data and, accordingly, may take the enforcement action authorized under paragraph (e)(2) of this section.

(2) *Remedies.* After HUD makes a final determination pursuant to paragraph (e) of this section that a GSE has submitted report(s), data submission(s) or information that are not current, are incomplete, or that contain untrue statement(s) of material fact, it may pursue any or all of the following remedies:

(i) HUD may obtain a cease-and-desist order against the GSE for failing to submit the report(s), data submission(s) or information, as applicable, required by subsection (m) or (n) of section 309 of the Fannie Mae Charter Act or subsection (e) or (f) of the Freddie Mac Charter Act, and as authorized by 12 U.S.C. 4581(a)(3), § 81.82, and subpart E of this part;

(ii) HUD may seek civil money penalties against the GSE for failing to submit the report(s), data submissions, or information, as applicable, required by subsection (m) or (n) of section 309 of the Fannie Mae Charter Act or subsection (e) or (f) of the Freddie Mac Charter Act, and as authorized by 12 U.S.C. 4585(a)(3), 24 CFR 81.83 and Subpart E of this part.

(iii) HUD may seek any other remedies or penalties against the GSE that may be available to the Secretary by virtue of the GSE's failure to provide data submissions, information and/or report(s) in accordance with the requirements of this section.

(3) *Procedures.* HUD shall comply with the procedures set forth in Subpart G of this part in connection with any enforcement action that it initiates against a GSE under this paragraph.

Dated: April 2, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Departmental Considerations To Establish the Low- and Moderate-Income Housing Goal

A. Introduction

Sections 1 and 2 provide a basic description of the rule process. Section 3 discusses conclusions based on consideration of the factors.

1. Establishment of Low- and Moderate-Income Goal

In establishing the Low- and Moderate-Income Housing Goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), collectively referred to as the Government-Sponsored Enterprises (GSEs), Section 1332 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4562) (FHEFSSA) requires the Secretary to consider:

(1) National housing needs;

(2) Economic, housing, and demographic conditions;

(3) The performance and effort of the enterprises toward achieving the Low- and Moderate-Income Housing Goal in previous years;

(4) The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;

(5) The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and

(6) The need to maintain the sound financial condition of the enterprises.

The Secretary also considered these factors in establishing a low- and moderate-income subgoal for home purchase loans on single-family-owner properties in metropolitan areas.

2. Underlying Data

In considering the statutory factors in establishing these goals, HUD relied on data from the 2001 American Housing Survey, the 2000 Censuses of Population and Housing, the 1991 Residential Finance Survey (RFS), the 1995 Property Owners and Managers Survey (POMS), other government reports, reports submitted in accordance with the Home Mortgage Disclosure Act (HMDA), and the GSEs. In order to measure performance toward achieving the Low- and Moderate-Income Housing Goal in previous years, HUD analyzed the loan-level data on all mortgages purchased by the GSEs for 1993–2002 in accordance with the goal counting provisions established by the Department in the December 1995 and October 2000 rules (24 CFR part 81).

3. Conclusions Based on Consideration of the Factors

The discussion of the first two factors covers a range of topics on housing needs and economic and demographic trends that are important for understanding mortgage markets. Information is provided which describes the market environment in which the GSEs must operate (for example, trends in refinancing activity). In addition, the severe housing problems faced by lower-income families are discussed, as are the barriers that minorities face when attempting to become homeowners. This discussion serves to provide useful background information for the discussion of the Underserved Areas and Special Affordable Housing Goals in Appendixes B and C, as well as for the Low- and Moderate-Income Housing Goal in this Appendix.

The third factor (past performance) and the fifth factor (ability of the GSEs to lead the industry) are also discussed in some detail in this Appendix. With respect to home purchase mortgages, the past performance of the GSEs and their ability to lead the industry are examined for all three housing goals; that analysis provides the basis for establishing the three subgoals for the GSEs' acquisitions of home loans on single-family-owner properties.

The fourth factor (size of the market) and the sixth factor (need to maintain the GSEs' sound financial condition) are mentioned only briefly in this Appendix. Detailed analyses of the fourth factor and the sixth factor are contained in Appendix D and in the economic analysis of this rule, respectively.

The factors are discussed in sections B through H of this appendix. Section I summarizes the findings and presents the Department's conclusions concerning the Low- and Moderate-Income Housing Goal. Section I also gives the rationale for a low- and moderate-income subgoal for home purchase loans.

The consideration of the factors in this Appendix has led the Secretary to the following conclusions:

- Changing population demographics will result in a need for primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences, and overcome information and other barriers that many immigrants and minorities face. Growing housing demand from immigrants (both those who are already here and those projected to come) and non-traditional homebuyers will help to offset declines in the demand for housing caused by the aging of the population. Immigrants and other minorities—who accounted for nearly 40 percent of the growth in the nation's homeownership rate over the past five years—will be responsible for almost two-thirds of the growth in the number of new households over the next ten years. As these demographic factors play out, the overall effect on housing demand will likely be sustained growth and an increasingly diverse household population from which to draw new renters and homeowners.
- Despite the record national homeownership rate of 67.9 percent in 2002, much lower rates prevailed for minorities, especially for African-American households (47.9 percent) and Hispanics (48.2 percent), and these lower rates are only partly accounted for by differences in income, age, and other socioeconomic factors.
- In addition to low incomes, barriers to homeownership that disproportionately affect minorities and immigrants include lack of capital for down payments and closing costs, poor credit history, lack of access to mainstream lenders, little understanding of the home buying process, and continued discrimination in housing markets and mortgage lending.
- A HUD-published study of discrimination in the rental and owner markets found that while differential treatment between minority and white home seekers had declined over the past ten years, it continued at an unacceptable level in the year 2000. In addition, disparities in mortgage lending continued across the nation in 2002, when the loan denial rate was 7.8 percent for white mortgage applicants, but 20.1 percent for African Americans and 15.5 percent for Hispanics.[1]
- Americans with the lowest incomes face persistent housing problems. Recent HUD analysis reveals that in 2001, 5.1 million households had "worst case" housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted very-low-income renter households. Among these households, 90 percent had a severe rent burden, 6 percent lived in severely inadequate housing, and 4 percent suffered from both problems.

[1] Mortgage denial rates are based on 2002 HMDA data for home purchase loans; manufactured housing lenders are excluded from these comparisons.

• Over the past ten years, there has been a "revolution in affordable lending" that has extended homeownership opportunities to historically underserved households. Fannie Mae and Freddie Mac have been a substantial part of this "revolution in affordable lending." During the mid-to-late 1990s, they added flexibility to their underwriting guidelines, introduced new low-down-payment products, and worked to expand the use of automated underwriting in evaluating the creditworthiness of loan applicants. HMDA data suggest that the industry and GSE initiatives are increasing the flow of credit to underserved borrowers. Between 1993 and 2002, conventional loans to low-income and minority families increased at much faster rates than loans to upper-income and non-minority families.

• The Low- and Moderate-Income Goal was set at 50 percent beginning in 2001. Effective on January 1, 2001, several changes in counting requirements came into effect, including (1) "bonus points" (double credit) for purchases of mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; and (2) a "temporary adjustment factor" (1.35 unit credit) for Freddie Mac's purchases of mortgages on large (more than 50 units) multifamily properties. With these two counting rules, Fannie Mae's performance was 51.5 percent in 2001 and 51.8 percent in 2002, and Freddie Mac's performance was 53.2 percent in 2001 and 51.4 percent in 2002; thus, both GSEs surpassed this higher goal in both years.

• The bonuses and temporary adjustment factor expired at the end of 2003. Without these rules, Fannie Mae's performance would have been 51.3 percent in 2000, 49.2 percent in 2001, and 49.0 percent in 2002. Freddie Mac's performance would have been 50.6 percent in 2000, 47.7 percent in 2001, and 46.5 percent in 2002. Thus, both Fannie Mae and Freddie Mac would have surpassed the 50 percent goal in 2000 and fallen short in 2001 and 2002.

• This Appendix includes a comprehensive analysis of each GSE's performance in funding home purchase mortgages for borrowers and neighborhoods covered by the three housing goals—special affordable and low- and moderate-income borrowers and underserved areas. In addition, the role of the GSEs in the first-time homebuyer market is examined. While Freddie Mac has improved its affordable lending performance in recent years, it has consistently lagged the conventional conforming market in funding affordable home purchase loans for borrowers and neighborhoods targeted by the housing goals. However, Freddie Mac's recent performance (1999–2002) has been much closer to the market than its earlier performance.

• In general, Fannie Mae's affordable lending performance has been better than Freddie Mac's. But like Freddie Mac, Fannie Mae's average performance during past periods (*e.g.*, 1993–2002, 1996–2002, 1999–2002) has been below market levels. However, it is encouraging that Fannie Mae markedly improved its affordable lending performance relative to the market during 2001 and 2002, the first two years of HUD's higher housing goal levels. Fannie Mae's average performance during 2001 and 2002 approached the market on the special affordable and underserved areas categories and matched the market on the low-mod category. Under one measure of GSE and market activity, Fannie Mae matched the market during 2002 on the special affordable category and slightly outperformed the market on the low-mod and underserved areas categories. In this case, which is referred to in the text as the "purchase year" approach, Fannie Mae's performance is based on comparing its purchases of all loans (both seasoned loans and newly-originated mortgages) during a particular year with loans originated in the market in that year. When Fannie Mae's performance is measured on an "origination year" basis (that is, allocating Fannie Mae's purchases in a particular year to the year that the purchased-loan was originated), Fannie Mae matched the market in the low- and moderate-income category during 2002, and lagged the market slightly on the other two categories.

• Both Fannie Mae and Freddie lag the conventional conforming market in funding first-time homebuyers, and by a rather wide margin. Between 1999 and 2001, first-time homebuyers accounted for 27 percent of each GSE's purchases of home loans, compared with 38 percent for home loans originated in the conventional conforming market.

• The GSEs have accounted for a significant share of the total (government as well as conventional) market for home purchase loans, but their market share for each of the affordable lending categories (*e.g.*, low-income borrowers and census tracts, high-minority census tracts) has been less than their share of the overall market.

• The GSEs also account for a very small share of the market for important groups such as minority first-time homebuyers. Considering the total mortgage market (both government and conventional loans), it is estimated that the GSEs purchased only 14 percent of loans originated between 1999 and 2001 for African-American and Hispanic first-time homebuyers, or one-third of their share (42 percent) of all home purchase loans originated during that period. Considering the conventional conforming market and the same time period, it is estimated that the GSEs purchased only 31 percent of loans originated for African-American and Hispanic first-time homebuyers, or approximately one-half of their share (57 percent) of all home purchase loans in that market. The GSEs' small share of the first-time homebuyer market could be due to the preponderance of high (over 20 percent) downpayment loans in their mortgage purchases.

• This Appendix discusses the dynamic nature of the single-family mortgage market and the numerous changes that that this market has undergone over the past few years. Some important trends that will likely factor into the GSEs' performance in meeting the needs of underserved borrowers include the growth of the subprime market, the increasing use of automated underwriting systems, and the introduction of risk-based pricing into the market.

• The long run outlook for the multifamily rental market is sustained, moderate growth, based on favorable demographics. The minority population, especially Hispanics, provides a growing source of demand for affordable rental housing. "Lifestyle renters" (older, middle-income households) are also a fast-growing segment of the rental population. Provision of affordable housing, however, will continue to challenge suppliers of multifamily rental housing and policy makers at all levels of government. Low incomes combined with high housing costs define a difficult situation for millions of renter households. Housing cost reductions are constrained by high land prices and construction costs in many markets. Government action—through land use regulation, building codes, and occupancy standards—are major contributors to those high costs.

• The market for financing multifamily apartments has grown to record volumes. Fannie Mae and Freddie Mac have been among those boosting volumes and introducing new programs to serve the multifamily market. Fannie Mae's multifamily purchases jumped from about $10 billion in 1999 and 2000 to $18.7 billion during the heavy refinancing year of 2001, and $18.3 billion in 2002.

• Freddie Mac has re-entered the multifamily market, after withdrawing for a time in the early 1990s. Concerns regarding Freddie Mac's multifamily capabilities no longer constrain its performance with regard to the housing goals. Freddie Mac's multifamily purchases increased from a relatively low $3 billion in 1997 to approximately $7 billion during the next three years (1998 to 2000), before rising further to $11.9 billion in 2001 and $13.3 billion in 2002.

• The overall presence of both GSEs in the rental mortgage market falls short of their involvement in the single-family owner market. Between 1999 and 2002, the GSEs' purchases totaled for 57 percent of the owner market, but only 27 percent of the single-family rental market and 30 percent of the multifamily market. Certainly there is room for expansion of the GSEs in supporting the nation's rental markets, and that expansion is needed if the GSEs are to make significant progress in closing the gaps between the affordability of their mortgage purchases and that of the overall conventional conforming market.

• Considering both owner and rental properties, the GSEs' presence in the goals-qualifying market has been significantly less than their presence in the overall conventional conforming mortgage market. Specifically, HUD estimates that the GSEs accounted for 49 percent of all owner and rental units financed in the primary market between 1999 and 2002, but only 32 percent of units qualifying for the low-mod goal, 41 percent of units qualifying for the underserved areas goal, and 35 percent of units qualifying for special affordable goal.

B. Factor 1: National Housing Needs

This section reviews the general housing needs of lower-income families that exist today and are expected to continue in the near future. Affordability problems that lower-income families face in both the rental and owner markets are examined. The section also describes racial disparities in homeownership and the causes of these disparities. It also notes some special problems, such as the need to rehabilitate our older urban housing stock, that are discussed throughout this appendix.

1. Homeownership Gaps

Despite recent record homeownership rates, many Americans, including disproportionate numbers of racial and ethnic minorities, are shut out of homeownership opportunities. Although the national homeownership rate for all Americans stood at 68.3 percent at the end of 2003, the rate for minority households was lower—for example, just 48.5 percent of African-American households and 48.3 percent of Hispanic households owned a home. Differences in income and age between minorities and whites do not fully explain these gaps. The Joint Center for Housing Studies estimated that if minorities owned homes at the same rates as whites of similar age and income, a homeownership gap of 10 percentage points would still exist.[2]

a. Importance of Homeownership

Homeownership is one of the most common forms of property ownership as well as savings.[3] Historically, home equity has been the largest source of wealth for most Americans, and wealth gains in housing have been more widely distributed among the population than gains in the stock market.[4] With stocks appreciating faster than home prices over the past decade, home equity as a share of family assets fell from 38 percent in 1989 to 33 percent in 1998.[5] Many of the gains in the stock market were erased after 1999 however, and housing returned to its place as the most significant asset in the household balance sheet in 2001.[6] Even with a bull market through most of the 1990s, 59 percent of all homeowners in 1998 held more than half of their net wealth in the form of home equity.[7] Among low-income homeowners (household income less than $20,000), home equity accounted for about 72 percent of household wealth, and approximately 55 percent for homeowners with incomes between $20,000 and $50,000. Median net wealth for low-income homeowners under 65 was twelve times that of a similar renter.[8] Thus a homeownership gap continues to translate directly into a wealth gap.

High rates of homeownership support economic stability within housing and related industries, sectors that contributed nearly one-half of the total gain in real GDP in 2001.[9] In addition to economic benefits such as jobs and residential investment, studies show that the better living environment associated with owning a home has positive impacts on children, in terms of lower rates of teenage pregnancy and higher reading other test scores. The current literature substantiates that the benefits of homeownership extend beyond individual homeowners and their families to society at large. Homeownership promotes social and community stability by increasing the number of stakeholders and reducing disparities in the distributions of wealth and income. The empirical literature is generally supportive of a relationship between homeownership and greater investment in property.[10] Homeownership is also associated with neighborhood stability (lower mobility), greater participation in voluntary and political activities,[11] and links to entrepreneurship.[12]

b. Barriers to Homeownership[13]

Insufficient income, high debt burdens, and limited savings are obstacles to homeownership for younger families. As home prices skyrocketed during the late 1970s and early 1980s, real incomes also stagnated, with earnings growth particularly slow for blue collar and less educated workers. Through most of the 1980s, the combination of slow income growth and increasing rents made saving for home purchase more difficult, and relatively high interest rates required large fractions of family income for home mortgage payments. Thus, during that period, fewer households had the financial resources to meet down payment requirements, closing costs, and monthly mortgage payments.

Economic expansion and lower mortgage rates substantially improved homeownership affordability during the 1990s. Many young, low-income, and minority families who were closed out of the housing market during the 1980s re-entered the housing market during the last decade. Even with an economic slowdown in 2000–2001, improvements in affordability were seen in 2001 as lower interest rates and modest income growth reduced the average monthly mortgage payment from its year-ago level.[14] However, many households still lack the earning power to take advantage of today's home buying opportunities. Several trends have contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favor white-collar employment, losses of unionized manufacturing jobs, and wage pressures exerted by globalization. Over 42 percent of the nation's population between the ages of 25 and 34 had no advanced education in 2000[15] and were therefore at risk of being unable to afford homeownership. African Americans and Hispanics, who have lower average levels of educational attainment than whites, are especially disadvantaged by the erosion in wages among less educated workers.

Immigrants and other minorities, who accounted for nearly 40 percent of the growth in the homeownership rate over the past five years, will be responsible for two-thirds of the growth in new households over the next ten years. These groups have unique housing needs and face numerous hurdles in becoming homeowners. In addition to low income, barriers to homeownership that disproportionately affect minorities and immigrants include:

- Lack of capital for down payment and closing costs;
- Poor credit history;
- Lack of access to mainstream lenders;
- Complexity and fear of the home buying process; and,
- Continued discrimination in housing markets and mortgage lending.

(i) *Lack of Cash for Down Payment.* In the 2002 Fannie Mae National Housing Survey, 40 percent of Hispanics reported not having enough money for a down payment as an obstacle to buying a home versus 32 percent of all Americans.[16] A study by Gyourko, Linneman, and Wachter found significant racial differences in homeownership rates in "wealth-constrained" households while finding no racial differences in homeownership rates among households with wealth sufficient to meet down payment and closing costs.[17] Minorities and immigrants are much less likely to receive gifts and inheritances from their parents to assist them in becoming a homeowner.

(ii) *Poor Credit History.* Poor credit history also differentially affects minority

[2] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2003*, 2003, p. 16.

[3] According to the National Association of Realtors, *Housing Market Will Change in New Millennium as Population Shifts*, November 7, 1998. Forty-five percent of U.S. household wealth was in the form of home equity in 1998. Since 1968, home prices have increased each year, on average, at the rate of inflation plus two percentage points

[4] Todd Buchholz, "Safe At Home: The New Role of Housing in the U.S. Economy," a paper commissioned by the Homeownership Alliance, 2002.

[5] Federal Reserve Board, "Recent Changes in U.S. Family Finances: Results from the 1998 Survey of Consumer Finances," January 2000, p. 15.

[6] Mark Zandi, "Housing's Rising Contribution," June 2002, p. 5.

[7] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 1998*.

[8] U.S Department of Housing and Urban Development, "Economic Benefits of Increasing Minority Homeownership," p. 7.

[9] Mark Zandi, "Housing's Rising Contribution," June 2002, p. 3.

[10] Robert Dietz and Donald Haurin, "The Social and Private Consequences of Homeownership," May 2001, p. 51.

[11] William M. Rohe, George McCarthy, and Shannon Van Zandt, "The Social Benefits and Costs of Homeownership," May 2000, p. 31.

[12] U.S. Department of Housing and Urban Development, "Economic Benefits of Increasing Minority Homeownership," p. 8–9.

[13] For a discussion of the causes of existing disparities in homeownership, see the various articles in Nicolas P. Retsinas and Eric S. Belsky (Eds), *Low-Income Homeownership: Examining the Unexamined Goal*, Washington, D.C.: Brookings Institution Press, 2002.

[14] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2002*, p. 14.

[15] U.S. Census Bureau, *Current Population Survey*, March 2000.

[16] Fannie Mae, *Fannie Mae National Housing Survey*, 2002, p. 11.

[17] Joseph Gyourko, Peter Linneman, and Susan Wachter. "Analyzing the Relationships among Race, Wealth, and Home Ownership in America," *Journal of Housing Economics* 8 (2), p. 63–89, as discussed in Thomas P. Boehm and Alan M. Schlottmann. "Housing and Wealth Accumulation: Intergenerational Impacts," in *Low-Income Homeownership: Examining the Unexamined Goal*, Brookings Institution Press (2002), p. 408.

households. In the same Fannie Mae survey, nearly a third of African-American respondents said their credit rating would be an obstacle to buying a home versus 23 percent of all Americans.[18] Because African-American and Hispanic borrowers are more likely than others to have little traditional credit history or a poorer credit history, they face increased difficulties in being accepted for mortgage credit. This is because credit history scores (such as a FICO score) are a major component of the new automated mortgage scoring systems. These systems are more likely to refer minority borrowers for more intensive manual underwriting, rather than to automatically accept them for the less costly, expedited processing. In these situations, there is the additional concern that "referred" borrowers may not always receive a manual underwriting for the loan that they initially applied for, but rather be directed to a high-cost subprime loan product.

(iii) *Lack of Access to Mainstream Lenders.* Minorities face heightened barriers in accessing credit because of their often limited access to mainstream lenders. Access to lenders becomes difficult when mainstream financial institutions are not located in neighborhoods where minorities live. The growth in subprime lending over the last several years has benefited credit-impaired borrowers—those who may have blemishes in their credit record, insufficient credit history, or non-traditional credit sources. Subprime lenders have allowed these borrowers to access credit that they could not otherwise obtain in the prime credit market. However, studies by HUD, The Woodstock Institute and others have shown that subprime lending is disproportionately concentrated in low-income and minority neighborhoods.[19] While these studies recognize that differences in credit behavior explain some of the disparities in subprime lending across neighborhoods, they argue that the absence of mainstream lenders has also contributed to the concentration of subprime lending in low-income and minority neighborhoods. More competition by prime lenders in inner city neighborhoods could lower the borrowing costs of families who currently have only the option of a high-cost subprime loan. This issue of the lack of mainstream lenders in inner city neighborhoods is discussed further in subsection 2, below, in connection with disparities between neighborhoods.

(iv) *Complexity and Fear of Home Buying Process.* An additional barrier to homeownership is fear and a lack of understanding about the buying process and the risks of ownership. Many Americans could become homeowners if provided with information to correct myths, misinformation, and concerns about the mortgage process. Some potential homeowners, particularly minorities, are unaware that they may already qualify for a mortgage they can afford. The 2002 Fannie Mae survey revealed that 30 percent of Americans believe erroneously that they need to pay 20 percent of the cost of a home up-front. In addition, Fannie Mae reported that half of Americans are only "somewhat" or "not at all" comfortable with mortgage terms.[20] Freddie Mac reports that six of 10 Hispanics are uncomfortable with home buying terminology, and think they need "perfect credit" to buy; and less than four in 10 are aware that lenders are not required by law to give them the lowest interest rate possible.[21] A study using focus groups with renters found that even among those whose financial status would make them capable of homeownership, many felt that the buying process was insurmountable because they feared rejection by the lender or being taken advantage of.[22]

(v) *Discrimination in the Housing and Mortgage Markets.* Finally, differential treatment of minorities in the sales and rental markets and in the mortgage lending market has been well documented. The continued discrimination in these markets is discussed in the next section.

2. Disparities in Housing and Mortgage Markets

Sales and Rental Markets, In 2002, HUD released its third Housing Discrimination Study (HDS) in the sale and rental of housing. The study, entitled *Discrimination in Metropolitan Housing Markets: National Results from Phase I of The Housing Discrimination Study* was conducted by the Urban Institute.[23] The results of this HDS were based on 4,600 paired tests of minority and non-minority home seekers conducted during 2000 in 23 metropolitan areas nationwide. The report showed large decreases between 1989 and 2000 in the level of discrimination experienced by Hispanics and African Americans seeking to buy a home. There has also been a modest decrease in discrimination toward African Americans seeking to rent a unit. This downward trend, however, has not been seen for Hispanic renters, who now are more likely to experience discrimination in their housing search than do African-American renters. But while generally down since 1989, the report found that housing discrimination still exists at unacceptable levels. The greatest share of discrimination for Hispanic and African-American home seekers can still be attributed to being told units are unavailable when they are available to non-Hispanic whites, and being shown and told about fewer units than comparable non-minority home seekers. Although discrimination is down on most areas for African-American and Hispanic homebuyers, there remain worrisome upward trends of discrimination in the areas of geographic steering for African Americans and, relative to non-Hispanic whites, the amount of help agents provide to Hispanics with obtaining financing. On the rental side, Hispanics are more likely in 2000 than in 1989 to be quoted a higher rent than their white counterpart for the same unit.

Another HUD-sponsored study asked respondents to a nationwide survey if they "thought" they had ever been discriminated against when trying to buy or rent a house or an apartment.[24] While the responses were subjective, they are consistent with the findings of the HDS. African Americans and Hispanics were considerably more likely than whites to say they have suffered discrimination—24 percent of African Americans and 22 percent of Hispanics perceived discrimination, compared to only 13 percent of whites.

Mortgage Lending Market. Research based on Home Mortgage Disclosure Act (HMDA) data suggests pervasive and widespread disparities in mortgage lending across the Nation. For 2001, the mortgage denial rate for white mortgage applicants was 23 percent, while 36 percent of African-American and 35 percent of Hispanic applicants were denied.

Two recent HUD-sponsored studies of paired-testing at the mortgage pre-application stage also points to discrimination by mortgage lenders. Based on its review of pair tests conducted by the National Fair Housing Alliance, the Urban Institute concluded that differential treatment discrimination at the pre-application level occurred at significant levels in at least some cities.[25] Minorities were less likely to receive information about loan products, received less time and information from loan officers, and were quoted higher interest rates in most of the cities where tests were conducted. A second HUD-sponsored study by the Urban Institute used the paired testing methodology in Los Angeles and Chicago and found similar results. African Americans and Hispanics faced a significant risk of unequal treatment when they visited mainstream mortgage lending institutions to make pre-application inquiries.[26]

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[18] Fannie Mae, *Fonnie Moe Notionol Housing Survey*, 2002, p. 11.

[19] See Dan Immergluck, *Stork Differences: The Explosion of the Subprime Industry ond Racial Hypersegmentation in Home Equity Lending.* Woodstock Institute, October 2000; and Daniel Immergluck and Marti Wiles, *Two Steps Bock: The Duol Mortgage Market, Predatory Lending, ond the Undoing of Community Development*, Woodstock Institute, Chicago, IL, November 1999. For a national analyses, see the HUD report *Unequal Burden: Income ond Racial Disporities in Subprime Lending in Americo*, April 2000; and Randall M. Scheessele, *Black and White Disporities in Subprime Mortgage Refinance Lending*, Housing Finance Working Paper No. HF–114, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, April 2002.

[20] Fannie Mae, *Fonnie Mae Notionol Housing Survey*, 2002, p. 9.

[21] See "Immigration Changes Won't Hurt Housing," in *National Mortgage News*, January 27, 2003, page 8.

[22] Donald S. Bradley and Peter Zorn, "Fear of Homebuying: Why Financially Able Households May Avoid Ownership," *Secondary Mortgoge Markets*, 1996.

[23] Margery Austin Turner, Stephen L. Ross, George Galster, and John Yinger, "Discrimination in Metropolitan Housing Markets," *The Urbon Institute Press*, November 2002.

[24] Martin D. Abravanel and Mary K. Cunningham, *How Much Do We Know? Public Aworeness of the Notion's Foir Housing Laws.* A report prepared for HUD by the Urban Institute, Washington, DC, April 2002.

[25] Margery Austin Turner, John Yinger, Stephen Ross, Kenneth Temkin, Diane Levy, David Levine, Robin Ross Smith, and Michelle deLair, *Whot We Know About Mortgage Lending Discriminotion.* The Urban Institute, contract report for the Department of Housing and Urban Development, December 1998.

[26] Margery Austin Turner, *All Other Things Being Equol: A Poired Testing Study of Mortgoge Lending Institutions*, The Urban Institute Press, April 2002.

Several possible explanations for these lending disparities have been suggested. A study by the Boston Federal Reserve Bank found that racial disparities cannot be explained by reported differences in creditworthiness.[27] In other words, minorities are more likely to be denied than whites with similar credit characteristics, which suggests lender discrimination. In addition, loan officers, who may believe that race is correlated with credit risk, may use race as a screening device to save time, rather than devote effort to distinguishing the creditworthiness of the individual applicant.[28] This violates the Fair Housing Act.

Underwriting rigidities may fail to accommodate creditworthy low-income or minority applicants. For example, under traditional underwriting procedures, applicants who have conscientiously paid rent and utility bills on time but have never used consumer credit would be penalized for having no credit record. Applicants who have remained steadily employed, but have changed jobs frequently, would also be penalized. As discussed in Section C below, lenders, private mortgage insurers, and the GSEs have been adjusting their underwriting guidelines to take into account these special circumstances of lower-income families. Many of the changes recently undertaken by the industry focused on finding alternative underwriting guidelines to establish creditworthiness that do not disadvantage creditworthy minority or low-income applicants. However, because of the enhanced roles of credit scoring and automated underwriting in the mortgage origination process, it is unclear to what degree the reduced rigidity in industry standards will benefit borrowers who have been adversely impacted by the traditional guidelines as discussed in section C.7, some industry observers have expressed a concern that the greater flexibility in the industry's written underwriting guidelines may not be reflected in the numerical credit and mortgage scores which play a major role in the automated underwriting systems that the GSEs and others have developed.

Disparities Between Neighborhoods. Mortgage credit also appears to be less accessible in low-income and high-minority neighborhoods. As discussed in Appendix B, 2001 HMDA data show that mortgage denial rates are nearly twice as high in census tracts with low-income and/or high-minority composition, as in other tracts (16.8 percent versus 8.7 percent). Numerous studies have found that mortgage denial rates are higher in low-income census tracts, even accounting for other loan and borrower characteristics.[29] These geographical disparities can be the result of cost factors, such as the difficulty of appraising houses in these areas because of the paucity of previous sales of comparable homes. Sales of comparable homes may also be difficult to find due to the diversity of central city neighborhoods. The small loans prevalent in low-income areas are less profitable to lenders because up-front fees to loan originators are frequently based on a percentage of the loan amount, although the costs incurred are relatively fixed. As noted above, racial disparities in mortgage access may be due to the fact that mainstream lenders are not doing business in certain inner city neighborhoods. There is evidence that mainstream lenders active in white and upper-income neighborhoods are much less active in low-income and minority neighborhoods—often leaving these neighborhoods to unregulated subprime lenders. Geographical disparities in mortgage lending are discussed further in Section C.8 below (which examines subprime lending) and in Appendix B (which examines the Underserved Areas Goal).

3. Affordability Problems and Worst Case Housing Needs

The severe affordability problems faced by low-income homeowners and renters are documented in HUD's "Worst Case Housing Needs" reports. These reports, which are prepared biennially for Congress, are based on the American Housing Survey (AHS), conducted every two years by the Census Bureau for HUD. The latest detailed report analyzes data from the 1999 AHS. Although it focuses on the housing problems faced by very-low-income renters, it also presents basic data on families and households in owner-occupied housing.[30]

The "Worst Case" report measures three types of problems faced by homeowners and renters:

1. Cost or rent burdens where housing costs or rent exceed 50 percent of income (a "severe burden") or range from 31 percent to 50 percent of income (a "moderate burden");
2. The presence of physical problems involving plumbing, heating, maintenance, hallway, or the electrical system, which may lead to a classification of a residence as "severely inadequate" or "moderately inadequate;" and,
3. Crowded housing, where there is more than one person per room in a residence.

The study reveals that in 1999, 4.9 million households had "worst case" housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted very-low-income renter households. Among the 34 million renters in all income categories, 6.3 million (19 percent) had a severe rent burden and over one million renters (3 percent) lived in housing that was severely inadequate.

a. Problems Faced by Owners

Of the 68.8 million owner households in 1999, 5.8 million (8 percent) confronted a severe cost burden and another 8.7 million (12.7 percent) faced a moderate cost burden. There were 870,000 households with severe physical problems, 2 million with moderate physical problems and 905,000 that were overcrowded. The report found that 25 percent of American homeowners faced at least one severe or moderate problem.

Not surprisingly, problems were most common among very low-income owners.[31] Almost a third of these households (31 percent) faced a severe cost burden, and an additional 22 percent faced a moderate cost burden. And 8 percent of these families lived in severely or moderately inadequate housing, while 2 percent faced overcrowding. Only 42 percent of very-low-income owners reported no problems.

Over time the percentage of owners faced with severe or moderate physical problems has decreased, as has the portion living in overcrowded conditions. However, affordability problems have become more common—the shares facing severe (moderate) cost burdens were only 3 percent (5 percent) in 1978, but rose to 5 percent (11 percent) in 1989 and 8 percent (13 percent) in 1999. The increase in affordability problems apparently reflects a rise in mortgage debt in the late 1980s and early 1990s, from 21 percent of homeowners' equity in 1983 to 36 percent in 1995.[32] The Joint Center for Housing Studies also attributes this to the growing gap between housing costs and the incomes of the nation's poorest households.[33] As a result of the increased incidence of severe and moderate cost burdens, the share of owners reporting no problems fell from 84 percent in 1978 to 78 percent in 1989 and 75 percent in 1999.

b. Problems Faced by Renters

Problems of all three types listed above are more common among renters than among homeowners. In 1999 there were 6.3 million renter households (19 percent of all renters) who paid more than 50 percent of their income for rent.[34] Another 7.1 million faced a moderate rent burden. Thus in total 40 percent of renters paid more than 30 percent of their income for rent.

Among very-low-income renters, 71 percent faced an affordability problem, including 40 percent who paid more than half of their income in rent. Almost one-third (31 percent) of renters with incomes between 51 percent and 80 percent of area median

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[27] Alicia H. Munnell, Geoffrey M.B. Tootell, Lynn E. Browne, and James McEneaney, "Mortgage Lending in Boston: Interpreting HMDA Data," *American Economic Review*, 86, March 1996.

[28] See Charles W. Calomeris, Charles M. Kahn and Stanley D. Longhofer, "Housing Finance Intervention and Private Incentives; Helping Minorities and the Poor," *Journal of Money, Credit and Banking*, 26, August 1994, pp. 634–74, for more discussion of this phenomenon, which is called "statistical discrimination"

[29] Robert B. Avery, Patricia E. Beeson and Mark E. Sniderman, *Understanding Mortgage Markets: Evidence from HMDA*, Working Paper Series 94–21, Federal Reserve Bank of Cleveland, December 1994.

[30] HUD has published an update on "worst case housing needs," which found that the number of such households rose from 4.86 million in 1999 to 5.07 million in 2001. However, detailed tables for 2001 have not been published.

[31] Very-low-income households are defined as those whose income, adjusted for household size, does not exceed 50 percent of HUD-adjusted area median income. This differs from the definition adopted by Congress in the GSE Act of 1992, which uses a cutoff of 60 percent and which does not adjust income for family size for owner-occupied dwelling units.

[32] Edward N. Wolff, "Recent Trends in the Size Distribution of Household Wealth," *The Journal of Economic Perspectives*, 12(3), (Summer 1998), p. 137.

[33] Joint Center for Housing Studies, *The State of the Nation's Housing: 2000*, June 2000, p. 24.

[34] Rent is measured in this report as gross rent, defined as contract rent plus the cost of any utilities that are not included in contract rent.

family income also paid more than 30 percent of their income for rent.

Affordability problems have increased over time among renters. The shares of renters with severe or moderate rent burdens rose from 32 percent in 1978 to 36 percent in 1989 and 40 percent in 1999.

The share of households living in inadequate housing in 1999 was higher for renters (11 percent) than for owners (4 percent), as was the share living in overcrowded housing (5 percent for renters, but only 1 percent for owners). Crowding and inadequate housing were more common among lower-income renters, but among even the lowest income group, affordability was the dominant problem. The prevalence of inadequate and crowded rental housing diminished over time until 1995, while affordability problems grew.

Other problems faced by renters discussed in the most recent detailed "Worst Case" report include a sharp decline (of 2.3 million, or 14 percent) between 1991 and 1999 in the number of rental units affordable to very-low-income families, and a worsening of the national shortage of units affordable and available to extremely-low-income families (those with incomes below 30 percent of area median income). Shortages of units affordable and available to extremely-low-income households were most pressing in the West and Northeast, especially in metropolitan areas in those regions.

4. Rehabilitation and Other National Housing Needs

In addition to the broad housing needs discussed above, there are additional needs confronting specific sectors of the housing and mortgage markets. One example of these specific needs concerns the rehabilitation of the nation's older housing stock. A major problem facing lower-income households is that low-cost housing units continue to disappear from the existing housing stock. Older properties are in need of upgrading and rehabilitation. These aging properties are concentrated in central cities and older inner suburbs, and they include not only detached single-family homes, but also small multifamily properties that have begun to deteriorate. But obtaining the funds to fix up older properties can be difficult. The owners of small rental properties in need of rehabilitation may be unsophisticated in obtaining financing. The properties are often occupied, and this can complicate the rehabilitation process. Lenders may be reluctant to extend credit because of a sometimes-inaccurate perception of high credit risk involved in such loans. The GSEs and other market participants have recently begun to pay more attention to these needs for financing of affordable rental housing rehabilitation. However, extra effort is required, due to the complexities of rehabilitation financing, as there is still a need to do more.

The rehabilitation of our aging housing stock is but one example of the housing and mortgage issues that need to be addressed. Several other examples will be provided throughout the following sections on the economic, housing, and demographic conditions in the single-family and multifamily markets, as well as in Appendices B–D. The discussion will cover a wide range of topics, such as subprime lending, predatory lending, automated underwriting systems, manufactured housing, the special needs of the single-family rental market, and challenges associated with producing affordable multifamily housing—just to name a few.

C. Factor 2: Economic, Housing, and Demographic Conditions: Single-Family Mortgage Market

This section discusses economic, housing, and demographic conditions that affect the single-family mortgage market. After a review of housing trends and underlying demographic conditions that influence homeownership, the discussion focuses on specific issues related to the single-family owner mortgage market. This subsection includes descriptions of recent market interest rate trends, refinance and home purchase activity, homebuyer characteristics, and the state of affordable lending. Other special topics examined include the growth in subprime lending, the increased use of automated underwriting, and the remaining homeownership potential among existing renters. Section D follows with a discussion of the economic, housing, and demographic conditions affecting the mortgage market for multifamily rental properties.

1. Recent Trends in the Housing Market

While most other sectors of the economy were weak or declining during 2001 and 2002, the housing sector showed remarkable strength. Despite the recession in 2001, factors such as record-low interest rates and continued price stability contributed to a record year in the housing market. In 2002, the U.S. economy moved into recovery with real GDP growing 2.4 percent. In October 2002, the 30-year home mortgage rate slipped below 6 percent for the first time since the mid-1960s. Favorable financing conditions and solid increases in house prices were the key supports to another record housing market during 2002. In fact, the year 2002 was among the strongest years experienced by the housing industry. By the end of 2002 the industry set many new records in single-family permits, new home sales, existing home sales, interest rates, and homeownership. Other indicators—total permits, starts, completions, and affordability—reached levels that were among the highest in the past two decades.

Single-Family Permits, Starts, and Completions. Builders took out 1,319,100 single-family permits in 2002, up 6.8 percent from 2001. The 2002 level was the highest number of single-family permits ever reported in the 43-year history of this series. Single-family starts totaled 1,359,700 housing units, up 6.8 percent from 2001, and the highest number of single-family starts since 1978. Construction was completed on 1,328,400 single-family housing units, up 5.8 percent from 2001. This is the highest number of single-family completions in 24 years.

Sales of New and Existing Homes. After leveling out in 2000, housing sales have boomed in the past two years, reaching a record high in 2001 and again in 2002. New home sales, which increased an average 6.3 percent per year between 1992 and 2002, reached a record high of 976,000 units in 2002, an increase of 7.5 percent over 2001 sales. The market for new homes has been strong throughout the nation.

The National Association of Realtors reported that nearly 5.6 million existing homes were sold in 2002, overturning the old record set in 2001 by 5 percent, and setting an all-time high in the 34-year history of the series. Sales of existing homes reached record levels in three of the four major regions of the nation and came within 96 percent of the record in the Northeast in 2001. Combined new and existing home sales also set a national record of 6.2 million last year.

One of the strongest sectors of the housing market in past years had been manufactured homes, but that sector has declined recently. Between 1991 and 1996, manufactured home shipments more than doubled, peaking in 1998 at 373,000. However, shipments fell more than 20 percent in both 2000 and 2001. In 2002, the industry shipped 169,000 new manufactured homes, down 12.4 percent from 2001. This was the lowest number of manufactured home shipments since 1963.

Homeownership Rate. In 1980, 65.6 percent of Americans owned their own home, but due to the unsettled economic conditions of the 1980s, this share fell to 63.8 percent by 1989. But since 1994, gains in the homeownership rate have occurred in each year, with the rate reaching another record mark of 67.9 percent in 2002. The number of households owning their own home in 2002 was 10.6 million greater than in 1994.

Gains in homeownership have been widespread over the last eight years.[35] As a result, the homeownership rate rose from:

- 42.0 percent in 1993 to 47.9 percent in 2002 for African-American households,
- 39.4 percent in 1993 to 48.2 percent in 2002 for Hispanic households,
- 73.7 percent in 1993 to 78.9 percent in 2002 for married couples with children,
- 65.1 percent in 1993 to 68.6 percent in 2002 for household heads aged 35–44, and
- 48.9 percent in 1993 to 51.8 percent in 2002 for central city residents.

However, as these figures demonstrate, sizable gaps in homeownership remain.

Economy/Housing Market Prospects. The economy grew at a rate of 2.2 percent in 2002 and was less robust than in past U.S. recoveries.[36] In response, the Federal Reserve has lowered interest rates to record lows, supporting housing affordability.

The Blue Chip consensus forecast for real GDP growth is 4.2 percent for 2004.[37] The Congressional Budget Office (CBO)[38] projects

[35] Homeownership rates prior to 1993 are not strictly comparable with those beginning in 1993 because of a change in weights from the 1980 Census to the 1990 Census.

[36] National Association of Realtors, "Near Record Home Sales Projected for 2003," December 3, 2002.

[37] *Blue Chip Economic Indicators*, Vol. 28, No. 11, November 10, 2003.

[38] Real GDP, unemployment, inflation, and treasury note interest rate projections are obtained for fiscal years 2003–2013 from The Budget and Economic Outlook: An Update, Washington, DC Congressional Budget Office. (August 2003). *http://www.cbo.gov/showdoc.cfm.*

that real GDP will grow at an average rate of 3.3 percent from 2005 through 2008, down from their forecasted rate of 3.8 percent in 2004. Inflation, as measured by the Consumer Price Index (CPI), is projected to remain modest during the same period, averaging 2.5 percent. The unemployment rate is expected to ease from 2003–2004 levels, averaging 5.4 percent over the forecast period. The remainder of this subsection focuses on future prospects for the housing market.

Fannie Mae expects existing home sales to reach a record level of 6 million in 2003 and decline only slightly to 5.7 million in 2004 and 2005.[39] Projected at 1.84 million in 2003, the National Association of Home Builders expects housing starts to decline to 1.77 million in 2004 and 1.71 million in 2005.[40] The Mortgage Bankers Association forecasts that 2004 housing starts will total 1.73 million units and the 30-year fixed mortgage rate will average 6.1 percent.[41] After more than doubling from a relative trough in 2000 to an estimated $2.6 trillion in 2002, Fannie Mae forecasts that mortgage originations will rise to a record high $3.7 trillion in 2003 before dropping to $1.8 trillion in 2004 and $1.5 trillion in 2005.[42]

2. Underlying Demographic Conditions

Between 2000 and 2025, the U.S. population is expected to grow by an average of 2.5 million per year.[43] This will likely result in 1.1 million new households per year, increasing the number of households 26 percent in the period, and creating a continuing need for additional housing.[44] This section discusses important demographic trends behind these overall household numbers that will likely affect housing demand in the future. These demographic forces include the baby-boom, baby-bust and echo baby-boom cycles; immigration trends; non-traditional and single households; "trade-up buyers;" and the growing income inequality between people with different levels of education. HUD's Office of Policy Development and Research funded a study, *Issue Papers on Demographic Trends Important to Housing*, which analyzes effects of demographic conditions on the housing market. The findings are presented throughout the sections that follow.[45]

As explained below, the role of traditional first-time homebuyers, 25-to-34 year-old married couples, in the housing market will be smaller in the current decade due to the aging of the population. For the first time in history, the population will have roughly equal numbers of people in every age group. Between 2000 and 2025, the Census Bureau projects that the largest growth in households will occur among householders 65 and over.[46] Thus, an increasing percentage of the population will be past their homebuying peak in the next two decades. However, because homeownership rates do not peak until population groups reach 65 to 74 years of age, this age cohort will continue to provide housing demand. According to Riche, the increasing presence of older households should increase the proportion of the population that owns, rather than rents housing.[47]

Growing housing demand from immigrants and non-traditional homebuyers will help to offset declines in the demand for housing caused by the aging of the population. Riche's study estimates that minorities will account for two-thirds of the growth in U.S. households over the next 25 years, and by 2025, non-family households will make up a third of all households. The "echo baby-boom" (that is, children of the baby-boomers) will also add to housing demand in the current and next decades. Finally, the growing income inequality between people with and without a post-secondary education will continue to affect the housing market.

The Baby-Boom Effect. The demand for housing during the 1980s and 1990s was driven, in large part, by the coming of homebuying age of the baby-boom generation, those born between 1945 and 1964. Homeownership rates for the oldest of the baby-boom generation, those born in the 1940s, rival those of the generation born in the 1930s. Due to significant house price appreciation in the late-1970s and 1980s, older baby-boomers have seen significant gains in their home equity and subsequently have been able to afford larger, more expensive homes. Circumstances were not so favorable for the middle baby-boomers. Housing was not very affordable during the 1980s, their peak homebuying age period. As a result, the homeownership rate, as well as wealth accumulation, for the group of people born in the 1950s lags that of the generations before them.[48]

As the youngest of the baby-boomers (those born in the 1960s) reached their peak home buying years in the 1990s, housing became more affordable. While this cohort has achieved a homeownership rate equal to the middle baby-boomers, they live in larger, more expensive homes. As the baby-boom generation ages, demand for housing from this group is expected to wind down.[49]

The baby-boom generation was followed by the baby-bust generation, from 1965 through 1977. Since this population cohort is smaller than that of the baby boom generation, it reduced housing demand in the preceding decade and is expected to do the same in the current decade, though, as discussed below, other factors kept the housing market very strong in the 1990s. However, the echo baby-boom generation (the children of the baby-boomers, who were born after 1977), while smaller than the baby-boom generation, will reach peak home buying age later in the first decade of the millennium.

Immigrant Homebuyers. Past, present, and future immigration will also contribute to gains in the homeownership rate. During the 1990s, 9.8 million legal immigrants entered the United States, as compared to 6.3 million entering in the 1980s and 4.2 million during the 1970s. Overall, the increase in the immigrant population directly accounted for 35 percent of the nation's rise in population in the 1990s.[50] As a result, the foreign-born population of the United States more than tripled from 9.6 million in 1970 to 31.1 million in 2000. Immigrants who become citizens buy homes at rates nearly as high as their same-aged native-born counterparts. Moreover, U.S.-born children of immigrants often have higher homeownership rates than the same-age children of native-born parents.[51] However, there are concerns about the assimilation into homeownership of recent Hispanic immigrants who are less educated than earlier cohorts of immigrants. Many immigrants also locate in high-priced housing markets, which makes it more difficult for them to achieve homeownership.

Although net foreign immigration is projected to decline in the current decade after 2002, high levels of immigration in the late 1980s and throughout the 1990s will have lasting positive effects on housing demand. New immigration in the current and next decades is projected to create 6.9 million net new households, but the majority of household growth in the period (16.9 million) will come from people already resident in the U.S. including the foreign-born population.[52] While immigrants tend to rent their first homes upon arriving in the United States, homeownership rates are substantial for those that have lived here for at least 6 years. In 1996, the homeownership

[39] Fannie Mae, "Berson's Economic and Mortgage Market Development Outlook," December 2003. *http://www.fanniemae.com/media/pdd/berson/monthly2003/121203.pdf.*

[40] *http://www.nahb.org.*

[41] Mortgage Bankers Association of America, Mortgage Finance Forecast, December 17, 2003. *http://www.mbaa.org/marketdata/forecasts/mffore1103.pdf.*

[42] Fannie Mae, "Berson's Economic and Mortgage Market Development Outlook," December 2003.

[43] U.S. Census Bureau, Population Projections Table NP–T1.

[44] Martha Farnsworth Riche, "How Changes in the Nation's Age and Household Structure Will Reshape Housing Demand in the 21st Century," in *Issue Papers on Demographic Trends Important to Housing,* Urban Institute Final Report to the Office of Policy Development and Research, U.S. Department of Housing and Urban Development, September 2002, p. 5.

[45] Barry Chiswick, Paul Miller, George Masnick, Zhu Xiao Di, and Martha Farnsworth Riche, *Issue Papers on Demographic Trends Important to Housing.* Urban Institute Final Report to the Office of Policy Development and Research, U.S. Department of Housing and Urban Development, September 2002.

[46] Martha Farnsworth Riche, "How Changes in the Nation's Age and Household Structure Will Reshape Housing Demand in the 21st Century," in *Issue Papers on Demographic Trends Important to Housing.* Urban Institute Final Report to the U.S. Department of Housing and Urban Development, September 2002, p. 4.

[47] *Ibid.* p. 6.

[48] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 1998,* p. 14.

[49] *Ibid.* p. 15.

[50] Federation for American Immigration Reform, <*http://www.fairus.org/html/042us604.htm#ins*>, site visited December 13, 2002.

[51] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2002,* pp. 16–17.

[52] George S. Masnick and Zhu Xiao Di, "Projections of U.S. Households By Race/Hispanic Origin, Age, Family, Type, and Tenure to 2020: A Sensitivity Analysis," in *Issue Papers on Demographic Trends Important to Housing.* Urban Institute Final Report to the U.S. Department of Housing and Urban Development, September 2002, p. 5.

rate for recent immigrants was 14.7 percent while it was 66.9 percent for foreign-born naturalized citizens after six years.[53] Higher-than-average foreign-born fertility rates and high rates of homeownership for immigrants living in the country for several years and among the children of immigrants suggest that past immigration will continue to create housing demand.

Past and future immigration will lead to increasing racial and ethnic diversity, especially among the young adult population. As immigrant minorities account for a growing share of first-time homebuyers in many markets, HUD and others will have to intensify their focus on removing discrimination from the housing and mortgage finance systems. The need to meet nontraditional credit needs, respond to diverse housing preferences, and overcome the information barriers that many immigrants face will take on added importance. In order to address these needs, the mortgage industry must offer innovative products and improve outreach efforts to attract minority homebuyers.

Nontraditional and Single Homebuyers. While overall growth in new households has slowed down, nontraditional households have become more important in the homebuyer market. As the population ages both relatively and absolutely, the nation's households will become smaller and more diverse. Riche notes that in 2000, traditional family households represented fewer than one in four households and were surpassed by both single-person households and married couples without children. With later marriages and more divorces, single-parent and single-person households have increased rapidly. In fact, single-parent households grew from 4 percent of family households in 1950 to 12 percent in 2000. Single-person households are now the nation's second most numerous household type, accounting for over 25 percent of all households. In the future, longer life expectancies and the continuing preference for one or two children will make households without children even more numerous. Projected to compose 80 percent of all households by 2025, nontraditional family households will play an increasingly important role in the housing market.[54]

Trade-up Buyers. Due to weak house price appreciation, traditional "trade-up buyers" stayed out of the market during the early 1990s. Their absence may explain, in part, the large representation of nontraditional homebuyers during that period. However, since 1995 home prices have increased more than 30 percent.[55] The greater equity resulting from recent increases in home prices should lead to a larger role for "trade-up buyers" in the housing market during the next 10 to 15 years. In addition, the growing number of higher-income, mid-life households will increase households' potential to "trade up" to more expensive housing.[56]

Growing Income Inequality. The Census Bureau recently reported that the top 5 percent of American households received 22.4 percent of aggregate household income in 2001, up from 21.4 percent in 1998 and up sharply from 16.1 percent in 1977. The share accruing to the lowest 80 percent of households fell from 56.5 percent in 1977 to 50.8 percent in 1998 and again to 49.8 percent in 2001. The share of aggregate income accruing to households between the 80th and 95th percentiles of the income distribution was virtually unchanged from 1977 to 2001.[57]

The increase in income inequality over past decades has been especially significant between those with and those without post-secondary education. The Census Bureau reports that by 1999, the annual earnings of workers with a bachelor's degree were 1.8 times the annual earnings of workers with a high school education.[58] The inflation-adjusted median earnings of high school graduates were at the same level in 2001 as in 1991 while the earnings of bachelor degree-holders rose nearly 9 percent over the same period.[59]

So, while homeownership is highly affordable, those without post-secondary education often lack the financial resources to take advantage of the opportunity. As discussed earlier, the days of the well-paying unionized factory job have passed. They have given way to technological change that favors white-collar jobs requiring college degrees, and wages in the manufacturing jobs that remain are experiencing downward pressures from economic globalization. The effect of this is that workers without the benefit of a post-secondary education find their demand for housing constrained. This is especially problematic for recent immigrants who are more likely to have limited educational attainment and English language proficiency.

Summary. Over the next two-and-a-half decades, the number of U.S. households is projected to increase by nearly 27 million. Of these new households, non-Hispanic white and traditional households will contribute only one-third and one-tenth of the growth, respectively. As the baby-boomers aged out of their peak home buying stage and the baby-bust generation aged into their peak home buying stage in the late 1980s, demand for housing was dampened by demographic factors during the 1990s. (Of course, other factors such as low interest rates propelled the housing market to record levels during this period.) As the echo baby-boomers begin to enter their peak home buying age, housing demand should pick up again through the remainder of the current decade and into the next. As these demographic factors play out, the overall effect on housing demand will likely be sustained growth and an increasingly diverse household population from which to draw new homeowners. There are continuing concerns about the increasing income inequality of our population and those recent immigrants and other persons who have limited education.

3. Basic Trends in the Single-Family Mortgage Market

Mortgage lending in the nation is growing at unprecedented levels. Residential mortgage originations soared to $2.5 trillion in 2002, a 22 percent increase over the previous record of $2.06 trillion set in 2001.[60] This boom in lending can be attributed to low mortgage interest rates and a record number of refinances. Approximately 40 percent of mortgage debt outstanding, or $2.5 trillion, was refinanced during the 2001–02 refinance boom. The last refinancing record was set in 1998 when roughly 20 percent of mortgage debt outstanding was refinanced.[61] This section focuses on recent interest rate trends, the refinance market, the home purchase market, and first-time homebuyers. The section concludes by examining the GSEs' acquisitions as a share of the primary single-family mortgage market, and provides mortgage market prospects.

a. Mortgage Characteristics

Interest Rate Trends and Volatility. Historically low mortgage interest rates in the late 1990s and 2001–2003 helped maintain consumer confidence in the housing sector as the economy emerged from its first recession in almost a decade. After high and fluctuating mortgage rates in the 1980s and early 1990s, recent years have seen a period of lower and more stable rates. The 1980s began with interest rates on mortgages for new homes above 12 percent but quickly rose to more than 15 percent.[62] By 1987–88, rates dipped into single digits but were rising again by 1989–90. Rates declined in the early 1990s, reaching a low of 6.8 percent in late 1993. An upturn in rates in 1994 and 1995 peaked at 8.3 percent in early 1995. By 1998, 30-year fixed conventional mortgages averaged 6.95 percent, the lowest level since 1968 but saw a rise in 1999 to 7.44 percent. Mortgage rates then continued to rise in 2000, averaging 8.05 percent for the year, before falling to a low of 6.62 percent in October 2001 and averaging 6.97 percent for 2001 as a whole.[63] Rates averaged 6.54 percent during 2002, reaching a low of 6.05

[53] Fred Flick and Kate Anderson, "Future of Housing Demand: Special Markets," *Real Estate Outlook*, 1998, p. 6.

[54] Riche, 2002, p. 1.

[55] Average new-home price: U.S. Census Bureau, *<http://www.census.gov/const/uspriceann.pdf>*

[56] Riche, 2002, p.17.

[57] All data in this paragraph are from the U.S. Census Bureau's Historical Income Table H2.

[58] Jennifer Cheeseman Day and Eric C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, U.S. Bureau of the Census, Current Population Reports P23–210, July 2002, p.3.

[59] U.S. Census Bureau, Historical Income Table H13.

[60] "Mortgage Originations Hit Record-Busting $2.5 Trillion in 2002, IMF Numbers Reveal," *Inside Mortgage Finance*, January 24, 2003, p. 3.

[61] Economy.com, "The Economic Contribution of the Mortgage Refinancing Boom," December 2002, p. 2.

[62] Interest rates in this section are effective rates paid on conventional home purchase mortgages on new homes, based on the Monthly Interested Rate Survey (MIRS) conducted by the Federal Housing Finance Board and published by the Council of Economic Advisers annually in the *Economic Report of the President* and monthly in *Economic Indicators*. These are average rates for all loan types, encompassing 30-year and 15-year fixed-rate mortgages and adjustable rate mortgages.

[63] *U.S. Housing Market Conditions, 2nd Quarter 2002*, August 2002, Table 14.

percent in December of that year. Falling further to 5.23 in June of 2003, mortgage interest rates remained low throughout last year, averaging 5.79 through September.[64]

Other Loan Terms. When mortgage rates are low, most homebuyers prefer to lock in a fixed-rate mortgage (FRM). Adjustable-rate mortgages (ARMs) are more attractive when rates are high, because they carry lower rates than FRMs and because buyers may hope to refinance to a FRM when mortgage rates decline. The Federal Housing Finance Board (FHFB) reports that the ARM share of the market fell from 20 percent in 1993 to a record low of 12 percent in 1998, before rising back to 21 percent in 1999. The ARM share continued to rise to 24 percent in 2000, but then fell dramatically to a low of 12 percent in 2001 as mortgage rates decreased.

In 2001, the term-to-maturity was 30 years for 83 percent of conventional home purchase mortgages, after steadily climbing to a high of 90 percent in 2000. The other maturities in 2001 included 15 years (13 percent), 20 years (3 percent), and 25 years (1 percent).

Low- and no-point mortgages continue to be a popular option for mortgage purchases. FHFB reports that average initial fees and charges ("points") have decreased from 2.5 percent of loan balance in the mid-1980s to 2 percent in the late-1980s, 1.5 percent in the early 1990s, and less than 1 percent in 1995–97. The downward trend continued throughout the late 1990s with the average initial fees and charges reaching a low of one-half percent in 2001. Coupled with declining interest rates, these lower transactions costs have increased the propensity of homeowners to refinance their mortgages.[65]

Another major change in the conventional home mortgage market has been the proliferation of high loan-to-value ratio (LTV) mortgages. According to data from the Federal Housing Finance Board, loans with LTVs greater than 90 percent (that is, down payments of less than 10 percent) made up less than 10 percent of the market in 1989–91, but 25 percent of the market in 1994–97, gradually decreasing to an average of 21 percent of the market in 2001. Loans with LTVs less than or equal to 80 percent fell from three-quarters of the market in 1989–91 to an average of 56 percent of the market in 1994–97, but then rose to an average of 63 percent of mortgages originated in 1998–2001. As a result, the average LTV rose from 75 percent in 1989–91 to nearly 80 percent in 1994–97, and then declined to 76.2 percent in 2001.[66]

b. Refinance Mortgages

Refinancing has fueled the growth in total mortgage originations, which were $638 billion in 1995 (a period of low refinance activity), but topped $2.5 trillion in 2002 (a period of heavy refinance activity). The refinance share of total mortgage originations rose to 50 percent in 1998, then decreased to 19 percent in 2000 before jumping to 57 percent in 2001.[67] Over the past ten years, refinance booms occurred three times, during 1992–93, 1998, and 2001–02. During the 2001–02 refinance boom, approximately 40 percent of the $2.5 trillion in mortgage debt outstanding was refinanced. The last refinancing record was set in 1998 when roughly 20 percent of mortgage debt outstanding was refinanced.[68]

In 1989–90 interest rates exceeded 10 percent, and refinancings accounted for less than 25 percent of total mortgage originations.[69] The subsequent sharp decline in mortgage rates drove the refinance share over 50 percent in 1992 and 1993 and propelled total single-family originations to more than $1 trillion in 1993—twice the level attained just three years earlier.

The refinance wave subsided after 1993, because most homeowners who found it beneficial to refinance had already done so and because mortgage rates rose once again.[70] Total single-family mortgage originations bottomed out at $638 billion in 1995, when the refinance share was only 21 percent. Total originations, driven by the volume of refinancings, amounted to $1.507 trillion in 1998, nearly 50 percent higher than the previous record level of $1.02 trillion attained in 1993.

The refinance wave from late 1997 through early 1999 reflected other factors besides interest rates, including greater borrower awareness of the benefits of refinancing, a highly competitive mortgage market, and the enhanced ability of the mortgage industry, utilizing automated underwriting and mortgage origination systems to handle an unprecedented volume of originations. The refinance share decreased to 19 percent in 2000 before jumping to a record 57 percent in 2001.

Historically low interest rates and declining mortgage transaction costs have driven the latest refinancing boom. Given these conditions, the after-tax cost saving on a new, lower-rate loan is much greater than the transaction costs of refinancing. In addition, the appreciation of housing prices has also contributed to the increase in refinancing. Over the past five years, the value of housing rose by approximately $5 trillion, and the rise in value has enabled lenders to service refinancing homeowners because of greater confidence in the creditworthiness of borrowers.[71]

Over the past few years, homeowners have become more willing to draw on the rising equity in their homes. According to Fannie Mae's 2002 National Housing Survey, homeowners that refinanced during 2001 withdrew about $110 billion in accumulated home equity wealth.[72] Freddie Mac estimates that more than one-half of all refinance mortgages in the past two years involved cash-out refinancing.[73]

The refinancing boom contributed to an estimated one-fifth of the national economy's real GDP growth since late 2000.[74] During 2001 and 2002, roughly $270 billion was raised in cash-out refinancing. Approximately one-half of cash from cash-out refinancing has enabled consumers to finance more spending for expenses such as home improvements, medical payments, education, and vehicles during a weakened economy. Roughly one-third of the cash from cash-out refinancing has allowed consumers to repay other debt.[75] The remaining cash from cash-out refinancing has enabled consumers to invest in other assets. Refinancing households save approximately $10 billion in their annual interest payments on their mortgage and consumer installment liabilities.

Although the refinancing boom may quickly fade if mortgage rates rise in 2004, the boom will have lingering effects. Mortgage borrowers that were able to secure low long-term interest rates through fixed rate mortgages will have more of their budgets to spend on other items. Meanwhile, cash-out borrowers, who are just receiving their money, will spend this year. It must be noted there is some concern regarding the potential for increased credit risk stemming from mortgage debt from cash out borrowers. According to a 2002 Regional Finance Review article, the mortgage liabilities of households have been growing at a rate more than double the growth in household incomes. However, this potential credit risk is moderated by the strong growth in housing values. The ratio of mortgage debt to housing

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[64] Mortgage Bankers Association website. MBA Weekly Survey of Mortgage Applications, Monthly Average Interest Rates on 30-Year Fixed-Rate Mortgages. *http://www.mortgagebankers.org/marketdata/index.html.*

[65] This is discussed in more detail in Paul Bennett, Richard Peach, and Stavros Peristani, *Structural Change in the Mortgage Market and the Propensity to Refinance,* Staff Report Number 45, Federal Reserve Bank of New York, September 1998.

[66] Other sources of data on loan-to-value ratios such as the American Housing Survey and the Chicago Title and Trust Company indicate that high-LTV mortgages are somewhat more common in the primary market than the Finance Board's survey. However, the Chicago Title survey does not separate FHA-insured loans from conventional mortgages. In addition, the statistics cited above pertain only to home purchase mortgages. Refinance mortgages generally have shorter terms and lower loan-to-value ratios than home purchase mortgages.

[67] The source for the refinance share and total mortgage originations was the Mortgage Bankers Association.

[68] Economy.com, "The Economic Contribution of the Mortgage Refinancing Boom," December 2002, p. 2.

[69] Refinancing data is taken from Freddie Mac's monthly *Primary Mortgage Market Survey.*

[70] There is some evidence that lower-income borrowers did not participate in the 1993 refinance boom as much as higher-income borrowers—see Paul B. Manchester, *Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac: 1996–97 Update,* Housing Finance Working Paper No. HF–006, Office of Policy Development and Research, Department of Housing and Urban Development, August 1998, pp. 30–32.

[71] Economy.com, "The Economic Contribution of the Mortgage Refinancing Boom," December 2002, p. 4.

[72] Fannie Mae, *2002 Fannie Mae National Housing Survey.* <http://www.fanniemae.com/global/pdf/media/survey/survey2002>, September 4, 2002, p. 2.

[73] Economy.com, "The Economic Contribution of the Mortgage Refinancing Boom," December 2002, p. 4.

[74] Mark M. Zandi, "Refinancing Boom," *Regional Finance Review,* December 2002, p. 11.

[75] *Ibid.* p. 14.

values, the aggregate loan-to-value ratio, has remained fairly stable for a decade.[76]

c. Home Purchase Mortgages

The volume of home purchase mortgages was $505 billion in 1995, rose to $848 billion in 1999, and remained in the $829–$873 billion range between 1999–2001 before jumping to $1.02 trillion in 2002 and $1.30 trillion in 2003. The Mortgage Bankers Association (MBA) forecasts that the home purchase volume will be $1.34 trillion in 2004 as the home purchase share rises to 54 percent of all originations.[77] The home purchase share of total mortgage originations was 79 percent in 1995, declined to 50 percent in 1998, rose to 81 in 2000, and sharply fell to 43 percent in 2001, 41 in 2002, and 34 percent in 2003, as refinance mortgage volume grew. This section discusses the important issue of housing affordability and then examines the value of homeownership as an investment.

The National Association of Realtors (NAR) has developed a housing affordability index, calculated as the ratio of median household income to the income needed to qualify for a median price home (the latter income is called the "qualifying income"). In 1993, NAR's affordability index was 133, which meant that the median family income of $37,000 was 33 percent higher than that income needed to qualify for the median priced home. Housing affordability remained at about 130 for 1994–97, with home price increases and somewhat higher mortgage rates being offset by gains in median family income.[78] Falling interest rates and higher income led to an increase in affordability to 143 in 1998, reflecting the most affordable housing in 25 years. Affordability remained high in 1999, despite the increase in mortgage rates. NAR's affordability index declined from 140 in 1999 to 129 in 2000 as mortgage rates increased. The index turned upward to 136 in 2001 as mortgage rates fell and maintained this average in 2002, before rising further to 140 in 2003.[79]

Although the share of home purchase loans for lower-income households and/or households living in lower-income communities increased over the past decade, affordability still remains a challenge for many. The median sales price of existing single-family homes in the United States continues to rise, reaching $158,100 in 2002 and $170,000 in 2003. The production of affordable housing and low interest rates could offset the negative impact of rising house prices, which undermine housing affordability for many Americans, particularly in several high-cost markets on the east and west coasts.

As discussed earlier, barriers are preventing many potential homeowners from becoming homeowners, thus reducing the possible amount of home purchase loans. While the strong housing sector has provided financial security for many Americans, a 2002 Fannie Mae survey found that "information barriers still keep many financially qualified families-particularly minority Americans from becoming homeowners or obtaining the lowest-cost financing available to them."[80]

These homeownership barriers pose a serious problem for many Americans who view homeownership as a smart, safe, long-term investment, rating homeownership as a better investment than the stock market. Home equity is the single most important asset for approximately two-thirds of American households that are homeowners. Considering that half of all homeowners held at least 50 percent of their net wealth in home equity in 1998, increasing housing affordability is important for many Americans.[81]

First-time Homebuyers. First-time homebuyers are a driving force in the nation's mortgage market. The current low interest rates have made it an opportune time for first-time homebuyers, which are typically people in the 25–34 year-old age group that purchase modestly priced houses. As the post-World War II baby boom generation ages, the percentage of Americans in this age group decreased from 28.3 percent in 1980 to 25.4 percent in 1992.[82] Even though this cohort is smaller, first-time homebuyers increased their share of home sales. According to Chicago Title data for major metropolitan areas, the first-time buyer share of the homebuyer market increased from roughly 40 percent in the beginning of the 1990s to 45–47 percent during the-mid and late 1990s.[83] Since the late 1990s, industry survey data suggest that the first-time homebuyer percentage has decreased slightly. In the first quarter of 2003, the share of all home purchases by first-time homebuyers was 40 percent compared to 42 percent in 2001.[84]

In the 1990s, lenders developed special programs targeted to first-time homebuyers and revised their underwriting standards to enhance homeownership opportunities for low-income families with special circumstances. The disproportionate growth in the number of first-time homebuyers and minority homebuyers largely drove the rising trend in total home purchases. Analysis of the American Housing Survey (AHS) indicates there were 1.3 million new first-time homebuyers during 1991, in comparison with over two million in each year between 1996 and 2001. In addition, first-time homebuyers comprised approximately 60 percent of all minority home purchases during the 1990s, compared with about 35 percent of all home purchases by non-Hispanic white families.

In comparison to repeat homebuyers, first-time homebuyers are more likely to be younger, have lower incomes, and purchase less expensive houses. According to the AHS, more than one-half or first-time homebuyers were below the age of 35, compared with less than one-quarter of repeat buyers in the 1990s. Thirty-nine percent of first-time buyers had incomes below 80 percent of the median compared to 30 percent of repeat buyers. Fifty-four percent of first-time buyers purchased homes priced below $100,000, compared to 37 percent of repeat buyers. Minorities comprise a higher proportion of first-time buyers (32 percent) compared to repeat buyers (14 percent). Compared to repeat buyers, first-time homebuyers are more likely to purchase a home in the central city and more likely to be a female-headed household.[85]

The National Association of Realtors reports that the average first-time homebuyer in the first quarter of 2003 was 32 years old with a household income of $54,800, compared to an average age of 46 years and average household income of $74,600 for repeat buyers. The average first-time homebuyers made a downpayment of 6 percent on a home that cost $136,000 while the average repeat buyer made a downpayment of 23 percent on a home costing $189,000. In the NAR survey, 37 percent of first-time homebuyers were single compared to 28 percent of repeat buyers.[86]

Many African Americans and Hispanics are likely to purchase homes in the coming years, contributing to the number of first-time home-buyers fueling growth in the housing sector. The number of homeowners will rise by an average of 1.1 million annually over the next two decades. The sizeable rise in the foreign-born population since the 1970's coupled with the increase in Latin American and Asian immigration will also contribute much to this growth.[87]

d. GSEs' Acquisitions as a Share of the Primary Single-Family Mortgage Market

Purchases by the GSEs of single-family mortgages amounted to $519 billion during the heavy refinancing year of 1993, stood at $215 billion in 1995, and were at $618 billion during the heavy refinancing year of 1998. Purchases then fell to $395 billion in 2000 before reaching record levels during the heavy refinancing years of 2001 ($961 billion) and 2002 ($1,090 billion). Purchases by Fannie Mae decreased from $316 billion in 1999 to $227 billion in 2000, before rising to $568 billion in 2001 and $848 billion in 2002. Freddie Mac's single-family mortgage purchases followed a similar trend, falling

[76] Economy.com, "The Economic Contribution of the Mortgage Refinancing Boom," December 2002, p. 9.

[77] Mortgage Bankers Association, "Mortgage Finance Forecast", March 15, 2004. *http://www.mortgagebankers.org/marketdata/forecasts/mffore1203.pdf.*

[78] Housing affordability varies markedly between regions, ranging in January 2004 from 194 in the Midwest to 107 in the West, with the South and Northeast falling in between.

[79] National Association of REALTORS. Housing Affordability Index, *http://www.realtor.org/Research.nsf/Pages/HousingInx,* 2003.

[80] Fannie Mae, September 4, 2002, p. 2.

[81] *Ibid.*

[82] U.S. Department of Commerce, Bureau of the Census, *Money Income of Households, Families, and Persons in the United States: 1992,* Special Studies Series P–60, No. 184, Table B–25, October 1993.

[83] Chicago Title and Trust Family of Insurers, *Who's Buying Homes in America,* 1998.

[84] National Association of Realtors. "New NAR Survey of Home Buyers and Sellers Shows Growing Web Use in a Dynamic Housing Market." *http://www.realtor.org.*

[85] *U.S. Housing Market Conditions, 3rd Quarter 2001,* November 2001, Table 4.

[86] National Association of Realtors. "New NAR Survey of Home Buyers and Sellers Shows Growing Web Use in a Dynamic Housing Market." *http://www.realtor.org.*

[87] Joint Center for Housing Studies at Harvard University, *State of the Nation's Housing 2002,* p.2.

from $233 billion in 1999 to $168 billion in 2000, and then rising to $393 billion in 2001 and $475 billion in 2002.[88]

The Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' share of total originations in the conventional single-family mortgage market, measured in dollars, declined from 37 percent in 1996 to 32 percent in 1997—well below the peak of 51 percent attained in 1993. OFHEO attributes the 1997 downturn in the GSEs' role to increased holdings of mortgages in portfolio by depository institutions and to increased competition with Fannie Mae and Freddie Mac by private label issuers. However, OFHEO estimates that the GSEs' share of the conventional market rebounded sharply in 1998–99, to 43–42 percent. The GSEs' share then decreased to approximately 30 percent of the single-family conventional mortgages originated in 2000, and then increased sharply to 40 percent in 2001. Total GSE purchases, including loans originated in prior years, amounted to 46 percent of conventional originations in 2001.[89]

e. Mortgage Market Prospects

The Mortgage Bankers Association (MBA) reports that mortgage originations in 2001 were $2.0 trillion, which is almost twice the volume of originations in 2000. Mortgage originations then increased to record levels of $2.5 trillion in 2002 and $3.8 trillion in 2003, with refinancings representing 66 percent of originations and the purchase volume amounting to $1.3 trillion. Estimates indicate that ARMs accounted for 19 percent of total mortgage originations in 2003.[90] In its March 15, 2004 forecast, MBA predicts that single-family mortgage originations will amount to $2.5 trillion in 2004 and $1.9 trillion in 2005, with refinancings representing 46 percent and 25 percent of originations respectively.

4. Affordable Lending in the Mortgage Market: New Products and Outreach

Extending homeownership opportunities to historically underserved households has been a growing concern for conventional lenders, private mortgage insurers and the GSEs. The industry has responded in what some have called a "revolution in affordable lending." The industry has offered more customized mortgage products, more flexible underwriting, and expanded outreach so that the benefits of the mortgage market can be extended to those who have not been adequately served through traditional products, underwriting, and marketing.

Fannie Mae and Freddie Mac have been a part of this "revolution in affordable lending." During the mid-to-late 1990s, they added flexibility to their purchase guidelines, they introduced new low-down-payment products, and they worked to expand the use of credit scores and automated underwriting in evaluating the creditworthiness of loan applicants. These major trends reflect changes in the GSEs' underwriting that have impacted affordable lending. Through these trends, Fannie Mae and Freddie Mac have attempted to increase their capacity to serve low- and moderate-income homebuyers.

This section summarizes recent initiatives undertaken by the GSEs and others in the industry to expand affordable housing. The end of this section will present evidence that these new industry initiatives are working, as increased mortgage credit has been flowing to low-income and minority families. The following section will continue the affordable lending theme by examining the performance of different market sectors (*e.g.*, depositories, GSEs, etc.) in funding loans for low-income and minority families. That section will also discuss the important role that FHA plays in making affordable housing available to historically underserved groups as well as the continuing concern that participants in the conventional market could be doing even more to help underserved families.

a. Lowering Down Payments and Up-Front Costs

Numerous studies have concluded that saving enough cash for a down payment and for up-front closing costs is the greatest barrier that low-income and minority families face when considering homeownership.[91] To assist in overcoming this barrier, the industry (including lenders, private mortgage insurers and the GSEs) began offering in 1994 mortgage products that required down payments of only 3 percent, plus points and closing costs. Other industry efforts to reduce borrowers' up-front costs included zero-point-interest-rate mortgages and monthly insurance premiums with no up front component. These new plans eliminated large up-front points and premiums normally required at closing.

During 1998, Fannie Mae introduced its "Flexible 97" and Freddie Mac introduced its "Alt 97" low down payment lending programs. Under these programs, borrowers were required to put down only 3 percent of the purchase price. The down payment, as well as closing costs, could be obtained from a variety of sources, including gifts, grants or loans from a family member, the government, a non-profit agency and loans secured by life insurance policies, retirement accounts or other assets. Fannie Mae continues to offer the "Flexible" line of products, and Freddie Mac continues to list "Alt 97."

In 2000, Fannie Mae launched the "MyCommunityMortgage" suite of products, which provides high loan-to-value product options for low- and moderate-income borrowers. In 2002, Fannie Mae purchased or securitized more than $882.5 million of *MyCommunityMortgage* products, which helped provide affordable housing solutions for 7,866 households. In addition, Fannie Mae created new tailored solutions to *MyCommunityMortgage* including a rural housing program, a "Community Solutions" program offering flexible income requirements consistent with targeted professions and an "Energy Efficient Mortgage" program.[92]

Fannie Mae also expanded its "Flexible" product line with the "Flexible 100" product, which eliminates the requirement for a down payment by providing 100 percent loan-to-value financing. The borrower is required to make at least a three percent contribution to closing costs; the funds for the contribution may come from a variety on sources such as gifts, grants, or unsecured loans from relatives, employers, public agencies, or nonprofits. Lenders delivered 17,206 "Flexible 100" loans to Fannie Mae totaling $2.2 billion in 2001.[93]

In 2001, Fannie Mae launched the *eZ Access*™ product pilot. This product is targeted to 11 underserved markets and allows lenders to qualify borrowers who may have less than perfect credit and limited available funds for down payment. Through December 2002, *eZ Access* helped 400 underserved families through Fannie Mae's purchase of $57.1 million in loans.[94]

In 2000, Freddie Mac introduced its "Freddie Mac 100" product, which is designed to assist borrowers who have good credit but lack the ability to provide a large down payment. "Freddie Mac 100" allows a 100 percent loan-to-value ratio with the condition that the borrower has the funds for closing costs. Another Freddie Mac product, "Affordable Gold 100" provides 100 percent financing to low- and moderate-income borrowers for the purchase price of a home in California. "Affordable Gold 100" combines mortgage insurance benefits provided by a state insurance fund, the secondary mortgage market, and a team of the nation's leading mortgage lenders.[95]

b. Partnerships—Fannie Mae

In addition to developing new affordable products, lenders and the GSEs have been entering into partnerships with local governments and nonprofit organizations to increase mortgage access to underserved borrowers. Fannie Mae's partnership offices in 54 central cities, which coordinate Fannie Mae's programs with local lenders and affordable housing groups, are an example of this initiative.

Fannie Mae continues to reach out to national groups and work with local affiliates

[88] The source of the GSE data for 2001 and earlier years is the Office of Federal Housing Enterprise Oversight (OFHEO), *Report to Congress*, 2002 (*see* Tables 1 and 11). The 2002 data are taken from "Fannie and Freddie Roll to Nearly $1.5 Trillion in New Business, Portfolios Continue Growing" in *Inside Mortgage Finance*, January 31, 2003, pages 6–7. It should be noted that the *Inside Mortgage Finance* data for 2001 was 13 percent higher than the OFHEO data for 2001; therefore, the 2002 data may be overstated.

[89] Office of Federal Housing Enterprise Oversight. "Mortgage Markets and The Enterprises in 2001," August 2002, p. 13

[90] Mortgage market projections from the MBA's *MBA Mortgage Finance Forecast*, December 17, 2003. 2000 and 2001 numbers from the MBA's MBA Mortgage Finance Forecast, January 10, 2002.

[91] *See* Charles, K. K. and E. Hurst (2002). "The Transition to Home Ownership and the Black-White Wealth Gap." *The Review of Economics and Statistics*, 84(2): 281–297; Mayer, C. and G. Engelhardt (1996). "Gift Down Payments and Housing Affordability." *Journal of Housing Research*, 7(1): 59–77; and Quercia, R. G., G. W. McCarthy, *et al.* (2003). "The Impacts of Affordable Lending Efforts on Homeownership Rates." *Journal of Housing Economics*, 12(1): 29–59.

[92] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, pp. 8–9.

[93] Fannie Mae, *2001 Annual Housing Activities Report*, 2002, pp. 5–7.

[94] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 8.

[95] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p.57.

to expand homeownership. In 2002, Fannie Mae enhanced 5 partnerships with national organizations and maintained 13 national partnership agreements. For example, Fannie Mae maintains a partnership with the National Urban League (NUL) and the Chase Manhattan Mortgage Corporation to increase NUL's homeownership counseling capacity by providing the necessary technology and tools to support the effort, and to purchase $50 million in mortgage products over five years that are specifically targeted to African Americans and other minorities in underserved areas. In 2002, NUL originated $20 million in loans. Another example is Fannie Mae's partnership with the AFL-CIO Housing Investment Trust (HIT) and Countrywide Mortgage, which launched "HIT HOME" in 2001. HIT HOME is an affordable home mortgage initiative that targets 13 million union members in 16 cities throughout the nation to provide union members with a variety of affordable mortgage choices that enable them to qualify for competitively priced loans with new re-payment terms. As of December 2002, over $244 million in loans have been originated through this initiative, serving 2,076 households.[96]

In order to meet the needs of underserved and low- and moderate-income populations, Fannie Mae has targeted specific populations for initiatives. These include minority and women-owned lenders (MWOL), Native Americans, working Americans, and borrowers served by community development financial institutions and public housing agencies. In 2002, through the MWOL Initiative, Fannie Mae purchased $9 billion in mortgages originated by MWOLs; 97% of this amount reached minority households. The Employer Assisted Housing Initiative reached 116 employers in 2002 in industries ranging from health care to education. The Community Development Financial Institutions Initiative committed to invest $17.1 million in 2002, which was expected to generate more than 980 additional units of affordable housing. The Section 8 Homeownership Initiative helped 35 families make the transition from Section 8 rental housing to homeownership in 2002. The Native American Initiative has served more than 3,376 Native American families living on reservations and trust lands since its inception, while providing $290 million in mortgage financing.[97]

Fannie Mae's American Dream Commitment's Opportunity for All Strategy and National Minority Homeownership Initiative has pledged to contribute at least $700 billion in private capital to serve 4.6 million families towards President George W. Bush's goal of expanding homeownership to 5.5 million new minority Americans by the end of the decade.[98] This marks a 66% increase in Fannie Mae's earlier commitment of $420 billion. Towards this goal, in 2002, Fannie Mae announced 10 new lender partnerships, bringing the total number of lenders committed since 2000 to 16, with an estimated $180 billion of *American Dream Commitment* business pledged to be delivered. Examples of lender partnerships under this initiative include J.P. Morgan Chase & Co. with a $35 billion national investment initiative designed to increase homeownership opportunities for underserved communities and improve affordable homeownership options for immigrants and minorities, and Bank One with a $12.5 billion community lending alliance to help low- and moderate-income families purchase homes with a total designated commitment of at least 25% toward increasing homeownership among minorities.[99]

Through these partnerships, a strategic effort was made to eliminate language, credit, and other barriers to minority homeownership and to reach underserved communities. In 2002, Fannie Mae helped serve 984,276 minority families by providing $136.2 billion in mortgage financing.[100] According to Fannie Mae, its lending partners realize that multicultural markets may differ from traditional markets, and thus they offer various flexible mortgage products to reach out to minority and immigrant homebuyers. Some of these mortgage products require only a $500 contribution from the borrower for closing costs. Others have flexible qualifying guidelines that use alternative sources of income like rent and part-time employment.[101]

c. Partnerships—Freddie Mac

Freddie Mac does not have a partnership office structure similar to Fannie Mae's, but it has undertaken a number of initiatives in specific metropolitan areas.[102] In 2001, Freddie Mac joined the Congressional Black Caucus to launch a new initiative, "With Ownership Wealth," designed to increase African-American homeownership with one million new families by 2005; Freddie Mac has pledged to purchase qualified mortgages originated under this initiative.[103] In 2002, Freddie Mac launched more than 30 new alliances and initiatives and continued working with existing alliances.[104] Freddie Mac has partnered with the National Council of La Raza (NCLR), 20 community based NCLR affiliated housing counseling organizations, the National Association of Hispanic Real Estate Professionals (NAHREP), EMT Applications and participating Freddie Mac Seller/Servicers including Bank of America, U.S. Bank and Wells Fargo Home Mortgage on the "En Su Casa" initiative. This $200 million homeownership initiative combines technology tools with flexible mortgage products to meet the needs of Hispanic borrowers. Mortgage products include low down payments, flexible credit underwriting and debt-to-income ratios, and streamlined processing for resident alien borrowers.[105]

In 2002, Freddie Mac joined with the City of Boston and the U.S. Conference of Mayors to make available the "Don't Borrow Trouble" predatory lending educational campaign to approximately 1,100 cities. In addition, Freddie Mac joined with Rainbow/PUSH and the National Urban League to promote the "CreditSmart℠" financial educational curriculum that helps consumers understand, obtain and maintain good credit, thereby preparing them for homeownership and other personal financial goals. In 2002, Freddie Mac also joined with the American Community Bankers and the Credit Union National Association in strategic alliances that will better enable member banks and credit unions access to the secondary market.[106]

In June 2002, President George W. Bush challenged the nation's housing industry to invest more than $1 trillion to make homeownership a reality for 5.5 million more minority households for the decade. Freddie Mac responded to the challenge with "Catch the Dream," which is a comprehensive set of 25 major initiatives aimed at accelerating the growth in minority homeownership. The initiatives range from homebuyer education and outreach to new technologies with innovative mortgage products. Catch the Dream represents a collaborative effort with lenders, nonprofit housing and community-based organizations, and other industry participants to expand homeownership opportunities for America's minorities.[107] Freddie Mac has committed to providing $400 billion in mortgage financing for minority families by the end of the decade.[108] In 2002, Freddie Mac purchased mortgages for 576,000 minority families, a total of 17.3% of their single-family, owner-occupied mortgage purchases for the year.[109] In addition, in 2002, minority- or women-owned lenders comprised 2.7% of Freddie Mac's network of lenders. $5.5 billion in loans were purchased from these lenders, financing housing for 45,000 families.[110]

The programs mentioned above are examples of the partnership efforts undertaken by the GSEs. There are more partnership programs than can be adequately described here. Fuller descriptions of these programs are provided in their Annual Housing Activity Reports.

[96] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, pp. 12–15.

[97] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, pp. 16–18.

[98] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 15.

[99] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, pp. 15–16.

[100] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p 5.

[101] Fannie Mae, "Minority Homeownership," 2002.

[102] Freddie Mac, *News Release*, January 15, 1999.

[103] Freddie Mac, 2002, pp. 41–42, and Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 62.

[104] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 60.

[105] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 61.

[106] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, pp. 35–38.

[107] Freddie Mac. Corporate Information. "Our Homeownership Commitment." *http://www.freddiemac.com/corporate/about/dream/expanding_minority_homeownership.htm.*

[108] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 28.

[109] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 32.

[110] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 15.

d. Underwriting and GSE Purchase Guidelines

Lenders, mortgage insurers, and the GSEs have also been modifying their mortgage underwriting standards to address the needs of families who have historically found it difficult to qualify under traditional guidelines. In addition to the changes in underwriting standards, the use of automated underwriting has dramatically transformed the mortgage application process. This section focuses on changes to traditional underwriting standards and recent GSE initiatives for credit-impaired borrowers. Subsequent sections will provide more details on the impact of automated underwriting.

The GSEs modified their underwriting standards to address the needs of families who find qualifying under traditional guidelines difficult. The goal of these underwriting changes is not to loosen underwriting standards, but rather to identify creditworthiness by alternative means that more appropriately measures the unique circumstances of low-income, immigrant, and minority households. Examples of changes that the GSEs and others in the industry have made to their underwriting standards include the following:

- Using a stable income standard rather than a stable job standard (or minimum period of employment). This particularly benefits low-skilled applicants who have successfully remained employed, even with frequent job changes.
- Using an applicant's history of rent and utility payments as a measure of creditworthiness. This measure benefits lower-income applicants who have not established a credit history.
- Allowing pooling of funds for qualification purposes. This change benefits applicants with extended family members. Freddie Mac, for example, allows income from relatives who live together to pool their funds to cover downpayment and closing costs and to combine their incomes for use in calculating the borrower's stable monthly income.

These underwriting changes have been accompanied by homeownership counseling to ensure homeowners are ready for the responsibilities of homeownership. In addition, the industry has engaged in intensive loss mitigation to control risks.

In 1999, HUD commissioned a study by the Urban Institute to examine the underwriting criteria that the GSEs use when purchasing mortgages from primary lenders.[111] According to the study, while the GSEs had improved their ability to serve low- and moderate-income borrowers, it did not appear at that time that they had gone as far as some primary lenders to serve these borrowers. From the Urban Institute's discussion with lenders, it was found that primary lenders were originating mortgages to lower-income borrowers using underwriting guidelines that allow lower down payments, higher debt-to-income ratios and poorer credit histories than allowed by the GSEs' guidelines.

From this and other evidence, the Urban Institute concluded that the GSEs were lagging the market in servicing low- and moderate-income and minority borrowers. Furthermore, the Urban Institute found "that the GSEs" efforts to increase underwriting flexibility and outreach has been noticed and is applauded by lenders and community advocates. Despite the GSEs' efforts in recent years to review and revise their underwriting criteria, however, they could do more to serve low- and moderate-income borrowers and to minimize disproportionate effects on minorities."[112] Since the Urban Institute study, Freddie Mac and Fannie Mae have been playing a larger role in financing low-income and minority borrowers. (*See* Section E.2.)

In addition to offering low-down-payment programs, the GSEs' recent efforts have also centered around their automated underwriting systems and their treatment of borrowers with blemished credit, the latter being perhaps the most controversial underwriting issue over the past few years. Freddie Mac recently launched a variety of new products aimed at providing borrowers with impaired credit more mortgage product choices. The new products include: "CreditWorks," which helps borrowers with excessive debt and impaired credit to qualify for a prime market rate mortgage more quickly than before, and "LeasePurchase Plus Initiative," which provides closing cost and down payment assistance in addition to extensive counseling for borrowers who have had bad credit or who have never established a credit history.[113] During 2002, Freddie Mac entered into several new markets under the "LeasePurchase Plus Initiative" and purchased more than $16 million in loans.[114]

According to Freddie Mac, its automated underwriting system, "Loan Prospector" has reduced costs, made approving mortgages easier and faster, and increased the consistency of the application of objective underwriting criteria. In addition, Freddie Mac states that "Loan Prospector" extends the benefits of the mortgage finance system to borrowers with less traditional credit profiles and limited savings by more accurately measuring risk. Freddie Mac reports that its automated underwriting system, Loan Prospector, has resulted in higher approval rates for minority borrowers than under traditional manual underwriting because of improved predictive powers. As mentioned in Section C.7, the 2000 version of LP approved 87.1 percent of loans generated through affordable housing programs, compared to 51.6 percent approved by manual underwriting. The Freddie Mac study found automated mortgage scoring less discriminatory and more accurate in predicting risk. However, as noted below in the automated mortgage scoring section, there are concerns that the codification of certain underwriting guidelines could result in unintentional discrimination or disparate treatment across groups. In response to the potential disparate impact of automated underwriting, Freddie Mac have launched initiatives to make the mortgage process more transparent by disclosing both credit and non-credit factors that Loan Prospector consider when evaluating a loan application. In 2000, Freddie Mac launched an initiative that published a list of all of the factors that Loan Prospector uses to analyze loans, and put the list on the Freddie Mac Web site.[115]

In 2002, Fannie Mae released two versions of its automated underwriting service, "Desktop Underwriter" (DU), to expand its mortgage product offerings and to update underwriting guidelines. These enhancements—labeled DU 5.2 and DU 5.2.1—increased homeownership opportunities for low- and moderate-income borrowers and borrowers with small downpayments by enhancing DU's risk assessment capabilities for certain high loan-to-value loans. For example, DU 5.2.1 enhanced its Expanded Approval™ policies to allow 100 percent loan-to-value limited cash-out refinances and the origination of 5/1 ARMs.[116] The Expanded Approval feature and Timely Payment Rewards option in DU were created by Fannie Mae in 1999 to enable lenders to more comprehensively review a borrower's creditworthiness. The Timely Payment Rewards option reduces the interest rate of qualified borrowers of up to one percent after making timely mortgage payments for a given time period.[117] With these options, lenders can offer mortgage loans to many borrowers previously unable to receive financing from a mainstream lender. A borrower who is recommended for approval for either of these features would be eligible for an initial mortgage rate that is lower than that available through the subprime market.[118] Automated mortgage scoring and the potential for disparate impacts on borrowers will be further discussed in a later section.

5. Affordable Single-Family Lending: Data Trends

a. 1993–2002 Lending Trends

HMDA data suggest that the industry and GSE initiatives are increasing the flow of credit to underserved borrowers. Between 1993 and 2002, conventional loans to low-income and minority families increased at much faster rates than loans to higher income and non-minority families. As shown below, conventional home purchase originations to African Americans more than doubled between 1993 and 2002 and those to Hispanic borrowers more than tripled. Home loans to low-income borrowers and to low-income and high-minority census tracts also more than doubled during this period.

[111] Kenneth Temkin, Roberto Quercia, George Galster, and Sheila O' Leary, *A Study of the GSEs' Single Family Underwriting Guidelines: Final Report*. Washington DC: U.S. Department of Housing and Urban Development, April 1999.

[112] Temkin, et al. 1999, p. 28.

[113] Freddie Mac, *2001 Annual Housing Activities Report*, 2002, p. 28.

[114] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 35.

[115] *Ibid.* p. 57.

[116] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 10.

[117] *Ibid.* p. 6.

[118] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 32.

	1993–2002 Growth rate: all home loans P (per cent)	1993–2002 Growth rate: conventional home loans P (per cent)
African-American Borrowers	80	133
Hispanic Borrowers	186	245
White Borrowers	30	43
Low-Income Borrower (Less than 80% of AMI)	91	119
Upper-Income Borrower (More than 120% of AMI)	66	81
Low-Income Census Tract	99	143
Upper-Income Census Tract	64	78
High-Minority Tract (50% or more minority)	113	167
Predominantly-White Tract (Less than 10% minority)	53	64

GSE purchases showed similar trends, as indicated by the following 1993–to–2002 percentage point increases for metropolitan areas: African-American borrowers (193 percent), Hispanic borrowers (208 percent), and low-income borrowers (193 percent). While their annual purchases of all home loans increased by 57 percent between 1993 and 2001, their purchases of mortgages that qualify for the three housing goals increased as follows: Special affordable by 264 percent; low- and moderate-income by 142 percent; and underserved areas by 112 percent.

While low interest rates and economic expansion certainly played an important role in the substantial increase in conventional affordable lending in recent years, most observers believe that the efforts of lenders, private mortgage insurers, and the GSEs were also important contributors. In addition, many observers believe that government initiatives such as the GSE housing goals and the Community Reinvestment Act have also played a role in the growth of affordable lending over the past 10 years.

b. Affordable Lending Shares by Major Market Sector

Section E below compares the GSEs' performance with the performance of primary lenders in the conventional conforming market. To provide a useful context for that analysis, this section examines the role of the conventional conforming market in funding low-income and minority families and their neighborhoods. Information on the mortgage market's funding of homes purchased by first-time homebuyers is also provided. In addition, this section compares the GSEs with other sectors of the mortgage market. The important role of FHA in the affordable lending market is highlighted and questions are raised about whether the conventional conforming market could be doing a better job helping low-income and minority borrowers obtain access to mortgage credit.

Table A.1 reports borrower characteristics and Table A.2 reports neighborhood characteristics for home purchase mortgages insured by FHA, purchased by the GSEs, originated by depository institutions (mainly banks and thrift), and originated in the conventional conforming market and in the total market for owner-occupied properties in metropolitan areas.[119] In this case, the "total" market consists of both the conventional conforming market and the government (mainly FHA and VA loans) market; "jumbo" loans above the conventional conforming loan limit are excluded from this analysis.[120]

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[119] Table A.3 also provides the same average (1999 to 2002) information as Tables A.1 and A.2 but for total (both home purchase and refinance) loans. Thus, it provides a complete picture of overall mortgage activity.

[120] The "Total Market" is defined as all loans (including both government and conventional) below the conforming loan limit of $240,000 in 1999, $252,700 in 2000, $275,000 in 2001, and $300,700 in 2002.

Table A.1

Borrower Characteristics for Major Sectors of the Mortgage Market in Metropolitan Areas
Home Purchase Mortgages, 1996-2002

			Conventional Conforming Market						
						Depositories		Conforming Market	
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Total	Portfolio	Total	W/O B&C [2]
Low-Income:									
1999	34.4 %	49.5 % [1]	25.1 %	24.7 %	24.8 %	29.2 %	28.5 %	30.1 %	29.8 %
2000	33.8	48.7	27.8	25.4	26.4	29.7	28.7	29.8	29.5
2001	33.0	50.7	26.8	27.9	27.4	28.2	29.2	28.3	28.1
2002	34.0	54.2	28.6	29.7	29.2	29.8	30.5	29.7	29.6
1999-2002 Average	33.8	50.7	27.2	27.1	27.1	29.2	29.2	29.5	29.3
1996-2002 Average	33.0	49.3	24.8	25.8	25.4	28.1	28.9	28.7	28.5
African American:									
1999	7.9	14.6	3.5	3.4	3.5	4.7	4.7	5.4	5.0
2000	8.3	15.5	4.3	4.2	4.3	5.4	5.0	5.9	5.4
2001	7.6	14.0	3.9	5.2	4.6	4.8	4.9	5.4	5.0
2002	7.5	13.9	3.5	5.4	4.7	4.9	4.8	5.8	5.3
1999-2002 Average	7.8	14.5	3.8	4.6	4.3	5.0	4.9	5.6	5.2
1996-2002 Average	7.7	14.4	3.6	4.4	4.1	4.7	4.8	5.4	5.0
Hispanic:									
1999	9.7	19.3	5.5	6.0	5.8	6.5	6.6	7.1	6.9
2000	10.9	20.7	6.6	8.0	7.4	7.9	7.7	8.3	8.1
2001	11.3	20.3	7.0	8.5	7.9	8.5	9.4	9.0	8.7
2002	12.2	20.6	6.6	10.4	9.0	9.3	9.2	10.4	9.9
1999-2002 Average	11.0	20.2	6.5	8.4	7.6	8.1	8.2	8.7	8.5
1996-2002 Average	10.1	19.2	5.9	7.6	6.9	7.0	7.0	7.7	7.5
Minority:									
1999	23.4	37.7	15.0	17.4	16.4	17.7	17.3	19.0	18.4
2000	25.4	40.2	17.6	20.2	19.0	20.4	19.6	21.2	20.5
2001	25.1	38.0	18.3	21.9	20.3	20.3	21.4	21.5	20.8
2002	26.8	38.5	18.9	24.9	22.7	22.1	21.3	24.2	23.2
1999-2002 Average	25.2	38.6	17.5	21.4	19.8	20.2	19.9	21.5	20.7
1996-2002 Average	23.5	37.3	16.0	19.8	18.3	18.2	17.7	19.6	18.9

Notes: The "1999-2002 Average" is a loan-based weighted average. All the data are for home purchase mortgages. The FHA, depositories, and market percentages are derived from HMDA data (various years). The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include conventional home loans purchased during 1999, 2000, 2001 and 2002; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1999 or 2000 or 2001or 2002) as well as their purchases of mortgages originated during 1999, 2000, 2001 and 2002. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the conforming loan limit which was $300,700 in 2002. "Total Depositories" data are loans originated by HMDA reporters regulated by FDIC, OTS, OCC, FRB, and The National Credit Union Administration; they consist mainly of banks, thrifts, and their subsidiaries. The "Portfolio Depositories" data refer to new originations that are not sold by banks and thrift institutions during 1999-2002 and thus are retained in depository portfolios. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic based on a "distribution of business" approach or explained in the text. For example, 49.5 percent of FHA-insured home loans were loans for low-income borrowers.

[2] HMDA-based market shares that have been adjusted to exclude the B&C portion of the subprime market. It should be recognized that there exists some uncertainty regarding the number of B&C loans in the HMDA data. The adjustment assumes that the B&C loans represent one-half of the subprime market. The adjustment for home purchase loans is small because subprime (B&C) loans are mainly refinance loans.

Table A.2

Neighborhood Characteristics for Major Sectors of the Mortgage Market in Metropolitan Areas Home Purchase Mortgages, 1996-2002

			Conventional Conforming Market						
						Depositories		Conforming Market	
Neighborhood Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Total	Portfolio	Total	W/O B&C [2]
Low-Income Tract:									
1999	12.7	18.2	8.3	7.9	8.1	10.8	11.6	11.3	10.9
2000	13.4	19.2	9.0	9.5	9.3	11.9	12.4	12.0	11.5
2001	12.5	18.2	9.4	10.1	9.8	11.0	12.3	11.0	10.7
2002	12.7	18.8	11.3	11.0	11.1	11.1	12.1	11.5	11.1
1999-2002 Average	12.8	18.6	9.6	9.8	9.7	11.2	12.1	11.4	11.1
1996-2002 Average	12.7	18.7	8.9	9.5	9.3	10.8	12.0	11.2	10.9
High-Minority Tract:									
1999	17.5	26.0	12.3	12.8	12.6	13.9	13.5	15.1	14.6
2000	18.5	26.5	12.8	15.3	14.2	15.7	14.9	16.4	15.7
2001	17.7	24.3	13.2	15.6	14.6	15.2	16.0	16.0	15.4
2002	18.6	24.0	16.2	17.3	16.9	16.1	15.5	17.5	16.7
1999-2002 Average	18.1	25.2	13.7	15.4	14.7	15.3	15.0	16.3	15.7
1996-2002 Average	17.7	25.9	12.8	15.1	14.2	14.2	13.9	15.4	14.9
High African-American Tract:									
1999	5.7	8.9	3.4	3.0	3.2	4.3	4.4	4.8	4.4
2000	6.0	9.4	3.9	3.7	3.8	5.0	4.8	5.1	4.8
2001	5.4	8.5	3.9	4.4	4.2	4.4	4.7	4.6	4.3
2002	5.5	8.4	5.3	4.7	4.9	4.6	4.8	4.9	4.6
1999-2002 Average	5.7	8.8	4.2	4.0	4.1	4.6	4.7	4.8	4.5
1996-2002 Average	5.7	9.1	3.8	4.0	3.9	4.4	4.6	4.7	4.5
Underserved Areas:									
1999	29.1	40.5	20.9	20.4	20.6	24.6	25.6	25.8	25.2
2000	30.3	42.1	22.0	23.4	22.8	26.7	27.1	27.1	26.4
2001	28.9	40.3	22.3	24.4	23.5	25.4	27.2	25.8	25.2
2002	29.7	40.9	25.8	26.7	26.3	26.2	27.2	27.2	26.4
1999-2002 Average	29.5	40.9	22.9	24.0	23.5	25.7	26.8	26.5	25.8
1996-2002 Average	29.2	41.0	21.7	23.5	22.8	24.9	26.4	25.9	25.4

See notes to Table A.1.

Table A.3

Borrower and Neighborhood Characteristics for Major Sectors of the Mortgage Market in Metropolitan Areas Home Purchase and Refinance Mortgages, 1999-2002

			Conventional Conforming Market					
							Conforming Market	
Borrower Characteristics	Total Market	FHA	Freddie Mac	Fannie Mae	Both GSEs	Depositories	Total	W/O B&C [2]
Low-Income:	31.6 %	50.0 % [1]	25.9 %	26.2 %	26.1 %	28.1 %	28.8 %	28.1 %
African American:	7.1	14.8	3.5	4.0	3.8	4.9	5.7	5.0
Hispanic:	9.2	19.5	5.7	7.4	6.7	7.0	7.7	7.5
Minority:	22.2	38.0	16.7	18.8	17.9	18.3	19.8	19.0
Neighborhood Characteristics								
Low-Income Tract:	12.2	17.9	9.3	9.5	9.4	10.9	11.5	10.9
High-Minority Tract:	17.6	25.5	13.9	15.3	14.7	15.1	16.6	15.7
High African-American Tract:	5.9	9.1	4.1	3.9	4.0	4.9	5.5	4.9
Underserved Areas:	28.4	40.4	23.1	23.8	23.5	25.4	26.7	25.7

Notes: The "1999-2002 Average" is a loan-based weighted average. All the data are for home purchase and refinance mortgages. The FHA, depositories, and market percentages are derived from 1999, 2000, 2001 and 2002 HMDA data (various years). The GSE percentages are derived from the loan-level data that Fannie Mae and Freddie Mac provide to HUD. The GSE data include conventional home loans purchased during 1999, 2000, 2001 and 2002; thus, these data include their purchases of seasoned loans (i.e., mortgages originated prior to 1999 or 2000 or 2001 or 2002) as well as their purchases of mortgages originated during 1999, 2000, 2001 and 2002. The "Total Market" combines the government sector (FHA and VA loans) and the conventional conforming market. Thus, it includes all loans except "jumbo" loans above the conforming loan limit which was $300,700 in 2002. "Depositories" data are loans originated by HMDA reporters regulated by FDIC, OTS, OCC, FRB, and The National Credit Union Administration; they consist mainly of banks, thrifts, and their subsidieries. The HMDA data for low-income borrowers exclude mortgages with a loan-to-borrower-income ratio greater than six.

[1] Each percentage represents the share of a sector's portfolio accounted for by the borrower or neighborhood characteristic based on "distribution of business" approach or explained in the text. For example, 50.0 percent of FHA-insured home loans between 1999 and 2002 were loans for low-income borrowers. It should be noted that due to FHA's streamline refinance program, borrower income data were not available for almost 70 percent of FHA's refinance loans.

[2] HMDA-based market shares that have been adjusted to exclude the B&C portion of the subprime market. It should be recognized that there exists some uncertainty regarding the number of B&C loans in the HMDA data. The adjustment assumes that the B&C loans represent one-half of the subprime market.

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HMDA is the source of the FHA, depository, and market data, while the GSEs provide their own data. Low-income, African-American, Hispanic, and minority borrowers are covered in Table A.1. Table A.2 provides information on four types of neighborhoods—low-income census tracts, tracts where minorities (or African Americans) account for more than 30 percent of the census tract population, and underserved areas as defined by HUD. The average data reported in Tables A.1 and A.2 for the years 1999 to 2002 offer a good summary of recent lending to low-income and minority borrowers and their communities.[121] Individual year data are also provided.

The focus of different market sectors on affordable lending is summarized by the percentages reported in Tables A.1 and A.2. These percentages show each sector's "distribution of business," defined as the share of loans originated (or, for the GSEs, purchased) that had a particular borrower or neighborhood characteristic. The interpretation of the "distribution of business" percentages can be illustrated using the FHA percentage for low-income borrowers: Between 1999 and 2002, 50.7 of all FHA-insured home purchase loans in metropolitan areas were originated for borrowers with an income less than 80 percent of the local area median income. These percentages are to be contrasted with "market share" percentages, which are presented below in Section E. A "market share" percentage is the share of loans with a particular borrower or neighborhood characteristic that was funded by a particular market sector (*e.g.*, FHA-insured, GSEs, depositories). As will discussed below, FHA's "market share" for low-income borrowers during the 1999-to-2002 period was estimated to be 26 percent which is interpreted as follows: Of all home purchase loans originated for low-income borrowers in metropolitan areas between 1999 and 2002, 26 percent were FHA-insured loans. Thus, in this example, the "distribution of business" percentage measures the importance (or concentration) of low-income borrowers in FHA's overall business while the "market share" percentage measures the importance of FHA to the market's overall funding of loans for low-income borrowers. Both concepts are important for evaluating performance—for an industry sector such as FHA or the GSEs to have a significant impact on lending to a targeted group, that sector's business must be concentrated on the targeted group and that sector must be of some size. The discussion below will focus on the degree to which different mortgage sectors concentrate on targeted groups, while Section E will also provide estimates of market shares.

The main insights from the "distribution of business" percentages in Tables A.1 and A.2 pertain to four topics.

(i) *FHA-Insured Loans.* FHA has traditionally been the mechanism used by borrowers who face difficulty obtaining mortgage financing in the private conventional market. FHA has long been recognized as the major source of funding for first-time, low-income and minority homebuyers who are not often able to raise cash for large downpayments.[122] Tables A.1 and A.2 show that FHA places much more emphasis on affordable lending than the other market sectors. Between 1999 and 2002, low-income borrowers accounted for 50.7 percent of FHA-insured loans, compared with 27.1 percent of the home loans purchased by the GSEs, 29.2 percent of home loans originated by depositories, and 29.5 percent of all originations in the conventional conforming market (*see* Table A.1). Likewise, 40.9 percent of FHA-insured loans were originated in underserved census tracts, while only 23.5 percent of the GSE-purchased loans, 25.7 percent of home loans originated by depositories, and 26.5 percent of conventional conforming loans were originated in these tracts (*see* Table A.2).[123] As discussed in Section E, FHA's share of the minority lending market is particularly high. While FHA insured only 18 percent of all home purchase mortgages originated below the conforming loan limit in metropolitan areas between 1999 and 2002, it is estimated that FHA insured 33 percent of all home loans originated for African-American and Hispanic borrowers.

(ii) *Conventional and GSE Minority Lending.* The affordable lending shares for the conventional conforming sector are low for minority borrowers, particularly African-American and Hispanic borrowers. These borrowers accounted for only 14.3 percent of all conventional conforming loans originated between 1999 and 2002, compared with 34.7 percent of FHA-insured loans and 18.8 percent of all loans originated in the total (government and conventional conforming) market. Not surprisingly, the minority lending performance of conventional lenders has been subject to much criticism. Recent studies contend that primary lenders in the conventional market are not doing their fair share of minority lending which forces minorities, particularly African-American and Hispanic borrowers, to rely on more costly FHA and subprime loans.[124] Thus, it appears that conventional lenders could be doing a better job helping minority borrowers obtain access to mortgage credit.

• The GSEs' funding of minority loans can be compared with mortgages originated for minority borrowers in the conventional conforming market, although the latter may be a poor benchmark, as discussed above. Between 1999 and 2002, home purchase loans to African-American and Hispanic borrowers accounted for 10.3 percent of Freddie Mac's purchases, 13.0 percent of Fannie Mae's purchases, and 14.3 percent of loans originated in the conventional conforming market (or 13.7 percent if B&C loans are excluded from the market definition). Thus, since 1999, the African-American and Hispanic share of the GSEs' purchases has been lower than the corresponding share for the conventional conforming market.[125]

• As the above comparisons show, Fannie Mae has had a much better record than Freddie Mac in funding loans for minority families. And Fannie Mae significantly increased its purchases of loans for African-American and Hispanic borrowers during 2001, raising the share of its purchases to market levels—13.7 percent for both Fannie Mae and the conforming market (without B&C loans). In 2002, Fannie Mae surpassed the conventional conforming market in funding African-American and Hispanic borrowers—a 15.8 percent share for Fannie Mae and a 15.2 share for the market. When all minority borrowers are considered, Fannie Mae has purchased mortgages for

[121] The affordable market shares reported in Table A.1 for the "Conventional Conforming Market W/O B&C" were derived by excluding the estimated number of B&C loans from the market data reported by HMDA. Because B&C lenders operate mainly in the refinance sector, excluding these loans from the conforming market has litte impact on the home purchase percentages reported in Table A.1. The method for excluding B&C loans is explained in Section E below and Appendix D.

[122] Almost two-thirds of the borrowers with an FHA-insured home purchase loan make a downpayment less than five percent, and over 80 percent are first-time home buyers. For discussions of the role of FHA in the mortgage market, see (a) Harold L. Bunce, Charles A. Capone, Sue G. Neal, William J. Reeder, Randall M. Scheessele, and Edward J. Szymanoski, *An Analysis of FHA's Single-Family Insurance Program*, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 1995; and (b) Office of Policy Development and Research, "FHA's Impact on Homeownership Opportunities for Low-Income and Minority Families During the 1990s' *Issue Brief IV*, U.S. Department of Housing and Urban Development, December 2000. For data on the credit characteristics of FHA borrowers, see Harold L. Bunce, William J. Reeder and Randall Scheessele, "Understanding Consumer Credit and Mortgage Scoring: A Work in Progress at HUD", U.S. Department of Housing and Urban Development, Unpublished Paper, 1999.

[123] FHA, which focuses on low downpayment loans and also accepts borrowers with credit blemishes, experiences higher mortgage defaults than conventional lenders and the GSEs. Still, the FHA system is actuarially sound because it charges an insurance premium that covers the higher default costs. For the results of FHA's actuarial analysis, see Deloitte & Touche, *Actuarial Review of MMI Fund as of FY 2000*, report for the U.S. Department of Housing and Urban Development, January 2001.

[124] See Green and Associates, *Fair Lending in Montgomery County: A Home Mortgage Lending Study*, a report prepared for the Montgomery County Human Relations Commission, March 1998; and Calvin Bradford, *Crisis in Dé jà vu: A Profile of the Racial Patterns in Home Purchase Lending in the Baltimore Market.* Report for The Public Justice Center, May 2000; and *The Patterns of GSE Participation in Minority and Racially Changing Markets Reviewed from the Context of Levels of Distress Associated with High Levels of FHA Lending*, GSE Study No. 11, U.S. Department of Housing and Urban Development, September 2000. For analysis suggesting some minorities receiving FHA loans could qualify for conventional loans, see Anthony Pennington-Cross, Anthony Yezer, and Joseph Nichols, *Credit Risk and Mortgage Lending: Who Uses Subprime and Why?* Working Paper No. 00–03. Research Institute for Housing America, 2000. Also see the series of recent studies concerning the lack of mainstream lenders in minority neighborhoods.

[125] For a comprehensive analysis of the GSEs' purchases of minority loans through 1999, see Harold L. Bunce, *An Analysis of GSE Purchases of Mortgages for African-American Borrowers and their Neighborhoods*, Housing Finance Working Paper No. 11, Office of Policy Development and Research, HUD, December 2000.

minority borrowers at a higher rate (years 2001 and 2002) than these loans were originated by primary lenders in the conventional conforming market (without B&C loans). Freddie Mac, on the other hand, lagged behind both the market and Fannie Mae in funding loans for minority borrowers during 2001 and 2002, as well as during the entire 1999-to-2002 period. The share of Freddie Mac's purchases for African-American and Hispanic borrowers declined from 10.9 percent in both 2000 and 2001 to 10.1 percent in 2002.

• Considering the minority census tract data reported in Table A.2, Fannie Mae lagged behind the conforming market (without B&C loans) in high-minority neighborhoods and in high-African-American neighborhoods during the 1999-to-2002 period. However, Fannie Mae improved its mortgage purchases in African-American neighborhoods during 2001 and 2002 to exceed market levels by 0.1 percentage point (*e.g.*, 4.7 percent of Fannie Mae's purchases and 4.6 percent of market originations were in high African-American tracts in 2002). And during 2001 and 2002, Fannie Mae also purchased loans in high-minority census tracts at a higher rate than loans were originated by conventional lenders in these tracts. While Freddie Mac has generally lagged the primary market in funding minority neighborhoods, note in Table A.2 that high African-American tracts increased from 3.9 percent of Freddie Mac's purchases in 2001 to 5.3 percent in 2002, placing Freddie Mac above the conventional conforming market level (4.6 percent) in 2002.

(iii) *Low-Income Lending by the GSEs.* Information is also provided on the GSEs' purchases of home loans for low-income borrowers (A.1) and for families living in low-income neighborhoods (A.2). Historically, the GSEs have lagged behind the conventional conforming market in funding affordable loans for these groups. During the 1999-to-2002 period, low-income borrowers (census tracts) accounted for 27.2 (9.6) percent of Freddie Mac's purchases, 27.1 (9.8) percent of Fannie Mae's purchases, 29.2 (11.1) percent of loans originated by depositories, and 29.3 (11.1) percent of home loans originated by conventional conforming lenders (without B&C loans). By the end of this period, Fannie Mae had significantly improved its performance relative to the market. In 2002, low-income borrowers (census tracts) accounted for 29.7 (11.0) of Fannie Mae's purchases, compared with 29.6 (11.1) percent for the conforming market. It is also interesting that even though Freddie Mac lagged the market in funding home loans for low-income borrowers during 2002 (28.6 percent versus 29.6 percent), it surpassed the market in financing properties in low-income census tracts (11.3 percent versus 11.1 percent). A more complete analysis of the GSEs' recent improvements in purchasing home loans that qualify for the housing goals is provided below in Section E.

(iv) *Depositories.* Within the conventional conforming market, depository institutions (mainly banks and thrifts) are important providers of affordable lending for lower-income families and their neighborhoods.[126] Between 1999 and 2002, underserved areas accounted for 26.8 percent of loans held in depository portfolios, which compares favorably with the underserved areas percentage (26.5 percent) for the overall conventional conforming market.[127] Depository lenders have extensive knowledge of their communities and direct interactions with their borrowers, which may enable them to introduce flexibility into their underwriting standards without unduly increasing their credit risk. The Community Reinvestment Act provides an incentive for banks and thrifts to initiate affordable lending programs with underwriting flexibility and to reach out to lower income families and their communities.[128] Many of the CRA loans are held in portfolio by lenders, rather than sold to Fannie Mae or Freddie Mac.[129]

(v) *First-time Homebuyers.* As explained in Section E, market information on first-time homebuyers is not as readily available as the HMDA data reported in Tables A.1 and A.2 on the income and racial characteristics of borrowers and census tracts served by the mortgage market. However, the limited market data that are available from the American Housing Survey, combined with the first-time homebuyer data reported by FHA and the GSEs, indicate a rather large variation in the funding of first-time homebuyers across the different sectors of the mortgage market. Based on the American Housing Survey (AHS), it is estimated that first-time homebuyers accounted for 42.3 percent of all home purchase loans originated throughout the market between 1999 and 2001,[130] and for 37.6 percent of home loans originated in the conventional conforming market. The AHS defines a first-time homebuyer as someone who has never owned a home. Using a more liberal definition of a first-time homebuyer (someone who has not owned a home in the past three years), FHA reports that first-time homebuyers accounted for 80.5 percent of all home loans that it insured between 1999 and 2001 and the GSEs report that first-time homebuyers accounted for 26.5 percent of the home loans purchased by each GSE during that same period. Given FHA's low downpayment requirements, it is not surprising that FHA focuses on first-time homebuyers. The GSEs, on the other hand, fall at the other end of the continuum, with their first-time homebuyer share (26.5 percent) falling far short of the first-time homebuyer share (37.6 percent) of the conventional conforming market. Section E will include a more detailed comparison of the GSEs and the conventional conforming market in serving first-time homebuyers. In addition, Section E will conduct a market share analysis that examines the funding of minority first-time homebuyers. Consistent with the earlier discussion, that analysis suggests that conventional lenders and the GSEs have played a relatively small role in the market for minority first-time homebuyers. One analysis reported in Section E estimates that mortgage purchases by the GSEs between 1999 and 2001 totaled 41.5 percent of all home loans originated, but they accounted for only 14.3 percent of home loans originated for first-time African-American and Hispanic homebuyers.

c. Community Reinvestment Act

The Community Reinvestment Act (CRA) requires depository institutions to help meet the credit needs of their communities.[131] CRA loans are typically made to low-income borrowers earning less than 80 percent of area median income, and in moderate-income neighborhoods. CRA provides an incentive for lenders to initiate affordable lending programs with underwriting flexibility. CRA loans are usually smaller than typical conventional mortgages and also are more likely to have a higher LTV, higher debt-to-income ratios and no payment reserves, and may not be carrying private mortgage insurance (PMI). Generally, at the time CRA loans are originated, many do not meet the underwriting guidelines required in order for them to be purchased by one of the GSEs. Therefore, many of the CRA loans are held in portfolio by lenders, rather than sold to Fannie Mae or Freddie Mac. Evidence is growing that CRA-type lending to low-income families can be profitable, particularly when combined with intensive loss mitigation efforts to control credit risk. In a recent survey conducted by the Federal Reserve, lenders reported that most CRA

[126] Tables A.1, A.2, and A.3 include data for all home loans originated by depositories as well as for the subset of loans originated but not sold, the latter being a proxy for loans held in depository portfolios. (See the notes to Table A.1 for definitions of the depository data.)

[127] However, as shown in Table A.1 , depository institutions resemble other conventional lenders in their relatively low level of originating loans for African-American, Hispanic and minority borrowers. Within the conventional conforming market, Fannie Mae has done a better job than depositories in funding minority borrowers, particularly Hispanic borrowers and minority borrowers as a group. During the last two years, Fannie Mae has also funded African-American borrowers at a higher rate than have depository institutions.

[128] CRA loans are typically made to low-income borrowers earning less than 80 percent of area median income, and in moderate-income neighborhoods. For a comprehensive analysis of CRA and its impact on affordable lending, see Robert E. Litan, Nicolas P. Retsinas, Eric S. Belsky and Susan White Haag, *The Community Reinvestment Act After Financial Modernization: A Baseline Report*, U.S. Department of Treasury, 2000.

[129] Evidence is growing that CRA-type lending to low-income families can be profitable, particularly when combined with intensive loss mitigation efforts to control credit risk. In a survey conducted by the Federal Reserve, lenders reported that most CRA loans are profitable although not as profitable as the lenders' standard products. See Board of Governors of the Federal Reserve System. *The Performance and Profitability of CRA-Related Lending*. Washington, DC, 2000.

[130] In this case, the market includes all government and conventional loans, including jumbo loans.

[131] For a comprehensive analysis of CRA and its impact on affordable lending, see Robert E. Litan, Nicolas P. Retsinas, Eric S. Belsky and Susan White Haag, *The Community Reinvestment Act After Financial Modernization: A Baseline Report*, U.S. Department of Treasury, 2000.

loans are profitable although not as profitable as the lenders' standard products.[132]

Some anticipate that the big growth market over the next decade for CRA-type lending will be urban areas. There has been some movement of population back to cities, consisting of aging Baby Boomers (so-called "empty nesters"), the children of Baby Boomers (the Echo Boomers aged 18–25), and immigrants, particularly Hispanics but also Asians.[133] The current low homeownership in inner cities (compared with the suburbs) also suggests that urban areas may be a potential growth market for lenders. Lenders are beginning to recognize that urban borrowers are different from suburban borrowers. A new or recent immigrant may have no credit history or, more likely, a loan-worthy credit history that can't be substantiated by the usual methods.[134] Products for duplexes and four-plexes are not the same as a mortgage for a subdivision house in the suburbs. Programs are being implemented to meet the unique needs of urban borrowers. One program emphasizing urban areas was initiated by the American Community Bankers (ACB). Under the ACB program, which made $16.2 billion in loans in 2002, lenders originated a variety of affordable products for first-time homebuyers and non-traditional borrowers that are then sold to Fannie Mae, Freddie Mac, Countrywide, or other investors that are partnering with the ACB. It is reported that some lenders are making these non-traditional loans for the first time.

For banks and thrifts, selling their CRA loans will free up capital to make new CRA loans. As a result, the CRA market segment provides an opportunity for Fannie Mae and Freddie Mac to expand their affordable lending programs. Section E.3c below presents data showing that purchasing targeted seasoned loans has been one strategy that Fannie Mae has chosen to improve its goals performance. Fannie Mae has been offering CRA programs since mid-1997, when it launched a pilot program, "Community Reinvestment Act Portfolio Initiative," for purchasing seasoned CRA loans in bulk transactions, taking into account track record as opposed to relying just on underwriting guidelines. Fannie Mae also started another pilot program in 1998, involving purchases of CRA loans on a flow basis, as they are originated. By 2001, Fannie Mae was investing $10.3 billion in initiatives targeted to aid financial institutions in meeting their CRA obligations. One CRA-eligible product in 2002 included the MyCommunityMortgage suite, which provides flexible product options for low- to moderate-income borrowers purchasing one- to four-unit homes.[135] In 2002, Fannie Mae purchased or securitized more than $882.5 million of MyCommunityMortgage products, which helped provide affordable housing solutions for 7,866 households.[136] In addition, Freddie Mac is also purchasing seasoned affordable mortgage portfolios originated by depositories to help meet their CRA objectives. In 2002, Freddie Mac developed credit enhancements that enable depositories to profitably sell their loans to Freddie Mac—these transactions facilitate targeted affordable lending activity by providing immediate liquidity. Freddie Mac also increased its ability to purchase smaller portfolios opening this option to many community banks that otherwise would not have an outlet for their portfolios.[137] The billions of dollars worth of CRA loans that will be originated, as well as the CRA loans being held in bank and thrift portfolios, offer both GSEs an opportunity to improve their performance in the single-family area.

6. Potential Homebuyers

While the growth in affordable lending and homeownership has been strong in recent years, attaining this Nation's homeownership goals will not be possible without tapping into the vast pool of potential homebuyers. Due to record low interest rates, expanded homeownership outreach, and new flexible mortgage products, the homeownership rate reached an annual record of 67.9 percent in 2002, reaching 68.3 percent in the fourth quarter of 2002. This section discusses the potential for further increases beyond those resulting from current demographic trends.

The potential homeowner population over the next decade will be highly diverse, as growing housing demand from immigrants (both those who are already here and those projected to come) and non-traditional homebuyers will help to offset declines in the demand for housing caused by the aging of the population. As noted in the above discussion of CRA, many of these potential homeowners will be located in urban areas. Immigrants and other minorities—who accounted for nearly 40 percent of the growth in the nation's homeownership rate over the past five years—will be responsible for almost two-thirds of the growth in the number of new households over the next ten years (between 2000 and 2010), as well as over the next 25 years (between 2000 and 2025).[138] By 2025, non-family households will make up a third of all households. Non-Hispanic white and traditional households will contribute only one-third and one-tenth of the growth in new households, respectively. Fannie Mae staff report that between 1980 and 1995, the number of new immigrant owners increased by 1.4 million; and between 1995 and 2010, that figure is expected to rise to by more than 50 percent to 2.2 million. These trends do not depend on the future inflow of new immigrants, as immigrants don't enter the housing market until they have been in this country for eleven years. As noted by Fannie Mae staff, "there are enough immigrants already in this country to keep housing strong for at least six and perhaps even 10 more years." [139] As these demographic factors play out, the overall effect on housing demand will likely be sustained growth and an increasingly diverse household population from which to draw new homeowners.

Surveys indicate that these demographic trends will be reinforced by the fact that most Americans desire, and plan, to become homeowners. According to the 2002 Fannie Mae Foundation annual National Housing Survey, Americans rate homeownership as the best investment they can make, far ahead of 401Ks, retirement accounts, and stocks. The percentage of Americans who said it was a good time to buy a home was at its highest level since 1994 at 75 percent, a jump of 21 percentage points since May 2001.[140] In addition, the survey found that 27 percent of Americans report they are likely to buy in the next three years, and 23 percent of those have started to save or have saved enough money for a down payment.[141]

Further increases in the homeownership rate depend on whether or not recent gains in the home owning share(s) of specific groups are maintained. Minorities accounted for 17 percent of owner households in 2001, but the Joint Center for Housing Studies reports that minorities were responsible for more than 40 percent (a total of 5.2 million) of the net growth in homeowners between 1993 and 2002.[142] As reported by the Fannie Mae survey, 42 percent of African-American families reported that they were "very or fairly likely" to buy a home in the next three years, up from 38 percent in 1998 and 25 percent in 1997. Among Hispanics and Hispanic immigrants, the numbers reached 37 percent and 34 percent respectively. The 2002 survey also reports that more than half of Hispanic renters cite homeownership as being "one of their top priorities." In addition, nearly a third (31 percent) of baby boomers said they are "very or fairly likely" to buy a home in the next three years.

In spite of these trends, potential minority homebuyers see more obstacles to buying a home, compared with the general public. Typically, the primary barriers to ownership are credit issues and a lack of funds for a downpayment and closing costs. But Freddie Mac staff emphasize that "immigrants and minorities face additional hurdles, including a lack of affordable housing, little understanding of the home buying process, and continuing financial obligations in their home countries." [143] In the Fannie Mae survey, minority groups reported misconceptions about the difficulty of becoming a homeowner such as beliefs about the amount of down payment required and mortgage lending practices, a lack of confidence about the homebuying process, poor credit ratings, and language barriers. In addition, there are continuing concerns about the limited education and low-income levels

[132] Board of Governors of the Federal Reserve System. *The Performance and Profitability of CRA-Related Lending*. Washington, DC, 2000.

[133] This discussion of urban lending draws from Jeff Siegel, "Urban Lending Helps Increase Volume and Meet CRA Requirements," *Secondary Marketing Executive*, February 2003, pp. 21–23.

[134] *Ibid.*

[135] Fannie Mae, (2002), p. 5.

[136] Fannie Mae, *2002 Annual Housing Activities Report*, p. 9.

[137] Fannie Mae, *2002 Annual Housing Activities Report*, p. 59.

[138] This section draws from "Immigration Changes Won't Hurt Housing," *Nation Mortgage News*, January 27, 2003, p. 8.

[139] *Ibid.*

[140] Fannie Mae, *Fannie Mae National Housing Survey*, 2002, p. 6.

[141] *Ibid.* p. 8.

[142] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 2003*, p. 15.

[143] "Immigration Changes. * * *" *Op. cit.*

of recent immigrants and other minorities. Thus, the new group of potential homeowners will have unique needs. To tap this potential homeowner population, the mortgage industry will have to address these needs on several fronts, such as expanding education and outreach efforts, introducing new products, and adjusting current underwriting standards to better reflect the special circumstances of these new households.

The Bush administration has outlined a plan to expand minority homeownership by 5.5 million families by the end of the decade. The Joint Center for Housing Studies has stated that if favorable economic and housing market trends continue, and if additional efforts to target mortgage lending to low-income and minority households are made, the overall homeownership rate could reach 70 percent by 2010.[144]

7. Automated Underwriting Systems and Mortgage Scorecards

This, and the following two sections, discuss special topics that have impacted the primary and secondary mortgage markets in recent years. They are automated mortgage scoring, subprime loans, and risk-based pricing. The GSEs' use of automated underwriting and mortgage scoring systems was briefly discussed in the earlier section on underwriting standards. This section expands on issues related to automated underwriting, a process that has spread throughout the mortgage landscape over the past five years, due mainly to the efforts of Fannie Mae and Freddie Mac.

According to Freddie Mac economists, automated mortgage scoring has enabled lenders to expand homeownership opportunities, particularly for underserved populations.[145] There is growing evidence that automated mortgage scoring is more accurate than manual underwriting in predicting borrower risks. Mortgage scorecards express the probability that an applicant will default as a function of several underwriting variables such as the level of down payment, monthly-payment-to-income ratios, cash reserves, and various indicators of an applicant's creditworthiness or credit history. Mortgage scorecards are statistically estimated regression-type equations, based on historical relationships between mortgage foreclosures (or defaults) and the underwriting variables. The level of down payment and credit history indicators, such as a FICO score, are typically the most important predictors of default in mortgage scoring systems.

This increased accuracy in risk assessment of mortgage scorecards has allowed risk managers to set more lenient risk standards, and thus originate more loans to marginal applicants. Applicants who would otherwise be rejected by manual underwriting are being qualified for mortgages with automated mortgage scoring in part because the scorecard allows an applicant's weaker areas to be offset by stronger characteristics. Typically, applicants whose projected monthly debt payment (mortgage payment plus credit card payment plus automobile loan payment and so on) comprise a high percentage of their monthly income would be turned down by a traditional underwriting system that relied on fixed debt-to-income ratios (such as 36 percent). In a mortgage scoring system, these same applicants might be automatically accepted for a loan due to their stellar credit record or to their ability to raise more cash for a down payment. The entity funding or insuring the mortgage (*i.e.*, a lender, private mortgage insurer, or a GSE) allows these positive characteristics to offset the negative characteristics because its confidence in the ability of the empirically-based mortgage scorecard to accurately identify those applicants who are more likely or less likely to eventually default on their loan.

Automated mortgage scoring was developed as a high-tech tool with the purpose of identifying credit risks in a more efficient manner. Automated mortgage scoring has grown as competition and decreased profit margins have created demands to reduce loan origination costs. As a result, automated mortgage scoring has become the predominant (around 60 to 70 percent) mortgage underwriting method.[146] As time and cost are reduced by the automated system, the hope was that more time would be devoted by underwriters to qualifying marginal loan applicants that are referred by the automated system for a more intensive, manual underwriting review. Fannie Mae and Freddie Mac are in the forefront of new developments in automated mortgage scoring technology. Both enterprises released automated underwriting systems in 1995—Freddie Mac's Loan Prospector and Fannie Mae's Desktop Underwriter. Each system uses numerical credit scores, such as those developed by Fair, Isaac, and Company, and additional data submitted by the borrower, such as loan-to-value ratios and available assets, to calculate a mortgage score that evaluates the likelihood of a borrower defaulting on the loan. The mortgage score is in essence a recommendation to the lender to accept the application, or to refer it for further review through manual underwriting. Accepted loans benefit from reduced document requirements and expedited processing.

As explained above, automated mortgage scoring allows tradeoffs between risk factors to be quantified more precisely, providing the industry more confidence in "pushing the envelope" of acceptable expected default rates. The GSEs' willingness to offer low-down-payment programs was based on their belief that their scoring models could identify the more creditworthy of the cash-constrained applicants. The GSEs' new "timely reward" products for subprime borrowers (discussed later) are integrated with their mortgage scoring systems. Automated mortgage scoring presents the opportunity to remove discrimination from mortgage underwriting, to accept all applicants, and to bring fair, objective, statistically based competitive pricing, greatly reducing costs for all risk groups. Some institutions have sought to better model and automate marginal and higher-risk loans, which have tended to be more costly to underwrite and more difficult to automate.[147]

Along with the promise of benefits, however, automated mortgage scoring has raised concerns. These concerns are related to the possibility of disparate impact and the proprietary nature of the mortgage score inputs. The first concern is that low-income and minority homebuyers will not score well enough to be accepted by the automated underwriting system, resulting in their getting fewer loans. African-American and Hispanic borrowers, for example, tend to have a poorer credit history record than other borrowers, which means they are more likely to be referred (rather than automatically accepted) by automated mortgage scoring systems that rely heavily on credit history measures such as a FICO score. There is also a significant statistical relationship between credit history scores and the minority composition of an area, after controlling for other locational characteristics.[148]

The second concern relates to the "black box" nature of the scoring algorithm. The scoring algorithm is proprietary and therefore it is difficult for applicants to know the reasons for their scores. However, it should be noted that the GSEs have taken steps to make their automated underwriting systems more transparent. Both Fannie Mae and Freddie Mac have published the factors used to make loan purchase decisions in Desktop Underwriter and Loan Prospector, respectively. In response to criticisms aimed at using FICO scores in mortgage underwriting, Fannie Mae's new version of Desktop Underwriter (DU) 5.0 replaces credit scores with specific credit characteristics and provides expanded approval product offerings for borrowers who have blemished credit. The specific credit characteristics include variables such as past delinquencies; credit records, foreclosures, and accounts in collection; credit card line and use; age of accounts; and number of credit inquiries.[149]

With automated mortgage scoring replacing traditional manual underwriting comes the fear that the loss of individual attention poses a problem for people who have inaccuracies on their credit report or for members of cultural groups or recent immigrants who do not use traditional credit and do not have a credit score. Some subprime lenders and underwriters have claimed that their manual underwriting of

[144] Joint Center for Housing Studies of Harvard University, *State of the Nation's Housing 1998*, p. 20.

[145] Peter M. Zorn, Susan Gates, and Vanessa Perry, "Automated Underwriting and Lending Outcomes: The Effect of Improved Mortgage Risk Assessment on Under-Served Populations. Program on Housing and Urban Policy," *Conference Paper Series*, Fisher Center for Real Estate and Urban Economics. University of California Berkeley, 2001, p. 5.

[146] John W. Straka, "A Shift in the Mortgage Landscape: The 1990s Move to Automated Credit Evaluations," *Journal of Housing Research*, 2000, (11)2: p. 207.

[147] *Ibid.* pp. 208–217.

[148] Robert B. Avery, Raphael W. Bostic, Paul S. Calem, and Glenn B. Canner, *Credit Scoring: Issues and Evidence from Credit Bureau Files*, mimeo, 1998, p. 24.

[149] Fannie Mae, September 4, 2002, p. 33.

high-risk borrowers cannot be automated with mortgage scoring. Although automated mortgage scoring has greatly reduced the cost of many lower-risk loans that are easier to rate, the cost of manually underwriting gray-area and higher-risk applicants still remains high.[150] There is also the fear that applicants who are referred by the automated system will not be given the full manual underwriting for the product that they initially applied for—rather they might be pushed off to higher priced products such as a subprime or FHA loan. In this case, the applicant may have had special circumstances that would have been clarified by the traditional manual underwriting, thus enabling the applicant to receive a prime loan consistent with his or her creditworthiness.

Banking regulators and legal analysts acknowledge the value of automated mortgage scoring, although some skeptics have noted concerns regarding fair lending, potential fraud, privacy issues, and the ability of models to withstand changing economic conditions.[151] With the rise of automated mortgage scoring, the great difference in Internet usage known as the "digital divide" could result in informational disadvantages for less educated and lower-income consumers. In addition to the digital divide, the lack of financial literacy in the United States may also result in a disparate impact on low-income and minority borrowers.[152]

2002 Urban Institute Study. The Urban Institute submitted a report to HUD in 2002 on subprime markets, the role of GSEs, and risk-based pricing.[153] The study took a preliminary look at the use of automated underwriting systems for a small sample of lenders. After conducting interviews with both subprime and prime lenders, the report noted that all of the lenders in the study had implemented some type of automated underwriting system. These lenders stated that automated underwriting raised their business volume and streamlined their approval process. In addition, the lenders reported they were able to direct more underwriting resources to borderline applications despite an increase in business volume.

Even with the use of automated mortgage scoring, the lenders in the study continued to conduct at least a cursory review to validate the application material. The majority of the lenders still used manual underwriting to originate loans not recommended for approval with automated mortgage scoring. The lenders reported they formulated their policies and procedures to make certain that borrowers receive the best mortgage, according to product eligibility. This study will be further referenced in a following section regarding subprime markets.

2001 Freddie Mac Study. According to a Freddie Mac study published by the Fisher Center for Real Estate and Urban Economics at University of California at Berkeley, underserved populations have benefited from automated mortgage scoring because of the increased ability to distinguish between a range of credit risks. In this paper, Freddie Mac economists compared the manual and automated mortgage scoring approval rates of a sample of minority loans originated in 1993–94 and purchased by Freddie Mac. While manual underwriters rated 51 percent of the minority loans in the sample as accept, automated mortgage scoring would have rated 79 percent of the loans as accept.[154]

In comparison to manual underwriting, this study found automated mortgage scoring not only less discriminatory but also more accurate in predicting risk. Two versions of Freddie Mac's automated underwriting system, Loan Prospector (LP), were used to review three groups of mortgage loans purchased by Freddie Mac.[155] The study found that LP was a highly accurate predictor of mortgage default. The resulting improved accuracy translates into benefits for borrowers, who would otherwise be rejected by manual underwriting to qualify for mortgages.

Analysis of the first group of loans showed that loans rated as "caution" were four times more likely to default than the average for all loans. Minority borrowers whose loans were rated as "caution" were five times more likely to default, and low-income borrowers whose loans were rated as "caution" were four times more likely to default than the average for all loans. The 2000 version of LP approved 87.1 percent of loans generated through affordable housing programs, compared to a 51.6 percent approval rate when the same loans were assessed using manual underwriting procedures. Further, the study found LP more accurate than manual underwriting at predicting default risk even with a higher approval rate. The study also demonstrated that Freddie Mac's year 2000 version of LP was more accurate in predicting risk than its 1995 version.

Concluding Observations. Automated underwriting has enabled lenders to reach new markets and expand homeownership opportunities, as illustrated by the 2001 Freddie Mac study. Increased accuracy with automated mortgage scoring has led to the development of new mortgage products that would have been previously considered too risky. For example, Freddie Mac uses Loan Prospector to approve Alt A loans, which tend to have nontraditional documentation; A-minus loans, which pose a higher risk of default; and other higher-risk mortgages, like 100 percent LTV loans. Both GSEs have and continue to add new products to develop their automated underwriting systems to reach more marginal borrowers.

Despite the gains in automated mortgage scoring and other innovations, minorities are still less likely to be approved for a loan. The difference in minority and non-minority accept rates may reflect greater social inequities in financial capacity and credit, which are integral variables in both manual and automated underwriting. In the future, the accuracy of automated mortgage scoring will hinge on updating the models and making them more predictive while reducing the disparate impact on low-income and minority borrowers.[156] The fairness of automated scoring systems will also depend importantly on whether referred applicants receive a traditional manual underwriting for the loan that they initially applied for, rather than being immediately offered a higher priced loan that does not recognize their true creditworthiness.

In addition to using automated underwriting systems as a tool to help determine whether a mortgage application should be approved, the GSEs' automated underwriting systems are being further adapted to facilitate risk-based pricing. With risk-based pricing, mortgage lenders can offer each borrower an individual rate based on his or her risk. The division between the subprime and the prime mortgage market will begin to fade with the rise of risk-based pricing, which is discussed in the next section on the subprime market.

8. Subprime Lending

The subprime mortgage market provides mortgage financing to credit-impaired borrowers—those who may have blemishes in their credit record, insufficient credit history, or non-traditional credit sources. This section examines several topics related to subprime lending including (a) the growth and characteristics of subprime loans, (b) the neighborhood concentration of subprime lending, (c) predatory lending, and (d) purchases of subprime mortgages by the GSEs. Section C.9 follows with a discussion of risk-based pricing.

a. The Growth and Characteristics of Subprime Loans

The subprime market has grown rapidly over the past several years, increasing from an estimated $35 billion in 1994 to $160 billion in 1999 and $173.3 billion in 2001, before rising to $213 billion in 2002. The subprime share of total market originations rose from 4.6 percent in 1994 to a high of 15 percent in 1999, and then fell to 8.5 percent in both 2001 and 2002.[157] Various factors have led to the rapid growth in the subprime market: federal legislation preempting state restrictions on allowable rates and loan features, the tax reform act of 1986 which encouraged tax-exempt home equity financing of consumer debt, increased demand for and availability of consumer debt, a substantial increase in homeowner equity due to house price appreciation, and a ready supply of available funds through

[150] Kenneth Temkin, Jennifer E.H. Johnson, and Diane Levy, *Subprime Markets, The Role of GSEs, and Risk-Based Pricing*, Washington: The Urban Institute. Report Prepared for the U.S. Department of Housing and Urban Development, 2002.

[151] Allen J. Fishbein, "Is Credit Scoring a Winner for Everyone?" *Stone Soup*, 2000, 14(3): pp. 14–15. See also Fitch IBCA, Inc., *Residential Mortgage Credit Scoring*, New York, 1995 and Jim Kunkel, "The Risk of Mortgage Automation," in *Mortgage Banking*, 1995, 57(8): pp. 69–76.

[152] Zorn *et al.*, 2001, pp. 19–20.

[153] Kenneth Temkin, Jennifer E.H. Johnson, and Diane Levy, *Subprime Markets, The Role of GSEs, and Risk-Based Pricing*, Washington: The Urban Institute. Report Prepared for the U.S. Department of Housing and Urban Development, 2002.

[154] Zorn, *et al.*, 2001, pp. 14–15.

[155] *Ibid.* p. 5.

[156] *Ibid.* pp. 18–19.

[157] Subprime origination data are from Inside Mortgage Finance. For the 2002 estimates, see "Subprime Origination Market Shows Strong Growth in 2002," *Inside B&C Lending*, published by Inside Mortgage Finance, February 3, 2003, page 1.

Wall Street securitization.[158] It is important to note that subprime lending grew in the 1990s mostly without the assistance of Fannie Mae and Freddie Mac.

Generally, there are three different types of products available for subprime borrowers. These include: home purchase and refinance mortgages designed for borrowers with poor credit histories; "Alt A" mortgages that are usually originated for borrowers who are unable to document all of the underwriting information but who may have solid credit records; and high loan-to-value mortgages originated to borrowers with fairly good credit. Fannie Mae and Freddie Mac are more likely to serve the first two types of subprime borrowers.[159]

Borrowers use subprime loans for various purposes, which include debt consolidation, home improvements, and an alternative source of consumer credit. Between 1999 and 2001, about two-thirds of subprime loans were refinance loans. It has been estimated that 59 percent of refinance loans were "cash out" loans.[160] According to a joint HUD-Treasury report, first liens accounted for more than three out of four loans in the subprime market.

The subprime market is divided into different risk categories, ranging from least risky to most risky: A-minus, B, C, and D. While there are no clear industry standards for defining the subprime risk categories, Inside Mortgage Finance defines them in terms of FICO scores—580–620 for A-minus, 560–580 for B, 540–560 for C, and less than 540 for D. The A-minus share of the subprime market rose from 61.6 percent in 2000 to 70.7 percent in 2001.[161] For the first nine months of 2002, the A-minus share accounted for 74 percent of the market, while the B share accounted for 11 percent, the C share accounted for 7.2 percent, and the D share accounted for 7.9 percent of the market.[162]

Delinquency rates by type of subprime loan are as follows: 3.36 percent for A-minus loans, 6.67 percent for B, 9.22 percent for C, and 21.03 percent for D, according to the Mortgage Information Corporation.[163] Because of their higher risk of default, subprime loans typically carry much higher mortgage rates than prime mortgages. Recent quotes for a 30-year Fixed Rate Mortgage were 8.85 percent for A-minus (with an 85 percent LTV), 9.10 percent for B credit (with an 80 percent LTV), and 10.35 percent for C credit (with a 75 percent LTV).[164] As the low loan-to-value (LTV) ratios indicate, one loss mitigation technique used by subprime lenders is a high down payment requirement. Some housing advocates have expressed concern that the perceptions about the risk of subprime loans may not always be accurate, for example, creditworthy borrowers in inner city neighborhoods may be forced to use subprime lenders because mainstream lenders are not doing business in their neighborhoods (see below).

Subprime borrowers are much more likely to be low income and be a minority than other borrowers. Between 1999 and 2001, 43.1 percent of subprime loans in the conventional conforming market went to low-income borrowers, compared with 29.5 percent of conventional conforming loans. During that same period, 19.9 percent of subprime loans were for African-American borrowers, compared with 6.5 percent of all conventional conforming loans. However, what distinguishes subprime loans from other loans is their concentration in African-American neighborhoods.

b. The Neighborhood Concentration of Subprime Lending

The growth in subprime lending over the last several years has benefited credit-impaired borrowers as well as those borrowers who choose to provide little documentation for underwriting. However, studies showing that subprime lending is disproportionately concentrated in low-income and minority neighborhoods have raised concerns about whether mainstream lenders are adequately serving these neighborhoods. A study of subprime lending in Chicago by The Woodstock Institute concluded that a dual, hyper-segmented mortgage market existed in Chicago, as mainstream lenders active in white and upper-income neighborhoods were much less active in low-income and minority neighborhoods—effectively leaving these neighborhoods to unregulated subprime lenders.[165] As part of the HUD-Treasury Task Force on Predatory Lending, HUD's Office of Policy Development and Research released a national level study—titled *Unequal Burden: Income and Racial Disparities in Subprime Lending in America*—that showed families living in low-income and African-American neighborhoods in 1998 relied disproportionately on subprime refinance lending, even after controlling for neighborhood income. An update of that analysis for the year 2000 yields the following trends:[166]

• In 2000, 36 percent of refinance mortgages in low-income neighborhoods were subprime, compared with only 16 percent in upper-income neighborhoods.

• Subprime lending accounted for 50 percent of refinance loans in majority African-American neighborhoods—compared with only 21 percent in predominantly white areas (less than 30 percent of population is African-American).

• The most dramatic view of the disparity in subprime lending comes from comparing homeowners in upper-income African-American and white neighborhoods. Among homeowners living in the upper-income white neighborhoods, only 16 percent turned to subprime lenders in 2000. But 42 percent of homeowners living in upper-income African-American neighborhoods relied upon subprime refinancing which is substantially more than the rate (30 percent) for homeowners living in low-income white neighborhoods.

• Similar results are obtained when the analysis is conducted for borrowers instead of neighborhoods. Upper-income African-American borrowers are twice as likely as low-income white borrowers to have subprime loans. Over one-half (54 percent) of low-income African-American borrowers turn to subprime lenders, as does over one-third (35 percent) of upper-income African-American borrowers. By comparison, only 24 percent of low-income white borrowers and 12 percent of upper-income white borrowers, rely upon subprime lenders for their refinance loans.[167]

It does not seem likely that these high market shares by subprime lenders in low-income and African-American neighborhoods can be justified by a heavier concentration of households with poor credit in these neighborhoods. Rather it appears that subprime lenders may have attained such high market shares by serving areas where prime lenders do not have a significant presence. The above finding that upper-income black borrowers rely more heavily on the subprime market than low-income white borrowers suggests that a portion of subprime lending is occurring with borrowers whose credit would qualify them for lower cost conventional prime loans. A lack of competition from prime lenders in low-income and minority neighborhoods has increased the chances that borrowers in these communities are paying a high cost for credit. As explained

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[158] Temkin et. al, 2002, p.1.

[159] Kenneth Temkin, Jennifer E.H. Johnson, Diane Levy, *Subprime Markets, The Role of GSEs, and Risk Based Pricing*, Washington: The Urban Institute. Report Prepared for the Department of Housing and Urban Development, 2002, p. 4.

[160] U.S. Department of Housing and Urban Development/U.S. Department of the Treasury, *Curbing Predatory Lending Report*, 2000, p. 31.

[161] "Wholesale Dominates Subprime Market Through 3rd Quarter '02," *Inside B&C Lending*, published by Inside Mortgage Finance, December 16, 2002, pp. 1–2.

[162] *Inside B&C Lending*, November 16, 2002, p. 2.

[163] Mortgage Information Corporation, *The Market Pulse*, Winter 2001, pp. 4–6.

[164] *Inside B&C Lending*, published by Inside Mortgage Finance, February 17, 2003, page 13.

[165] Daniel Immergluck, *The Predatory Lending Crisis in Chicago: The Dual Mortgage Market and Local Policy*, testimony before the Chicago City Council, April 5, 2000. Immergluck found that subprime lenders received 74 percent of refinance applications in predominantly black tracts compared to 21 percent in predominantly white tracts in 1998. According to Immergluck, these racial disparities provide evidence that the residential finance market in Chicago is hypersegmented, resulting in the increased likelihood that minorities receive mortgage credit from a subprime, rather than a prime, lender in Chicago. Also see Daniel Immergluck, *Stark Differences: The Explosion of the Subprime Industry and Racial Hypersegmentation in Home Equity Lending*, Woodstock Institute, October 2000.

[166] See Randall M. Scheessele, *Black and White Disparities in Subprime Mortgage Refinance Lending*, Housing Finance Working Paper HF–014, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, April 2002.

[167] For an update to 2001, see The Association of Community Organizers for Reform Now (ACORN), *Separate and Unequal Predatory Lending in America*, 2002. In 2001, subprime lenders originated 27.8 percent of all conventional refinance loans for African-Americans, 13.6 percent for Hispanic homeowners, and just 6.3 percent for white homeowners. Overall, African-Americans were 4.4 times more likely to use a subprime lender than whites, and Hispanics were 2.2 times more likely to do so.

next, there is also evidence that the higher interest rates charged by subprime lenders cannot be fully explained solely as a function of the additional risks they bear. Thus, a greater presence by mainstream lenders could possibly reduce the high up-front fees and interest rates being paid by residents of low-income and minority neighborhoods.

The Freddie Mac study presented evidence that subprime loans bear interest rates that are higher than necessary to offset the higher credit risks of these loans.[168] The study compared (a) the interest rate on subprime loans rated A-minus by the lenders originating these loans with (b) the interest rates on prime loans purchased by Freddie Mac and rated A-minus by a Freddie Mac underwriting model. Despite the fact that both loan groups were rated A-minus, on average the subprime loans bore interest rates that were 215 basis points higher. Even assuming that the credit risk of the subprime loans was in fact higher than the prime loans, the study could not account for such a large discrepancy in interest rates. Assuming that default rates might be three to four times higher for the subprime loans would account for a 90 basis point interest rate differential. Assuming that servicing the subprime loans would be more costly would justify an additional 25 basis point differential. But even after allowing for these possible differences, the Freddie Mac researchers concluded that the subprime loans had an unexplained interest rate premium of 100 basis points on average.[169]

Banking regulators have recognized the link between the growth in subprime lending and the absence of mainstream lenders and have urged banks and thrifts that lending in these neighborhoods not only demonstrates responsible corporate citizenship but also profitable lending. Ellen Seidman, former Director of the Office of Thrift Supervision, stated that, "Many of those served by the subprime market are creditworthy borrowers who are simply stuck with subprime loans or subprime lenders because they live in neighborhoods that have too few credit or banking opportunities."

With respect to the question of whether borrowers in the subprime market are sufficiently creditworthy to qualify for more traditional loans, Freddie Mac has said that one of the promises of automated underwriting is that it might be better able to identify borrowers who are unnecessarily assigned to the high-cost subprime market. Freddie Mac has estimated that 10–30 percent of borrowers who obtain mortgages in the subprime market could qualify for a conventional prime loan through Loan Prospector, Freddie Mac's automated underwriting system.[170] Fannie Mae has stated that half of all mortgage borrowers steered to the high-cost subprime market are in the A-minus category, and therefore are prime candidates for Fannie Mae.[171]

c. Predatory Lending

Predatory lending has been a disturbing part of the growth in the subprime market. Although questions remain about its magnitude, predatory lending has turned homeownership into a nightmare for far too many households. The growing incidence of abusive practices has been stripping borrowers of their home equity, threatening families with foreclosure, and destabilizing neighborhoods. Also, in some cities, there are indications that unscrupulous realtors, mortgage brokers, appraisers, and lenders are duping some FHA borrowers into purchasing homes at an inflated price or with significant undisclosed repairs. The problems associated with home equity fraud and other mortgage abuses are not new ones, but the extent of this activity seems to be increasing. The expansion of predatory lending practices along with subprime lending is especially troubling since subprime lending is disproportionately concentrated in low- and very-low income neighborhoods, and in African-American neighborhoods.

The term "predatory lending" is a short hand term that is used to encompass a wide range of abuses. While there is broad public agreement that predatory lending should have no place in the mortgage market, there are differing views about the magnitude of the problem, or even how to define practices that make a loan predatory. The joint HUD-Treasury report, *Curbing Predatory Home Mortgage Lending*, concluded that a loan can be predatory when lenders or brokers: charge borrowers excessive, often hidden fees (called "packing fees"); successively refinance loans at no benefit to the borrower (called "loan flipping"); make loans without regard to a borrower's ability to repay; and, engage in high-pressure sales tactics or outright fraud and deception. These practices are often combined with loan terms that, alone or in combination, are abusive or make the borrower more vulnerable to abusive practices. Vulnerable populations, including the elderly and low-income individuals, and low-income or minority neighborhoods, appeared to be especially targeted by unscrupulous lenders.

One consequence of predatory lending is that borrowers are stripped of the equity in their homes, which places them at an increased risk of foreclosure. In fact, high foreclosure rates for subprime loans provide the most concrete evidence that many subprime borrowers are entering into mortgage loans that they simply cannot afford. The high rate of foreclosures in the subprime market has been documented by HUD and others in recent research studies.[172] These studies have found that foreclosures by subprime lenders grew rapidly during the 1990s and now exceed the subprime lenders' share of originations. In addition, the studies indicate that foreclosures of subprime loans occur much more quickly than foreclosures on prime loans, and that they are concentrated in low-income and African-American neighborhoods. Of course, given the riskier nature of these loans, a higher foreclosure rate would be expected. With the information available it is not possible to evaluate whether the disparities in foreclosure rates are within the range of what would be expected for loans prudently originated within this risk class. But findings from these studies about the high rate of mortgage foreclosure associated with subprime lending reinforce the concern that predatory lending can potentially have devastating effects for individual families and their neighborhoods.

At this time, there are open questions about the effectiveness of the different approaches being proposed for eradicating predatory lending and the appropriate roles of different governmental agencies—more legislation versus increased enforcement of existing laws, long-run financial education versus mortgage counseling, Federal versus state and local actions. In its recent issuance of predatory lending standards for national banks, the Office of the Comptroller of the Currency (OCC) cited the efforts of Fannie Mae and Freddie Mac' in reducing predatory lending.[173] The OCC advised banks against abusive practices, such as rolling single-premium life insurance into a loan. The agency cited guidelines developed by Fannie Mae and Freddie Mac as a "useful reference" or starting point for national banks. Following publication of HUD's proposed 2000 Rule inviting comments on disallowing goals credit for high cost mortgage loans, Fannie Mae and Freddie Mac told lenders they would no longer purchase loans with certain abusive practices, such as excessive fees and failing to consider a borrower's ability to repay the debt.

It is important to re-emphasize that predatory lending generally occurs in neighborhoods where borrowers have limited access to mainstream lenders. While predatory lending can occur in the prime market, it is ordinarily deterred in that market by competition among lenders, greater homogeneity in loan terms and greater financial information among

[168] Howard Lax, Michael Manti, Paul Raca, and Peter Zorn, "Subprime Lending: An Investigation of Economic Efficiency," February 25, 2000.

[169] It should also be noted that higher interest rates are only one component of the higher cost of subprime loans since borrowers also often face higher origination points. The Freddie Mac study did not find a large differential between prime and subprime loans in points paid, but the study notes that subprime loans often have points rolled into the loan principal, which cannot be identified with their data.

[170] Freddie Mac, *We Open Doors for America's Families*, Freddie Mac's Annual Housing Activities Report for 1997, March 16, 1998, p. 23.

[171] Rommy Fernandez, "Fannie Mae Eyes Half of the Subprime Market," in *The American Banker*, March 1, 2002. Also see "Fannie Mae Vows More Minority Lending," *Washington Post*, March 16, 2000, p. EO1.

[172] For an overview of these studies, see Harold L. Bunce, Debbie Gruenstein, Christopher E. Herbert, Randall M. Scheessele, *Subprime Foreclosures: The Smoking Gun of Predatory Lending*, 2000. Also see Abt Associates Inc., *Analyzing Trends in Subprime Originations and Foreclosures: A Case Study of the Atlanta Metro Area*, February 2000 and *Analyzing Trends in Subprime Originations and Foreclosures: A Case Study of the Boston Metro Area*, September 2000; National Training and Information Center, *Preying on Neighborhoods: Subprime Mortgage Lenders and Chicagoland Foreclosures*, 2000; and the HUD study, *Unequal Burden in Baltimore: Income and Racial Disparities in Subprime Lending*, May 2000.

[173] "OCC Cites Fannie, Freddie Predatory Lending Rules As Model," Dow Jones Business News, February 25, 2003.

borrowers. Thus, one solution to address this problem would be to encourage more mainstream lenders to do business in our inner city neighborhoods.

d. Purchases of Subprime Mortgages by the GSEs

Fannie Mae and Freddie Mac have shown increasing interest in the subprime market since the latter half of the 1990s. The GSEs entered this market by purchasing securities backed by non-conforming loans. Freddie Mac, in particular, increased its subprime business through structured transactions, with Freddie Mac guaranteeing the senior classes of senior/subordinated securities. The two GSEs also purchase subprime loans on a flow basis. Fannie Mae began purchasing subprime loans through its Timely Payment Reward Mortgage program in June 1999, and Freddie Mac rolled out a similar product, Affordable Merit Rate, in May 2000 (described below). In addition to purchasing subprime loans for borrowers with blemished credit, the GSEs also purchase another non-conforming loan called an Alternative-A or "Alt-A" mortgage. These mortgages are made to prime borrowers who do not want to provide full documentation for loans. The GSEs' interest in the subprime market has coincided with a maturation of their traditional market (the conforming conventional mortgage market), and their development of mortgage scoring systems, which they believe allows them to accurately model credit risk. Although the GSEs account for only a modest share of the subprime market today, some market analysts estimate that they could purchase as much as half of the overall subprime market in the next few years.[174]

Precise information on the GSEs' purchases of subprime loans is not readily available. Data can be pieced together from various sources, but this can be a confusing exercise because of the different types of non-conforming loans (Alt-A and subprime) and the different channels through which the GSEs purchase these loans (through securitizations and through their "flow-based" product offerings). Freddie Mac, which has been the more aggressive GSE in the subprime market, purchased approximately $12 billion in subprime loans during 1999—$7 billion of A-minus and alternative-A loans through its standard flow programs and $5 billion through structured transactions.[175] In 2000, Freddie Mac purchased $18.6 billion of subprime loans on a flow basis in addition to another $7.7 billion of subprime loans through structured transactions.[176] Freddie Mac securitized $9 billion in subprime and Alt-A product in 2001 and $11.1 billion in 2002.

Fannie Mae initiated its Timely Payments product in September 1999, under which borrowers with slightly damaged credit can qualify for a mortgage with a higher interest rate than prime borrowers. Under this product, a borrower's interest rate will be reduced by 100 basis points if the borrower makes 24 consecutive monthly payments without a delinquency. Fannie Mae has revamped its automated underwriting system (Desktop Underwriter) so loans that were traditionally referred for manual underwriting are now given four risk classifications, three of which identify potential subprime (A-minus) loans.[177] Fannie purchased about $600 million of subprime loans on a flow basis in 2000.[178] Fannie Mae securitized around $0.6 billion in subprime mortgages in 2000, before increasing to $5.0 billion in 2001 and 7.3 billion in 2002.[179]

In terms of total subprime activity (both flow and securitization activities), Fannie Mae purchased $9.2 billion in 2001 and over $15 billion in 2002, the latter figure representing about 10 percent of the market, according to Fannie Mae staff.[180]

A greater GSE role in the subprime lending market will most likely have a significant impact on the subprime market. Currently, the majority of subprime loans are not purchased by GSEs, and the numbers of lenders originating subprime loans typically do not issue a large amount of prime loans. Partly in response to higher affordable housing goals set by HUD in its new rule set in 2000, the GSEs are increasing their business in the subprime market. In the 2000 GSE Rule, HUD identified subprime borrowers as a market that can assist Fannie Mae and Freddie Mac in reaching their higher affordable housing goals while also helping establish more standardization in the subprime market. According to an Urban Institute study in 2002, many subprime lenders believe that successful companies serving high-risk borrowers need to have specialized expertise in outreach, servicing, and underwriting, which is lacking among most prime lenders.[181] These lenders do not believe the more standardized approaches of prime lenders and the GSEs will work with subprime borrowers, who require the more customized and intensive origination and loan servicing processes currently offered by experienced subprime lenders.

As noted above, both Fannie Mae and Freddie Mac make the claim that the subprime market is inefficient, pointing to evidence indicating that subprime borrowers pay interest rates, points, and fees in excess of the increased costs associated with serving riskier borrowers in the subprime market.[182] A recent Freddie Mac study found automated mortgage scoring less discriminatory and more accurate in predicting risk than manual systems such as those currently used by subprime lenders.[183] According to Fannie Mae, although a high proportion of borrowers in the subprime market could qualify for less costly prime mortgages, it remains unclear why these borrowers end up in the subprime market.[184] Fannie Mae and Freddie Mac believe they can bring more efficiency to the subprime market by creating standardized underwriting and pricing guidelines in the subprime market. An expanded GSE presence in the subprime market could be of significant benefit to lower-income and minority families if it attracted more mainstream lenders and competition to those inner-city neighborhoods that are currently served mainly by subprime lenders.

Many subprime lenders do not think it is appropriate for Fannie Mae and Freddie Mac to increase their role in the subprime market because they do not view the subprime market as inefficient. Some officials in subprime mortgage markets claim the higher prices paid by borrowers in the subprime market appropriately reflect the risks that come from extending credit to riskier borrowers. These officials believe it is unfair for GSEs to enter an efficient, private market that provides a necessary service to credit-impaired borrowers. Opponents of a larger GSE role in the subprime market argue GSEs have an unfair competitive advantage because they can secure capital at cheaper rates.[185] Because the GSEs have a funding advantage over other market participants, they have the ability to under price their competitors and increase their market share.[186] This advantage, as has been the case in the prime market, could allow the GSEs to eventually play a significant role in the subprime market. Many subprime lenders fear they will be unfairly driven out of business as the GSEs increase their role in the subprime market.

9. Risk-Based Pricing

The expanded use of automated underwriting and the initial uses of risk-based pricing are changing the mortgage lending environment, often blurring the distinctions between the prime and subprime market. Prime lenders are now using automated underwriting systems that are being adapted to facilitate risk-based pricing. For some time, the majority of prime mortgage borrowers have received loan rates based on average cost pricing. Generally, borrowers receive roughly the same Annual Percentage Rate[187] (APR), regardless of the risk of loss to the lender. The risk of all borrowers is averaged together, and the price is determined by the average risk.

In contrast, risk-based pricing enables mortgage lenders to offer each borrower an individualized interest rate based on his or her risk. Or, more broadly, to offer interest rates based on whether or not the borrower

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174 Temkin et al., 2002, p. 1.

175 David A. Andrukonis, "Entering the Subprime Arena," *Mortgage Banking*, May 2000, pp. 57–60.

176 Subprime Lenders Mixed on Issue of GSE Mission Creep," Inside B and C Lending, March 19, 2001.

177 See Lederman, et al., *Op cit.*

178 Kenneth Temkin, Jennifer E. H. Johnson, and Diane K. Levy, "Subprime Markets, the Role of GSEs, and Risk-Based Pricing," *Urban Institute*, August 2001, p. 1.

179 *Inside Mortgage Finance's*, "Inside MBS & ABS," December 15, 2000 and March 8, 2002.

180 Statement by Mercy Jimenez of Fannie Mae in "Fannie Mae: Forges Ahead in Subprime," *Secondary Marketing Executive*, February 2003, p.15.

181 Temkin *et al.*, 2002, p. 1

182 See Lax *et al.*, 2000.

183 Zorn, *et al.*, 2001, p. 5.

184 Fannie Mae, Remarks Prepared for Delivery by Franklin Raines, Chairman and CEO of Fannie Mae to the National Community Reinvestment Coalition. Washington, DC, March 20, 2000.

185 Temkin *et al.*, 2002, p. 1.

186 For an explanation of the GSEs funding advantage see *Government Sponsorship of FNMA and FHLMC*, United States Department of the Treasury, July 11, 1996.

187 Annual Percentage Rate takes into account points, fees, and the periodic interest rate.

falls into a certain category of risk, such as specific loan-to-value and FICO score combination or specified mortgage score range. Lenders could also set the interest rate based on various factors including the probability of prepayment and characteristics of the underlying collateral, as well as the default risk of the borrower. Borrowers that pose a lower risk of loss to the lender would then be charged a comparatively lower rate than those borrowers with greater risk. Rather than lower risk borrowers cross-subsidizing higher risk borrowers like in average cost pricing, lower risk borrowers pay a relatively lower rate.

In response to the expanded use of automated underwriting and pressures from the GSEs, other purchasers of loans, mortgage insurers, and rating firms, lenders are increasing their use of risk-based pricing.[188] In today's markets, some form of differential pricing exists for the various subprime categories, for new products targeted at credit-impaired borrowers (such as Fannie Mae's Timely Payments product), and for private mortgage insurance across all credit ranges. For example, private mortgage insurers use FICO scores and "Accept" determinations from the GSEs" automated underwriting systems to make adjustments to insurance premiums.[189] Rating agencies vary subordination requirements based on the credit qualify of the underlying collateral.

Many believe there is cross-subsidization within the crude risk categories used in today's market. For example, some of the better quality subprime borrowers in the A-minus category may be inappropriately assigned to the subprime market. The GSEs and others are attempting to learn more about the subprime market, and their initial efforts suggest that there will be an increase in the use of risk-based pricing within this market, although it is recognized that the expansion of risk-based pricing depends importantly on these parties gaining a better understanding of the subprime borrower and the ability of their mortgage scoring systems to predict risk within this market. It must be noted that the power of the underlying algorithm in automated underwriting systems determines the ability of these systems to accurately predict risk and set prices.

If prime lenders adopted risk-based pricing, many would be willing to lend to riskier subprime borrowers because their risk would now be offset with an increase in price. In theory, the mortgage market should expand because all mortgages will be approved at a price commensurate with risk, rather than setting a risk floor and approving no one beneath the floor. Risk-based pricing could also expand the prime lenders' market by enabling them to reach a new group of underserved customers.[190] Taking advantage of GSEs' lower cost of capital, GSEs may be able to offer borrowers who could not afford a rate in the subprime market a rate they can afford resulting from risk-based pricing.

Risk-based pricing also poses challenges on the mortgage market because some of the more risky borrowers (who are currently cross-subsidized by less risky borrowers) may not be able to afford their higher, risk-based interest rate. Also, the adoption of an automated risk-based pricing system may have an uncertain effect on minority groups, who tend to have lower credit scores, as discussed earlier. On the other hand, if minorities are eligible for prime financing, the cost of financing minorities may fall as will the potential for subprime lenders to draw minorities to their higher-priced products.

As the GSEs become more comfortable with subprime lending, the line between what today is considered a subprime loan versus a prime loan will likely deteriorate, making expansion by the GSEs look more like an increase in the prime market. This melding of markets could occur even if many of the underlying characteristics of subprime borrowers and the market's evaluation of the risks posed by these borrowers remain unchanged. Increased involvement by the GSEs in the subprime market will result in more standardized underwriting guidelines and the increased participation of traditional lenders. In fact, there are indications that mainstream players are already increasing their activity in this market. According to staff from Moody's Investors Service, the growing role of large mortgage aggregators in the subprime market has been a key factor in the improving credit qualify on deals issued in 2002.[191] According to a representative from Washington Mutual, subprime credit qualify has also improved as lenders carve out new loan categories that fall somewhere between the large Alt A market and traditional subprime business.[192] As the subprime market becomes more standardized, market efficiencies will reduce borrowing costs. Lending to credit-impaired borrowers will, in turn, increasingly make good business sense for the mortgage market.

C. Factor 2: Economic, Housing, and Demographic Conditions: Multifamily Mortgage Market

1. Introduction

At the time of the previous GSE rulemaking in 2000, the multifamily rental housing market was coming off several years of generally positive performance. Vacancies were low in most markets and rent increases were matching or exceeding economy-wide inflation. A key to this strong performance was the volume of new multifamily construction, which was at a level consistent with demand growth. Job growth and income gains helped many renters pay the higher rents without undue burden. As always, conditions varied from region to region, and across market segments, but the overall tone of the apartment market was quite healthy.

Much has changed in the subsequent three years. The economic slowdown has reduced apartment demand, and with new multifamily construction about unchanged, vacancies have risen and rents have softened. Provision of decent housing affordable to households of moderate or low incomes is a challenge even in strong economic times, and with the unemployment rate up nearly two percentage points since late 2000, affordability problems have increased for many, despite the softness in rents.

Despite the recent weakness in the apartment property market, the market for financing of apartments has grown to record volumes. The favorable long-term prospects for apartment investments, combined with record low interest rates, has kept investor demand for apartments strong and supported property prices. Refinancings too have grown, and credit quality has remained very high. Fannie Mae and Freddie Mac have been among those boosting volumes and introducing new programs to serve the multifamily market.

This section will review these market developments, interpret the performance of Fannie and Freddie within that market context, and discuss future prospects for the multifamily rental market, its financing, and the GSE role. The intention here is only to update the discussion from 2000. For general background information on the multifamily mortgage market and the GSEs, see the 2000 Rule and the HUD-sponsored research report, *Study of Multifamily Underwriting and the GSEs' Role in the Multifamily Market* (Abt Associates, 2001).

2. The Multifamily Rental Housing Market: 2000–2003

The definition of "good" market conditions in multifamily rental housing depends on one's perspective. Investors and lenders like low vacancies, steady rent increases, and rising property values. Developers like strong demand for new construction and favorable terms on construction financing. Consumers, in contrast, prefer low rents and a wide selection of available apartments.

The mid- to late-1990s were among the most successful of recent history, in that apartment market conditions were generally good for all of these interest groups. Investment returns were favorable, construction volumes were steady at sustainable levels, and many consumers had income gains in excess of their rent increases.

Market conditions for multifamily rental housing began to weaken toward the end of 2000. Early warnings came from the publicly traded apartment companies, some of which reported easing in demand growth in the first months of 2001, coinciding with a slowdown in job growth to its lowest level since 1992.

By the second quarter of 2001, most apartment market indicators were reflecting the slowdown. Vacancies were up, approaching 10 percent for all multifamily (5+ units in structure) rental housing, according to the Census Bureau, and about half that rate among the larger apartment properties monitored by private market research firms. The FDIC's *Survey of Real Estate Trends* detected the first signs of weakening in the first half of 2001, followed by a big falloff in second half of the year and a continuing slide in the first half of 2002.

Apartments—especially those serving the top end of the rental market—appear to have

[188] Temkin *et al.*, 2002, p. 29.

[189] For example, see Radian's product offerings at *http://www.radiangroupinc.com.*

[190] Vanessa Bush, "Risk-Based Pricing Trend Could Make Mortgage Lending More Efficient," *America's Community Banker*, October 1, 1998.

[191] "Improving Credit Quality, Maturing Business Stoke Confidence in Subprime MBS Market," *Inside MBS & ABS*, published by Inside Mortgage Finance, February 21, 2003.

[192] *Ibid*.

performed worse than other rental housing in the past four years, after several years of rent growth and occupancies surpassing the rental market averages. The multifamily vacancy rate has increased more than the overall rental market vacancy rate in each of the years 2000, 2002, and 2003. In 2001, the vacancy rates increased at an equivalent rate. For example, the Census Bureau's estimate of a 1.2 percentage point increase in vacancies for apartments in the year ending in the third quarter of 2003 exceeds the overall rental vacancy rate of .9%. Similarly, while rent growth has decelerated slightly for all rental housing according to the CPI, industry surveys of apartment rents show year-over-year declines in rents in many local markets.[193] In 2003, asking rents remained flat nationally, as multifamily completions declined 5 percent.[194]

a. Apartment Demand and Supply

The primary reason for the softening in the multifamily rental market has been a reduction in the growth of consumer demand for apartment housing. The general slowdown in economic activity meant fewer apartment customers, with less money, than if the economy were vigorously expanding. Persistent low interest rates have also enticed renters into the home purchase market as evidenced by the U.S. homeownership rate, which grew to 68.4 percent in 2003, further contributing to a weakness in rental demand.

The reduced demand is most evident in the national statistics on employment. Job growth began decelerating in late 2000 and throughout 2001, turning negative late that year. The largest year-over-year job loss of the economic downturn occurred in February 2002, and year-over-year losses have continued through October 2003. Apartment demand seems particularly sensitive to labor market conditions, given the importance of rental housing to mobile individuals and families accepting new jobs or transfers. Reis, Inc., a real estate market research firm, estimates that the total number of occupied apartments (in properties with 40+ units) actually declined in both 2001 and 2002 in the large markets nationwide that are monitored by the company.[195]

Households, not jobs, fill apartments, and for this reason household formations are a preferable indicator of demand for apartments as well as other types of housing. The Census Bureau estimates that the total number of renter households nationwide has been essentially unchanged at approximately 34.8 million since 1996. Yet during the late 1990s apartment demand was expanding, and apartments were apparently picking up market share from other rental housing. The past two or three years may have seen a reversal of that trend in share.

Long-term demographic trends are expected to be favorable for rental housing demand.[196] The maturing of the "Baby Boom Echo" generation will increase the number of persons under age 25 who will seek rental housing, immigration is expected to continue to fuel demand for rental housing, and minority populations, while increasing their homeownership rates, are growing and will contribute to higher absolute demand for rental housing. Thus demographic trends support an improvement in the long-run demand for rental demand, which is likely to include higher multifamily rental demand.

Supply growth has been maintained, even though the current reduced multifamily demand warrants less new construction. Total multifamily starts (2+ units) have been running approximately 325-to-350 thousand annually for the past six years, according to Census Bureau statistics, adding about 1 percent annually to the total multifamily stock. Most of these new units are built for rental use, with only about 20 percent in recent years reported as being built as for-sale condominium units.

The reduced short-term demand has shown through in absorption speeds for new apartments. The percentage of newly completed unfurnished apartments rented within three months of completion fell from 71 percent during the first quarter of 2000 to 64 percent during the first quarter of 2001 and to 58 percent during the first quarter of 2002, according to the Census Bureau. This percentage rose slightly to 59 percent in the first quarter of 2003.

b. Performance by Market Segments

Some segments of the multifamily rental market have been more affected than others by the recent softening. As mentioned earlier, the top end of the apartment market seems especially hard hit, as measured by rising vacancies and reduced rent growth. This segment is particularly dependent on job growth and transfers for new customers, and is particularly vulnerable to losses of residents and prospective customers to home purchase. According to reports by apartment REITs and other investors, these top-end properties have not been getting the job-related in-movers, but have still been losing a lot of customers to home purchase. These properties generally have annual resident turnover rates of above 50 percent, and thus are particularly quickly influenced by changes in demand. Furthermore, this is the segment of the apartment market into which most of the new construction is built.

Performance has varied geographically as well. Some of the coastal markets, especially in Northern California, saw the double-digit rent increases of the late 1990s replaced by double-digit declines, before stabilizing more recently. "Supply constrained markets" had been preferred by apartment investors during the 1990s, but recent market performance has reminded investors and analysts that all markets have their day. For example, Houston posted the biggest year-over-year rent increase of any major apartment market in 2001, despite a long-run history of moderate rent growth and few barriers to new apartment construction. Rent changes in the 27 metropolitan markets for which estimates are available from the CPI ranged from a low of −0.3 percent to a high of 6.7 percent in the first half of 2003 relative to a year earlier. And across the 75 metropolitan areas for which rental vacancy rates (apartments plus other rentals combined) are available, rates for the year 2002 ranged from 2.4 percent to 15.4 percent, according to the Census Bureau. In a historical context, this variation is moderate, although up somewhat since the late 1990s.

Conditions in the "affordable" segment of the apartment market are harder to track than in the high-end segment because of lesser investor interest and analyst coverage. Data for the late 1990s analyzed by the National Housing Conference saw affordability problems continuing, although a study of apartment renters by the National Multi Housing Council saw some improvement in affordability during the strong economic growth of 1997–1999.[197] Other work noted that rent to income ratios for the lowest income quintile of renters rose during the late 1990s even as these ratios were stable or declining for other renters.[198] Harvard's *State of the Nation's Housing* report for 2002 highlighted the variability of the affordability problem from place to place.[199]

Little research is available on affordability trends since 1999. However, tabulations from the 2001 *American Housing Survey* indicate that income growth between 1999 and 2001 in the lowest quintile of renter households continued to lag that of higher income renters, and fell short of the average rent increases during this period. Together, these statistics suggest that affordability has deteriorated early this decade among at least this group of very low-income renters. Other work using the AHS found that the number of low-to moderate-income working families with severe rental cost burdens increased 24 percent between 1999 and 2001.[200]

The low-income housing tax credit (LIHTC) continues to finance much of the newly built multifamily rental housing that is affordable to households with moderate income. Restricted to households with incomes no greater than 60 percent of the local median, this program financed approximately 75,000 units in 2001, according to the National Council of State Housing Agencies, after running in the mid- to high-60 thousand range the previous three years. About 70 percent of these units are newly built, and the rest are renovations of existing units.

Expenditures for improvements to existing rental apartments have grown in recent years.

[193] *See*, for example, Marcus & Millichap Research Services, *National Apartment Report*, January 2003.

[194] Marcus & Millichap Research Services, *National Apartment Report*, January 2004.

[195] "Apartment Landlords Gather to Dreary Outlook for Sector," *Wall Street Journal*, January 15, 2003, Section B.

[196] Mortgage Bankers Association of America, "MBA News Link: Rental Market Demographics "Favorable," Report Says," January 2003.

[197] Center for Housing Policy/National Housing Conference, "Housing America's Working Families: A Further Exploration," *New Century Housing*, Vol. 3, No. 1, March 2002; Mark Obrinsky and Jill Meron, "Housing Affordability: The Apartment Universe," *National Multi Housing Council*, 2002.

[198] "Housing Affordability in the United States: Trends, Interpretations, and Outlook," a report prepared for the Millennial Housing Commission by J. Goodman, November, 2001.

[199] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing, 2002*.

[200] Center for Housing Policy/National Housing Conference, "America's Working Families and the Housing Landscape 1997–2001," *New Century Housing*, Vol. 3, No. 2, November 2002.

In 2001 the total of $11.3 billion was nearly twice the figure of three years earlier, according to the Census Bureau, and more than a third as large as construction spending for newly built multifamily structures, including owner-occupied condos. Many of these improvements are to older properties in high-demand neighborhoods. Improvements to the physical structures have external benefits. But often the renovations are in connection with re-positionings that move the apartments into a higher rent range and bring changes in the demographic composition of the resident base.

In 2002, expenditures on total improvements to existing apartments declined to $9.8 billion, while new construction spending increased $2 billion. This shift further suggests a re-positioning to apartments with a higher rent range. Excluding units financed with tax credits or other subsidies, most of the multifamily rental construction in recent years has been targeted on the upper end of the market, often the only segment for which unsubsidized new construction is economically feasible. The median asking rent on new unfurnished apartments completed in 2001 was $877, up 11 percent over the previous two years. In 2002 median asking rent for these properties was $905. Of those units brought to market in 2002, 45 percent were at rents at or above $950.

3. Multifamily Financing Trends

In contrast to the softening observed in the demand/supply balance for multifamily, mortgage financing of these properties has been at a record pace in the past three years.

a. Lending Volume

Total multifamily mortgage debt outstanding increased 9.5 percent in 2000 (Q4/Q4), 11.4 percent in 2001, and 8.6 percent in 2002, according to the Federal Reserve's Flow of funds accounts. This trend continued through the third quarter of 2003, which saw a 12.4 percent annualized increase. The dollar volumes were above those of any previous year, and far exceeded the lending volumes of all years other than 1998 and the frenzied period 1985–86. The pace has picked up slightly in 2003, with figures through the first two quarters indicating annualized growth of about 9 percent. Furthermore, a survey by the Mortgage Bankers Association of America shows that of 48 member firms surveyed, representing all large mortgage banking firms and a cross section of smaller mortgage companies, multifamily origination volume increased by 16 percent in 2002—from $35 billion in 2001 to $41 billion in 2002.

The apparent inconsistency between current market fundamentals and financing can be explained by low interest rates. The same financial forces that lowered the mortgage rates for home purchasers to record lows by 2002 also reduced the financing costs of multifamily properties. The ten year Treasury yield, a common benchmark for multifamily loan pricing, fell to a 45-year low of 3.3 percent in June 2003 from 6.3 percent as recently as the end of 1999.

Another feature boosting investor demand for apartment properties and the resulting demand for debt to finance those purchases has been the lack of attractive returns on many financial assets and other alternative investments. Despite the current weak performance of apartments, investors apparently are looking through to the long-run outlook for these assets, which is generally thought to be favorable, as indicated most recently by investor surveys fielded by the Urban Land Institute and by LendLease and PriceWaterhouseCoopers.[201]

The net change in mortgage debt outstanding is defined as loan originations less repayments and charge offs. As discussed in Appendix D, net change is a lower bound on originations. By all accounts, originations—for which no single source of estimates is available—are much higher than net change in most years. High levels of refinancings of existing multifamily mortgages in recent years has been a factor in originations exceeding the net change in debt outstanding.

Most mortgage lending is in the "conventional" market. Multifamily loan programs of the Federal Housing Administration accounted about $7 billion in new insured mortgages in fiscal year 2003—up from $6 billion in fiscal year 2002 and $5 billion in fiscal 2001. Despite the recent increase in FHA originations, and the likely continued strong performance for FHA multifamily programs in the foreseeable future,[202] FHA remains but a small portion of the total multifamily mortgage market. Outstanding FHA-insured multifamily mortgage debt was $55 billion at the end of the first quarter of 2003—only about 11 percent of all multifamily mortgage debt outstanding.

Multifamily lending has been spurred by new apartment construction, property sales, and refinancings. New multifamily construction was valued at $32.6 billion in 2002, according to the Census Bureau, up 14 percent from 2000. The number of new multifamily units completed over this period actually declined 6 percent, and the increased expenditures reflect higher costs per unit. The increase in asking rents described earlier suggests higher property values and greater debt carrying capacity.

b. Property Sales and Refinancings

Sales of existing apartment properties tend to be pro-cyclical. Increasing asset values bring buyers to the market and tempt sellers to realize their capital gains. In soft markets, in contrast, the bid-ask spread generally widens and the volume of sales declines, as sellers perceive current offers as beneath the property's long run value and buyers are reluctant to pay for past performance or the hope of future gains. Sales tend to increase mortgage debt, because the loan originated to finance the purchaser's acquisition is typically considerably larger than the mortgage retired by the seller.

No source of apartment property sales statistics matches the comprehensive national coverage of the single-family market provided by the National Association of Realtors' monthly estimates. But surveys by the National Multi Housing Council and other apartment industry reports indicate that transactions volume dipped during 2001 and has since stabilized but not yet returned to the levels of the late 1990s. Even if the number of transactions is off, the dollar volume may well have risen, depending on the mix and prices of properties sold.

Mortgage lending volumes have recently been boosted by shifts in property ownership. Publicly traded real estate investment trusts had been the big gainers during most of the 1990s, and by 1999 owned nearly 6 percent of all apartments nationwide and a considerably larger share of all big (100+ unit) properties. But beginning in 1999 capital market developments made private buyers more competitive. Since then the number of apartments owned by large REITs has declined about 5 percent, with diverse private interests apparently picking up market share.

Private investors are able to use more leverage—greater debt—in financing their transactions than the market permits the public REITs. As a result, the very low mortgage rates recently have given them an advantage in bidding on properties. In addition, equity funding costs of REITs rose as their stock prices flattened or moved down as part of the broader equity market correction.

Refinancings have, by all accounts, also been strong. Despite the lockout provisions and yield maintenance agreements that constrain early refinancings of many multifamily loans, lenders reported very strong refinancing activity in 2001 and continuing into 2002. Although refinancing volume data for the entire market are not available, the trends in refinance volume for FHA and the GSEs show very strong increases in refinance activity during 2002 and 2003. For example, FHA's Section 223(a)(7) program, which is limited to refinancing of FHA multifamily mortgages, experienced an increase in origination volume of 133 percent in Fiscal Year 2003 and 181 percent in Fiscal Year 2002. ($1.73 billion in FY 2003, $0.74 billion in FY 2002, and $0.26 billion in FY 2001). Similarly, the GSEs increased their combined volume of refinances by 83 percent from 1999–2000 to 2001–2002, from $17.6 billion to $32.1 billion. Refinancings, especially when motivated by a desire to lower interest expense rather than to extract equity, do not add as much to debt outstanding as do purchase loans, which often are much larger than the seller's existing mortgage that is repaid at the time of sale. Nonetheless, refinancings represent a significant part of all multifamily mortgage lending.

c. Sources of Financing and Credit Quality

The sources of funding of multifamily mortgages shifted somewhat in the past few years, judging from the Flow of Funds accounts. As shown in Table A.4, four categories of lenders have dominated multifamily mortgage lending since the mid-1990s. Of those four, commercial banks have played a lesser, although still substantial, role in recent years, providing 20 percent of the $86 billion in net additional funding of multifamily mortgages during 2000 and 2001.

[201] Urban Land Institute, *The ULI Forecast, 2002;* Lendlease and Prive WaterhouseCoopers, *Emerging Trends in Real Estate, 2003.*

[202] Merrill Lynch, *A New Look at FHA Prepayments and Defaults,* September 2002.

The portfolio holdings of the GSEs, by contrast, have been much more important than during the last half of the 1990s. Mortgage backed securities, both from the GSEs and especially from other issuers, accounted for proportionally less of the growth in 2000–01 than in 1995–99, but between them still accounted for nearly half of all the net credit extensions. Some slight broadening of the base of multifamily lending in the past two years, as these four lender groups accounted for only 85 percent of the net credit extended in 2000 and 2001, compared to all of it in the previous five-year period.

BILLING CODE 4210–27–P

Table A.4

Providers of Net Additions to Multifamily Mortgage Debt Outstanding

(Percent distribution)

	2000-2001	1995-1999
Commercial Banks	20 %	27 %
Fannie Mae/ Freddie Mac		
Portfolio	15	2
MBS	18	25
Private MBS	17	32
All Others	30	14
Total	100 %	100 %
Memo: Aggregate Net Addition to Debt ($ billions)	85.5	93.9

Sources: Federal Reserve Flow of Funds Accounts, OFHEO 2001 Annual Report.

BILLING CODE 4210-27-C

The market values of apartment properties have generally held up well, although the most recent indicators suggest some flattening. Properties in the portfolios of pension funds continued to appreciate into the second half of 2002, according to the National Council of Real Estate Investment Fiduciaries, although at a reduced annual rate of less than 2 percent. And the sales price per square foot of "Class A" properties monitored by Global Real Analytics rose until turning down in early 2002, posting a 1.6 percent year over year decline in the second quarter.

The continuing value of collateral has helped keep loan quality high on multifamily mortgages. Delinquency rates from all major reporters are at or near record lows, and well below the rates reported for single-family mortgages and commercial properties. At commercial banks, the FDIC reports a non-current loan percentage of 0.38 in the second quarter of 2002. In life insurance company portfolios only .05 percent of residential mortgages were overdue at the end of 2002, and as of the third quarter of 2002 the GSEs were both reporting similarly miniscule delinquency rates of below 0.1 percent; all of these rates are below those of a year earlier.

Multifamily lenders have remained cautious in their underwriting and, together with their regulators, have avoided repeating the mistakes of the 1980s. Many of the senior loan officers surveyed quarterly by the Federal Reserve have reported tightening their terms on commercial mortgages, and that shift likely has occurred in their multifamily lending as well. Perhaps the best indicator of discipline in multifamily lending is the fact that, despite the strong apartment demand during the last half of the 1990s, construction never rose above its long-run sustainable level, unlike the rampant overbuilding that plagued the industry in the mid- and late-1980s.

4. Recent GSE Involvement in Multifamily Finance

As the multifamily mortgage market has expanded since 1999, Fannie Mae and Freddie Mac have increased their lending, picked up market share, introduced new programs, and enhanced others.

Beginning with their whole loans, the GSEs added 34 percent to their combined holdings of multifamily loans in 2001, and another 26 percent in 2002 (*see* Table A.6 below). The growth in multifamily MBS volume was nearly as dramatic, increasing 26 percent in 2001 and another 14 percent in 2002. The gains resulted in the GSEs increasing their share (whole loans and securities combined) of all multifamily debt outstanding to 22.8 percent by the third quarter of 2003, up from 19 percent at year-end 2001, 15 percent at year-end 1999 and 11 percent at the end of 1995. By this combined measure of portfolio holdings and MBS outstanding, at year-end 2002 Fannie Mae had nearly twice ($65 billion versus $37 billion) the multifamily business of Freddie Mac, although Freddie was growing its multifamily business more rapidly (67 percent increase between 2000 and 2002, compared to 46 percent increase for Fannie Mae).

Measures that focus on new multifamily activity, specifically gross mortgage purchase volumes and new security issuance, vary across recent years and between the GSEs. For the GSEs combined, these measures of current business activity show sharp gains of over 70 percent in 2001, following small decreases in activity in 2000. In 2002, the GSEs combined posted small declines for both measures. Measures of multifamily gross mortgage purchases and new security issuance diverged for the two GSEs in 2002. Fannie Mae experienced declines in these balance sheet and new business indicators in 2002 while Freddie Mac experienced gains, particularly in new security issuance. As discussed earlier, the credit quality of GSE multifamily loans has remained very high even with the large gains in loan volume.

Despite the substantial pickup in GSE multifamily activity, the position of these companies in the multifamily mortgage market remains well below their dominance in single-family mortgage finance. At the end of 2002, the GSEs' market share of single family debt outstanding was 44 percent, twice the share of multifamily debt held or securitized by these two companies, according to Federal Reserve statistics. Furthermore, the multifamily share of all housing units financed by the GSEs combined has declined from its 1997 level (Table A.5), although the annual statistics are heavily influenced by the volume of refinancings in the single-family market, which spiked in 1998 and again in 2001 and 2002 in response to the big decline in mortgage rates in those years. Because of lock-out agreements and other loan covenants, multifamily loans are not as prone to rate-induced refinancings as are single-family mortgages.

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Table A.5

Multifamily Share of All Housing Units Financed

	Units Financed								
	Fannie Mae			Freddie Mac			GSEs Combined		
Year	Multifamily	Total	Multifamily Share	Multifamily	Total	Multifamily Share	Multifamily	Total	Multifamily Share
1997	253,065	1,888,547	13.4%	99,470	1,213,126	8.2%	352,535	3,101,673	11.4%
1998	394,345	3,707,839	10.6%	221,319	2,718,565	8.1%	615,664	6,426,404	9.6%
1999	294,186	3,109,885	9.5%	191,492	2,328,800	8.2%	485,678	5,438,685	8.9%
2000	289,891	2,293,397	12.6%	163,580	1,677,295	9.8%	453,471	3,970,692	11.4%
2001	503,909	4,893,900	10.3%	315,868	3,381,036	9.3%	819,777	8,274,936	9.9%
2002	461,397	6,362,315	7.3%	333,038	4,552,277	7.3%	794,435	10,914,592	7.3%

Source: GSE Annual Housing Activity Reports, Table 1; figures for 2001 are adjusted for REMIC weights and participations.

a. Contrasting Business Models

While both Fannie Mae and Freddie Mac have significantly increased their multifamily activities in recent years, they have pursued distinct business models in achieving that growth. As shown in Table A.6, most of Fannie Mae's multifamily growth has come in MBS products, whereas Freddie Mac has relied more on loans purchased and held in its portfolio. At the end of 2002, Fannie Mae had almost four dollars of outstanding MBSs for every dollar of portfolio holdings. Freddie Mac, on the other hand, more than three times as much volume in portfolio as it had in MBS outstanding.

Table A.6

GSE Multifamily Mortgage Activity, 1998-2002
($ millions)

	1998	1999	2000	2001	2002
Fannie Mae					
MF Whole Loans in Portfolio	8,185	7,911	8,361	10,538	13,571
% Change From Previous Year		-3.3%	5.7%	26.0%	28.8%
MF MBS Outstanding	28,535	32,221	35,987	44,909	51,111
% Change From Previous Year		12.9%	11.7%	24.8%	13.8%
MF Purchases (Cash + Securitizations)	11,428	10,012	10,377	19,131	16,611
% Change From Previous Year		-12.4%	3.6%	84.4%	-13.2%
MF MBS Issuance	11,028	8,497	7,596	13,801	12,338
% Change From Previous Year		-23.0%	-10.6%	81.7%	-10.6%
Freddie Mac					
MF Whole Loans in Portfolio	7,978	12,355	16,369	22,483	28,036
% Change From Previous Year		54.9%	32.5%	37.4%	24.7%
MF MBS Outstanding	N/A	4,462	5,708	7,476	8,780
% Change From Previous Year			27.9%	31.0%	17.4%
MF Purchases (Cash + Securitizations)	3,910	7,181	6,030	9,509	10,656
% Change From Previous Year		83.7%	-16.0%	57.7%	12.1%
MF MBS Issuance	937	2,045	1,786	2,356	3,596
% Change From Previous Year		118.2%	-12.7%	31.9%	52.6%
Combined					
MF Whole Loans in Portfolio	16,163	20,266	24,730	33,021	41,607
% Change From Previous Year		25.4%	22.0%	33.5%	26.0%
MF MBS Outstanding	N/A	36,683	41,695	52,385	59,891
% Change From Previous Year			13.7%	25.6%	14.3%
MF Purchases (Cash + Securitizations)	15,338	17,193	16,407	28,640	27,267
% Change From Previous Year		12.1%	-4.6%	74.6%	-4.8%
MF MBS Issuance	11,965	10,542	9,382	16,157	15,934
% Change From Previous Year		-11.9%	-11.0%	72.2%	-1.4%

Source: Calculated from tables in OFHEO 2001 Annual Report.

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The differing emphasis on portfolio holdings and securities issuance is related to the GSEs' contrasting approaches to credit underwriting.[203] Fannie Mae has long had risk-sharing arrangements with its multifamily loan originators, and currently has over 25 Delegated Underwriters and Servicers who are authorized to originate loans meeting Fannie Mae's requirements for sale to the GSE without prior approval of individual transactions. These "DUS" lenders retain part of the credit risk on the loans sold to Fannie.

Freddie Mac has taken a different approach to credit underwriting. In the wake of large credit losses on its multifamily business in the late 1980s and 1990, Freddie Mac essentially withdrew from the market. When it re-entered in late 1993, the company elected to retain all underwriting in-house and not delegate this function to the loan originators participating in Freddie Mac's Program Plus network. Because Freddie assumes the entire credit risk on loans it purchases, some commercial banks and other financial institutions desiring to remove multifamily loans and all related liabilities from their books find Freddie's program preferable.

[203] "No Mistaking GSEs for Twins in Multifamily," *American Banker*, October 2, 2002.

b. Affordable Multifamily Lending

Because most of the GSEs' multifamily lending is on properties affordable to households with low- or moderate incomes, financing of affordable multifamily housing by the GSEs has increased almost as much as their total multifamily lending. Approximately 86 percent of Fannie Mae's multifamily lending volume in 2002 qualified as affordable to low- or moderate income households, according to Fannie Mae's annual *Housing Activity Report*, as did 93 percent of Freddie Mac's multifamily units financed. For the entire multifamily rental market, HUD estimates that 90 percent of all housing units qualify as affordable to families at 100 percent of the area median, the standard upon which the low- and moderate-income housing goal is defined.

Owing to this high propensity to qualify as affordable lending, financing of multifamily rental housing is especially important for the GSEs attainment of their affordable housing goals. Less than 8 percent of the units financed by the GSEs in 2002 were multifamily rentals, as described above. Yet 15 percent of the units qualifying as low- and moderate-income purchases were multifamily, according to Table 1 of the GSEs' activity reports for 2002.

The GSEs increased the volume of their affordable multifamily lending dramatically in 2001, the first year of the new, higher affordable housing goals set for the GSEs. As measured by number of units financed, the total affordable lending (shown in the "low-mod total" rows of Table A.7) more than doubled from a year earlier, especially after application of the upward adjustment factor authorized for Freddie Mac in the 2000 Rule. In 2002, the GSEs maintained a high volume of affordable multifamily lending with Fannie Mae showing a slight decrease and Freddie Mac a slight increase.

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Table A.7

Multifamily Units Financed

	1998	1999	2000	2001	2002	Source
Fannie Mae						
Total	393,397	294,091	289,509	503,909	461,397	1
Percent Change		-25%	-2%	74%	-8%	
Small	64,753	12,351	7,196	37,449	77,485	2
Large	328,644	281,740	282,312	466,460	383,912	2
Low-Mod Total	334,042	274,026	266,410	463,655	416,905	3
Percent Change		-18%	-3%	74%	-10%	
Small	52,508	10,017	6,244	32,732	67,892	3
Large	281,534	264,009	260,166	430,923	349,012	3
Underserved Areas Total	170,488	110,532	107,603	228,960	203,491	3
Percent Change		-35%	-3%	113%	-11%	
Small	43,133	5,879	4,042	23,794	50,204	3
Large	127,356	104,653	103,561	205,166	153,287	3
Special Affordable Total	180,726	164,068	147,641	267,513	241,359	3
Percent Change		-9%	-10%	81%	-10%	
Small	33,256	5,832	4,450	19,771	39,548	3
Large	147,470	158,236	143,191	247,742	201,811	3
Freddie Mac						
Total	221,319	191,492	163,580	315,370	333,038	1
Percent Change		-13%	-15%	93%	6%	
Small	10,244	4,068	2,996	50,492	44,039	2
Large	211,075	187,424	160,584	264,878	288,999	2
Low-Mod Total	211,760	172,417	151,166	294,875	298,134	3
Percent Change		-19%	-12%	95%	1%	
Small	9,421	3,322	2,621	48,062	40,563	3
Large	202,339	169,095	148,545	246,813	257,570	3
Underserved Areas Total	96,431	69,175	58,758	145,068	153,930	3
Percent Change		-28%	-15%	147%	6%	
Small	5,881	2,059	1,833	43,252	41,023	3
Large	90,550	69,175	56,924	101,817	112,907	3
Special Affordable Total	120,776	82,982	79,375	168,753	159,680	3
Percent Change		-31%	-4%	113%	-5%	
Small	5,785	1,526	1,636	36,600	28,245	3
Large	114,991	81,455	77,739	132,153	131,436	3

Sources: 1. Tables 15a, 15b of Summary Tables for 1993-2000 on HUD User web site for 2001, Annual Housing Activity Report Table 1.
2. For 1998-99, Table 4 of Summary Tables for 1993-2000 on HUD User web site for 2001, Annual Housing Activity Report Table 1.
3. For 1998-99, Table 4 of Summary Tables for 1993-2000 on HUD User web site totals for 1998-99 calculated as sum of small and large for 2000-2001, Annual Housing Activity Report Table 1.

Totals for 2001 are the "adjusted" totals from Annual Housing Activity Report Table 1 exclusive of adjustments for bonuses and Freddie Mac's Temporary Adjustment Factor.

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The figures in Table A.7 are exclusive of the "Temporary Adjustment Factor (TAF)" granted to Freddie Mac as part of the 2000 Rule. The TAF was a response to Freddie Mac's limited opportunities for refinancing business because of its minimal involvement in the multifamily market in the early and mid-1990s. [204] The TAF, which expired at the end of 2003, provided a 20 percent upward adjustment to multifamily units in properties with 50 or more units, for purposes of the affordable housing goals.

Multifamily financing made major contributions not only to the GSEs attainment of the overall goal for affordable lending in 2002, but also to the "underserved areas" goal and "special affordable" goal. As shown in Table A.7, the 2001 increases in lending in each of these categories were substantial at both Fannie Mae and Freddie Mac, again leveling off for both in 2002. The GSEs also met the special multifamily affordable subgoal set in the 2000 Rule in both 2001 and 2002.

c. Multifamily Initiatives of the GSEs

Fannie Mae and Freddie Mac have taken a number of steps since 2000 to expand their multifamily lending and to respond specifically to the goals established in the 2000 Rule. These initiatives are summarized in the annual activity reports filed by the GSEs.[205]

One focus of the 2000 Rule was on lending to small (5-to-50 units) multifamily properties, which the Rule identified as an underserved market. HUD-sponsored research has found that the supply of mortgage credit to small properties was impeded by the substantial fixed costs of multifamily loan originations, by owners' insufficient documentation of property income and expense, and by the limited opportunities for fees for underwriting and servicing small loans.[206] As a result, many multifamily lenders focus on larger properties, which were found to have more loan products available to them and to pay lower interest rates than did small properties.

In an attempt to promote the supply of credit to small properties, the 2000 Rule provided incentives for the GSEs to step up their involvement in this segment of the multifamily mortgage market. The incentives likely contributed to the huge increases in small property lending posted by both Fannie Mae and Freddie Mac in 2001 and continuing into 2002 (Table A.7). The combined total of these units financed in 2001 and 2002 was almost 8 times those financed in the previous two years. This lifted the percentage of all GSE multifamily lending that was on small properties to their highest levels ever.

Programs introduced or enhanced by the GSEs in the past two years have contributed to these striking numerical results. Delegated Underwriting and Servicing (DUS) is Fannie Mae's principle product line for purchasing individual multifamily loans. This product line is offered through 26 lenders with expertise in financing multifamily properties. In 2002, 92% of the DUS loan activity served affordable housing needs, 41% of DUS loans in underserved markets, and 51% addressed "special affordable" needs.[207] Fannie Mae markets its specialized 3MaxExpress product line for loans worth less than or equal to $3 million. This program helped secure $4.1 billion in financing since 2001, which has assisted 130,000 families living in small multifamily properties.[208] Fannie Mae additionally has federal Low-Income Housing Tax Credit (LIHTC) programs and special financing projects for special use properties such as Seniors Housing.[209]

During 2002, Freddie Mac used innovative financing structures combined with prudent, flexible multifamily lending practices, which were targeted at affordable initiatives through its Program Plus network of lenders resulting in record levels of multifamily mortgage purchases. The GSEs face strong competition in this market from small banks and other depository institutions that prefer to hold these loans in their own portfolios.[210]

The 2000 Rule discussed other ways in which the GSEs might help promote financing of affordable multifamily housing. Two of those were lending for property rehabilitation and leadership in establishing standards for affordable multifamily lending. Many affordable properties are old and in need of capital improvements if they are to remain in the housing stock. Rehabilitation lending is a specialized field, and one in which the GSEs for a variety of reasons have not been major players. Less than 1 percent of all GSE multifamily lending in 2002 was for property rehabilitation. In 2002, Fannie Mae hosted its first ever Preservation Advisory Meeting with leaders in the housing and real estate finance industry to identify best practices and formulate real world solutions to this critical policy issue.[211]

Setting standards for affordable multifamily lending was identified in the 2000 Rule as another area where the GSEs could provide greater leadership. It was also noted, based on HUD-sponsored research underway at that time,[212] that market participants believe the GSEs to be conservative in their approaches to affordable property lending and underwriting. Actions described in the GSEs' annual activity reports for 2001 and 2002 indicate attempts by the GSEs to promote market standards that will reduce the transactions costs of multifamily lending while also providing programs that have the flexibility needed to deal with unique circumstances.

5. Future Prospects

The outlook for the multifamily rental housing market is marked by near-term risks and longer-run optimism, according to most observers. The prospects for the next few quarters are dominated by the macroeconomy. In particular, job growth, with its implications for formations of households, will be a key for the resumption of growth in apartment demand. Many forecasters would ascribe to the Federal Reserve's forecast of a slight increase in GDP growth to 4.3 percent in 2004,[213] while also agreeing with the Fed's warning that "An unusual degree of uncertainty attends the economic outlook at present, in large measure, but not exclusively, because of potential geopolitical developments." [214]

When consumer demand does pick up, recovery should be reasonably fast. While the recent production levels have outpaced demand, they have been near the middle of the long run historical range and very close to the average of the last half of the 1990s. Judging from the firm tone to rents and vacancies during that period, total multifamily completions production of 275,000 to 350,000 units is a sustainable level of annual production—that is, the level consistent with long run demographic trends and replacement of units lost from the stock.

Because new construction has remained moderate, there is no massive overhang of product that will need to be absorbed. With increased demand, vacancies should fall and rents firm reasonably promptly. A key assumption behind this forecast for vacancies and rents is that new apartment construction not rise appreciably from its current level.

Recovery in the apartment market may also, perversely, be promoted by the recent unprecedented strength of the single-family market. Typically, economic recoveries bring strong growth in single-family housing demand, some of that coming from apartment renters seeking more space. With single-family activity already near record highs, boosted by historically low mortgage interest rates and despite the recently soft economy, it is uncertain how much higher single-family demand—and the accompanying losses of apartment customers to homeownership—can go.

Whenever the recovery comes, it will put the multifamily rental market back onto a long-run path that appears to promise sustained, moderate growth. As discussed in the 2000 Rule, the demographic outlook is favorable for apartment demand. Even if the homeownership rate increases further and the total number of renter households grows only slowly, as described in the discussion of the single-family housing market earlier in this Rule, apartment demand can be expected

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[204] For background information on the Freddie Mac TAF, see pages 65054 and 65067–65068 of the 2000 Rule.

[205] *Fannie Mae's 2002 Annual Housing Activities Report,* pages 24–27; *Freddie Mac's Annual Housing Activities Report for 2002,* pages 41–47.

[206] Abt Associates Inc., *An Assessment of the Availability and Cost of Financing for Small Mulifamily Properties,* a report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, August 2001.

[207] Fannie Mae, *2002 Annual Housing Activities Report,* 2003, p. 25.

[208] Fannie Mae, *2002 Annual Housing Activities Report,* 2003, p. 25.

[209] Fannie Mae, *2002 Annual Housing Activities Report,* 2003, p. 26–27.

[210] "Fannie Courting Multifamily Sellers; Small Banks Balking," *American Banker,* January 13, 2003.

[211] Fannie Mae, *2002 Annual Housing Activities Report,* 2003, p. 27.

[212] Abt Associates, "Study of Multifamily Underwriting and the GSEs' Role in the Multifamily Market," Final Report to the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, August 2001.

[213] Federal Reserve, Survey of Professional Forecasters, November 2003.

[214] Board of Governors of the Federal Reserve System, *Monetary Policy Report to the Congress,* February 11, 2003, page 4.

to increase more rapidly than that for other rental housing, owing to the likely changes in age composition and reductions in average household size. One estimate projects the annual growth in apartment households to be one percent.[215]

a. The Outlook for Multifamily Housing Supply

Regarding supply, one of the secrets of the success of the multifamily sector during the 1990s was that production never rose above its long-run sustainable level. The discipline of developers, investors, and their lenders that brought that result needs to be continued if the apartment market is to maintain stability.

Multifamily housing may benefit in the future from more favorable public attitudes and local land use regulation. Higher density housing is a potentially powerful tool for preserving open space, reducing sprawl, and promoting transportation alternatives to the automobile. The recently heightened attention to these issues may increase the acceptance of multifamily rental construction to both potential customers and their prospective neighbors.

Provision of affordable housing will continue to challenge suppliers of multifamily rental housing and policy makers at all levels of governments. Low incomes combined with high housing costs define a difficult situation for millions of renter households. Housing cost reductions are constrained by high land prices and construction costs in many markets. Government action—through land use regulation, building codes, and occupancy standards—are major contributors to those high costs, as is widely recognized by market participants, including the leaders of the GSEs.[216] Reflecting the preferences of the electorate, these regulated constraints are unlikely to change until voter attitudes change.

b. The Future Role of the GSEs

Regarding the mortgage financing of multifamily rental apartments, it is hard to anticipate events that might disrupt the flow or alter the sources of mortgage credit to apartments. In the past, certain events have triggered such changes—notably the savings and loan debacle of the 1980s and Freddie Mac's withdrawal from the market following large losses in the early 1990s—but these are, by definition, surprises. The current structure and performance of the multifamily mortgage market provide some comfort that the risks are slight. The lender base is not overly dependent on any one institution or lender type for either loan originations or funding. Lending discipline appears to have been maintained, given the low mortgage delinquency rates even during the weak economy of the past two years. The near term outlook of most market participants is for ample supply of mortgage financing at historically low interest rates.[217] Yet complacency would be a mistake.

Responding to both market incentives and their public charters, Fannie Mae and Freddie Mac can be expected to build on their recent records of increased multifamily lending and continue to be leaders in financing volumes, in program innovations, and in standards setting. Certainly there is room for expansion of the GSEs' share of the multifamily mortgage market, which, as mentioned earlier, is by the measure of dollar volume outstanding currently only about half the market share enjoyed by the GSEs in single-family lending. And from the perspective of units financed, the statistics from Table A.5 combined with data from the 2001 American Housing Survey indicate that, while the GSEs financed 7.2 percent of all the nation's year-round housing units that year, the percentage of multifamily rental units (that is renter-occupied units and vacant rental units in structures with at least five units) was only 5.7 percent.

The sharp gains since 2000 in small property lending by Fannie Mae and Freddie Mac demonstrate that it is feasible for this important segment of the affordable housing market to be served by the GSEs. Building on the expertise and market contacts gained in the past three years, the GSEs should be able to make even greater in-roads in small property lending, although the challenges noted earlier will continue.

The GSEs' size and market position between loan originators and mortgage investors makes them the logical institutions to identify and promote needed innovations and to establish standards that will improve market efficiency. As their presence in the multifamily market continues to grow, the GSEs will have both the knowledge and the "clout" to push simultaneously for market standardization and for programmatic flexibility to meet special needs and circumstances, with the ultimate goal of increasing the availability and reducing the cost of financing for affordable and other multifamily rental properties.

E. Factor 3: Performance and Effort of the GSEs Toward Achieving the Low- and Moderate-Income Housing Goal in Previous Years

This section first discusses each GSE's performance under the Low- and Moderate-Income Housing Goal over the 1996–2002 period.[218] The data presented are "official results"—*i.e.*, they are based on HUD's analysis of the loan-level data submitted to the Department by the GSEs and the counting provisions contained in HUD's regulations in 24 CFR part 81, subpart B. As explained below, in some cases these "official results" differ from goal performance reported by the GSEs in the Annual Housing Activities Reports (AHARs) that they submit to the Department.

The main finding of this section concerning the overall housing goals is that both Fannie Mae and Freddie Mac surpassed the Department's Low- and Moderate-Income Housing Goals for each of the seven years during this period. Specifically:

- The goal was set at 40 percent for 1996; Fannie Mae's performance was 45.6 percent and Freddie Mac's performance was 41.1 percent.
- The goal was set at 42 percent for 1997–2000. Fannie Mae's performance was 45.7 percent in 1997, 44.1 percent in 1998, 45.9 percent in 1999, and 49.5 percent in 2000; and Freddie Mac's performance was 42.6 percent in 1997, 42.9 percent in 1998, 46.1 percent in 1999, and 49.9 percent in 2000.
- In the October 2000 rule, the low- and moderate-income goal was set at 50 percent for 2001–03. As of January 1, 2001, several changes in counting provisions took effect for the low- and moderate-income goal, as follows: "bonus points" (double credit) for purchases of goal-qualifying mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; a "temporary adjustment factor" (1.20 units credit, subsequently increased by Congress to 1.35 units credit) for Freddie Mac's purchases of goal-qualifying mortgages on large (more than 50 units) multifamily properties; changes in the treatment of missing data; a procedure for the use of imputed or proxy rents for determining goal credit for multifamily mortgages; and eligibility of purchases of certain qualifying government-backed loans to receive goal credit. These changes are explained below. Fannie Mae's low-mod goal performance was 51.5 percent in 2001 and 51.8 percent in 2002, and Freddie Mac's performance was 53.2 percent in 2001 and 51.4 percent in 2002, thus both GSEs surpassed this higher goal in both years. This section discusses the October 2000 counting rule changes in detail below, and provides data on what goal performance would have been in 2001–02 without these changes.[219]

After the discussion of the overall housing goals in Sections E.1 to E.5, Sections E.6 to E.12 examine the role of the GSEs in funding home purchase loans for lower-income borrowers and for first-time homebuyers. A summary of the main findings from that analysis is given in Section E.6. Section E.13 then summarizes some recent studies on the GSEs' market role and section E.14 discusses the GSEs' role in the financing of single-family rental properties.

1. Performance on the Low- and Moderate-Income Housing Goal in 1996–2002

HUD's December 1995 rule specified that in 1996 at least 40 percent of the number of units financed by each of the GSEs that were eligible to count toward the Low- and Moderate-Income Goal should qualify as low- or moderate-income, and at least 42 percent of such units should qualify in 1997–2000. HUD's October 2000 rule made various

[215] Jack Goodman, "The Changing Demography of Multifamily Rental Housing," *Housing Policy Debate*, Winter 1999.

[216] Remarks by Franklin D. Raines, Chairman and CEO, Fannie Mae, to the Executive Committee of the National Association of Home Builders, January 18, 2003. *See* also Edward Glaeser and Joseph Gyourko, "The Impact of Zoning on Housing Affordability," Working Paper 8835, National Bureau of Economic Research, March 2002.

[217] "Capital Markets Outlook 2003," *Apartment Finance Today*, Vol. 7, No. 1 (January/February 2003).

[218] Performance for the 1993–95 period was discussed in the October 2000 rule.

[219] To separate out the effects of changes in counting rules that took effect in 2001, this section also compares performance in 2001 to estimated performance in 2000 if the 2001 counting rules had been in effect in that year.

changes in the goal counting rules, as discussed below, and increased the Low- and Moderate-Income Goal to 50 percent for 2001–03.

Table A.8 shows low-mod goal performance over the 1996–2002 period, based on HUD's analysis. The table shows that Fannie Mae surpassed the goals by 5.6 percentage points and 3.7 percentage points in 1996 and 1997, respectively, while Freddie Mac surpassed the goals by narrower margins, 1.1 and 0.6 percentage points. During the heavy refinance year of 1998, Fannie Mae's performance fell by 1.6 percentage points, while Freddie Mac's performance rose slightly, by 0.3 percentage point. Freddie Mac showed a gain in performance to 46.1 percent in 1999, exceeding its previous high by 3.2 percentage points. Fannie Mae's performance in 1999 was 45.9 percent, which, for the first time, slightly lagged Freddie Mac's performance in that year.

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Table A.8

GSEs' Performance on the Low- and Moderate-Income Housing Goal, 1996-2002

	1996	1997	1998	1999	2000	2001*	2002*
Low-and Moderate-Income Goal	40%	42%	42%	42%	42%	50%	50%
Fannie Mae:							
Units Eligible to Count Toward Goal	1,831,690	1,710,530	3,468,428	2,925,347	2,130,686	4,541,456	5,848,788
Low- and Moderate-Income Units	834,393	782,265	1,530,308	1,343,396	1,054,349	2,340,179	3,028,959
Percent Low- and Moderate-Income	45.6%	45.7%	44.1%	45.9%	49.5%	51.5%	51.8%
Freddie Mac:							
Units Eligible to Count Toward Goal	1,293,424	1,173,915	2,654,850	2,224,849	1,578,236	3,238,783	4,275,958
Low- and Moderate-Income Units	532,219	499,590	1,137,660	1,024,660	788,324	1,723,699	2,199,228
Percent Low- and Moderate-Income	41.1%	42.6%	42.9%	46.1%	49.9%	53.2%	51.4%

* Performance in 2001-2002 not directly comparable with performance in 1996-2000 due to changes in goal counting rules, as discussed in text, and shown in Table A.9.

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Both GSEs exhibited sharp gains in goal performance in 2000—Fannie Mae's performance increased by 3.6 percentage points, to a record level of 49.5 percent, while Freddie Mac's performance increased even more, by 3.8 percentage points, which also led to a record level of 49.9 percent. Fannie Mae's performance was 51.5 percent in 2001 and 51.8 percent in 2002; Freddie Mac's performance was 53.2 percent in 2001 and 51.4 percent in 2002. However, as discussed below, using consistent accounting rules for 2000–02, each GSE's performance in 2001–02 was below its performance in 2000.

The official figures for low-mod goal performance presented above differ from the corresponding figures presented by Fannie Mae and Freddie Mac in their Annual Housing Activity Reports to HUD by 0.2–0.3 percentage point in both 1996 and 1997, reflecting minor differences in the application of counting rules. These differences also persisted for Freddie Mac for 1998–2000, but the goal percentages shown above for Fannie Mae for these three years are the same as the results reported by Fannie Mae to the Department. Fannie Mae reported its performance in 2001 as 51.6 percent and Freddie Mac reported its performance as 53.6 percent—both were slightly above the corresponding official figures of 51.5 percent and 53.4 percent, respectively. For 2002, Fannie Mae's reported performance was the same as reported by HUD (51.8 percent), while Freddie Mac's reported performance was 51.3 percent, slightly below HUD's official figure of 51.4 percent.

Fannie Mae's performance on the Low- and Moderate-Income Goal was in the range between 44 percent and 46 percent between 1996 and 1999, but jumped sharply in just one year, from 45.9 percent in 1999 to 49.5 percent in 2000. Freddie Mac's performance was in the range between 41 percent and 43 percent between 1996 and 1998, and then rose to 46.1 percent in 1999 and 49.9 percent in 2000. As discussed above, official performance rose for both GSEs in 2001–02, but this was due to one-time changes in the counting rules—abstracting from counting rule changes, performance fell for both GSEs.

Fannie Mae's performance on the Low- and Moderate-Income Goal surpassed Freddie Mac's in every year through 1998. This pattern was reversed in 1999, as Freddie Mac surpassed Fannie Mae in goal performance for the first time, though by only 0.2 percentage point. This improved relative performance of Freddie Mac was due to its increased purchases of multifamily loans, as it re-entered that market, and to increases in the goal-qualifying shares of its single-family mortgage purchases. Freddie Mac's performance also slightly exceeded Fannie Mae's performance in 2000, 49.9 percent to 49.5 percent. Freddie Mac's official performance also exceeded Fannie Mae's official performance in 2001, but this reflected a difference in the counting rules applicable to the two GSEs that was enacted by Congress; if the same counting rules were applied to both GSEs (that is, Freddie Mac did not receive the 1.35 Temporary Adjustment Factor), Fannie Mae's performance would have exceeded Freddie Mac's performance, by 51.5 percent to 50.5 percent.

In 2002, Freddie Mac's performance on the low mod-goal (51.4 percent) fell short of Fannie Mae's performance (51.8 percent), even though Freddie Mac had the advantage of the Temporary Adjustment Factor. The gap would have been wider without this factor, and in fact Freddie Mac's performance would have been short of the goal, at 49.2 percent.

2. Changes in the Goal Counting Rules for 2001–03

A number of changes in the counting rules underlying the calculation of low- and moderate-income goal performance took effect beginning in 2001, as follows:

• *Bonus points for multifamily and single-family rental properties.* During the 2001–03 period the Department awarded "bonus points" (double credit in the numerator) for goal-qualifying units in small (5–50 unit) multifamily properties and, above a threshold, 2–4 unit owner-occupied properties whose loans were purchased by the GSEs. By letters dated December 24, 2003, the Department notified the GSEs that these bonus points would not be in effect after December 31, 2003.

• *Freddie Mac's Temporary Adjustment Factor.* As part of the Consolidated Appropriations Act of 2000, Congress required the Department to award 1.35 units of credit for each unit financed in "large" multifamily properties (*i.e.*, those with 51 or more units) in the numerator in calculating performance on the housing goals for Freddie Mac for 2001–03.[220] This "temporary adjustment factor" (TAF) did not apply to goal performance for Fannie Mae during this period. By letters dated December 24, 2003, the Department notified Freddie Mac that this factor would not be in effect after December 31, 2003.

• *Missing data for single-family properties.* In the past, if a GSE lacked data on rent for rental units or on borrower income for owner-occupied units in single-family properties whose mortgages it purchased, such units were included in the denominator, but not in the numerator, in calculating goal performance. Since some of these units likely would have qualified for one or more of the housing goals, this rule lowered goal performance. Under the new counting rules for the low- and moderate-income goal and the special affordable goal that took effect in 2001, the GSEs are allowed to exclude loans with missing borrower income from the denominator if the property is located in a below-median income census tract. This exclusion is subject to a ceiling of 1 percent of total owner-occupied units financed. The enterprises are also allowed to exclude single-family rental units with missing rental information from the denominator in calculating performance for these two goals; there is no ceiling or restriction to properties located in below-median income census tracts for this exclusion of single-family rental units. No single-family loans can be excluded from the denominator in calculating performance on the underserved areas goal—that is, if a GSE does not have sufficient information to determine whether or not a property is located in an underserved area, all units in such a property are included in the denominator, but not in the numerator, in calculating performance on this goal.

• *Missing data and proxy rents for multifamily properties.* In the past, if a GSE lacked data on rent for rental units in multifamily properties whose mortgages it purchased, such units were included in the denominator, but not in the numerator, in calculating goal performance. Since some of these units likely would have qualified for one or more of the housing goals, this rule lowered goal performance. Under the new counting rules that took effect in 2001, if rent is missing for multifamily units, a GSE may estimate "proxy rents," and, up to a ceiling of 5 percent of total multifamily units financed, may apply these proxy rents in determining whether such units qualify for the low- and moderate income goal and special affordable goal. If such proxy rents cannot be estimated, these multifamily units are excluded from the denominator in calculating performance under these goals. No multifamily loans can be excluded from the denominator in calculating performance on the underserved areas goal—that is, if a GSE does not have sufficient information to determine whether or not a property is located in an underserved area, all units in such a property are included in the denominator, but not in the numerator, in calculating performance on this goal.

• *Purchases of certain government-backed loans.* Prior to 2001, purchases of government-backed loans were not taken into account in determining performance on the GSEs' low- and moderate-income and underserved area housing goals. That is, all such loans were excluded from both the numerator and the denominator in calculating goal performance on these two goals, and in accordance with Section 1333(b)(1)(A) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, purchases of only certain government-backed loans were included in determining performance on the GSEs' special affordable goals. In October 2000 the Department took steps to encourage the enterprises to play more of a role in the secondary market for several types of government-backed loans where it appeared that greater GSE involvement could increase the liquidity of such mortgages. Home equity conversion mortgages (HECMs) were developed in the late-1980s by the Federal Housing Administration (FHA); these mortgages allow senior citizens to draw on the equity in their homes to obtain monthly payments to supplement their incomes. Thus purchases of FHA-insured HECMs now count toward the low- and moderate-income housing goals if the mortgagor's income is less than median income for the area. Similarly, purchases of mortgages on properties on tribal lands insured under FHA's Section 248 program or HUD's Section 184 program may qualify for the GSEs' housing goals. And purchases of mortgages under the Rural Housing Service's Single Family Housing Guaranteed Loan Program

[220] See *Congressional Record,* December 15, 2000, pp. H12295–96.

may also count toward all of the housing goals.[221]

[221] Prior to the October 2000 rule, purchases of these government-backed mortgages were only eligible for credit under the special affordable goal.

3. Effects of Changes in the Counting Rules on Goal Performance in 2001–02

Because of the changes in the low- and moderate-income goal counting rules that took effect in 2001, direct comparisons between official goal performance in 2000 and 2001–02 are somewhat of an "apples-to-oranges comparison." For this reason, the Department has calculated what performance would have been in 2000 under the 2001–03 rules; this may be compared with official performance in 2001–02—an "apples-to-apples comparison." HUD has also calculated what performance would have been in 2001–02 under the 1996–2000 rules; this may be compared with official performance in 2000—an "oranges-to-oranges comparison." These comparisons are presented in Table A.9.

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Table A.9

Effects of Counting Rule Changes on the GSEs' Performance on the Low- and Moderate-Income Goal

GSE	Year	Baseline A*	Technical Changes[1]	Baseline B*	Bonus Points: Small MF[2]	Bonus Points: SF Rental[3]	Temporary Adjustment Factor (TAF)[4]	Baseline C*
Fannie Mae	1999	**45.9%**	0.9%	46.8%	0.4%	1.2%	NA	48.4%
	2000	**49.5%**	1.8%	51.3%	0.3%	0.9%	NA	52.5%
	2001	47.7%	1.5%	49.2%	0.7%	1.6%	NA	**51.5%**
	2002	47.4%	1.6%	49.0%	1.2%	1.6%	NA	**51.8%**
	Change, 2001-02	-0.3%	0.1%	-0.2%	0.5%	0.0%	NA	0.3%
Freddie Mac	1999	**46.1%**	0.5%	46.6%	0.1%	1.3%	2.7%	50.7%
	2000	**49.9%**	0.7%	50.6%	0.2%	1.0%	3.3%	55.1%
	2001	47.2%	0.5%	47.7%	1.5%	1.4%	2.7%	**53.2%**
	2002	46.1%	0.4%	46.5%	1.0%	1.7%	2.2%	**51.4%**
	Change, 2001-02	-1.1%	-0.1%	-1.2%	-0.5%	0.3%	-0.5%	-1.8%

Details may not add to total due to rounding.

*Note: Baseline A represents performance under 1996-2000 scoring, thus figures for 1999-2000 in bold are official performance in those years. Baseline B adjusts Baseline A for technical changes in counting rules. Baseline C represents performance under 2001-03 scoring, thus figures for 2001-2002 in bold are official performance in those years.

[1] *Technical changes* include credit for purchases of certain qualifying government-backed loans, exclusions of loans with missing information from the denominator in calculating performance, and the use of imputed or proxy rent for multifamily properties.

[2] *Small multifamily bonus points*: for 2001-03, every qualifying unit in a 5-50 unit multifamily property counts as two units in the numerator in calculating goal performance.

[3] *Single-family rental bonus points*: above a threshold, every qualifying unit in a 2-4 unit property in which one unit is owner-occupied and the other units are rental counts as two units in the numerator in calculating goal performance for 2001-03.

[4] *Temporary adjustment factor (TAF)*: in December 2000 Congress enacted a provision whereby every qualifying unit in a large (> 50 unit) multifamily property counts as 1.35 units in calculating goal performance for Freddie Mac for 2001-03. This provision does not apply to goal performance for Fannie Mae.

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Specifically, Table A.9 shows performance under the low- and moderate-income goal in three ways. Baseline A represents performance under the counting rules in effect in 1996–2000. Baseline B incorporates the technical changes in counting rules—changes in the treatment of missing data (including use of proxy rents), and eligibility for the goals of certain government-backed loans. Baseline C incorporates in addition to the technical changes the bonus points and, for Freddie Mac, the temporary adjustment factor. Baseline B corresponds to the counting approach proposed in this rule to take effect in 2005. Boldface figures under Baseline A for 1999–2000 and under Baseline C for 2001–02 indicate official goal performance, based on the counting rules in effect in those years—*e.g.*, for Fannie Mae, 45.9 percent in 1999, 49.5 percent in 2000, 51.5 percent in 2001, and 51.8 percent in 2002.

• *Performance on the Low- and Moderate-Income Goal under 1996–2000 Counting Rules Plus Technical Changes.* If the "Baseline B" counting approach had been in effect in 2000–02 and the GSEs had purchased the same mortgages that they actually did purchase in those years, both Fannie Mae and Freddie Mac would have surpassed the low- and moderate-income goal in 2000 and fallen short in 2001 and 2002. Specifically, Fannie Mae's performance would have been 51.3 percent in 2000, 49.2 percent in 2001, and 49.0 percent in 2002. Freddie Mac's performance would have been 50.6 percent in 2000, 47.7 percent in 2001, and 46.5 percent in 2002.

• *Performance on the Low- and Moderate-Income Goal under 2001–2003 Counting Rules.* If the 2001–03 counting rules had been in effect in 2000–02 and the GSEs had purchased the same mortgages that they actually did purchase in those years (*i.e.*, abstracting from any behavioral effects of "bonus points," for example), both GSEs would have substantially surpassed the low- and moderate-income goal in all three years, but both GSEs' performance figures would have deteriorated somewhat from 2000 to 2001, and, for Freddie Mac, from 2001 to 2002. Specifically, Fannie Mae's "Baseline C" performance would have been 52.5 percent in 2000, 51.5 percent in 2001, and 51.8 percent in 2002. Freddie Mac's performance would have been 55.1 percent in 2000, surpassing its official performance level of 53.2 percent in 2001 and 51.4 percent in 2002. Measured on this consistent basis, then, Fannie Mae's performance fell by 1.0 percentage point in 2001, and Freddie Mac's by 1.9 percentage points in 2001 and an additional 1.8 percentage points in 2002. These reductions were primarily due to 2001–02 being years of heavy refinance activity.

Details of Effects of Changes in Counting Rules on Goal Performance in 2001–02. As discussed above, counting rule changes that took effect in 2001 had significant positive impacts on the performance of both GSEs on the low- and moderate-income goal in that year—3.8 percentage points for Fannie Mae, and 6.0 percentage points for Freddie Mac. This section breaks down the effects of these changes on goal performance for both GSEs; results are shown in Table A.9.

• *Freddie Mac.* The largest impact of the counting rule changes on Freddie Mac's goal performance was due to the application of the temporary adjustment factor for purchases of mortgages on large multifamily properties, as enacted by Congress; this added 2.7 percentage points to goal performance in 2001, as shown in Table A.9. Bonus points for purchases of mortgages on small multifamily properties added 1.5 percentage points to performance, and bonus points for purchase of mortgages on owner-occupied 2–4 unit rental properties added 1.4 percentage points to performance. The remaining impact (0.5 percentage point) was due to technical changes in counting rules—primarily, the exclusion of single-family units with missing information from the denominator in calculating goal performance. Credit for purchases of qualifying government-backed loans played a minor role in determining Freddie Mac's goal performance. These same patterns also appeared in 2002.

• *Fannie Mae.* The temporary adjustment factor applies to Freddie Mac's goal performance, but not to Fannie Mae's performance, thus counting rule changes had less impact on its performance than on Freddie Mac's performance in 2001. The largest impact of the counting rule changes on Fannie Mae's goal performance was due to the application of bonus points for purchases of mortgages on owner-occupied 2–4 unit rental properties, which added 1.6 percentage points to performance, and for purchases of mortgages on small multifamily properties, which added 0.7 percentage point to performance. The remaining impact (1.3 percentage points) was due to technical changes—primarily, the exclusion of single-family units with missing information from the denominator in calculating goal performance.[222] Credit for purchases of qualifying government-backed loans and the use of proxy rent for multifamily properties played a minor role in determining Fannie Mae's goal performance. These same patterns also appeared in 2002 for Fannie Mae.

4. Bonus Points for the Low- and Moderate-Income Goal

As discussed above, the Department established "bonus points" to encourage the GSEs to step up their activity in 2001–03 in two segments of the mortgage market—the small (5–50 unit) multifamily mortgage market, and the market for mortgages on 2–4 unit properties where 1 unit is owner-occupied and 1–3 units are occupied by renters. Bonus points did not apply to purchases of mortgages for owner-occupied 1-unit properties, for investor-owned 1–4 unit properties, and for large (more than 50 units) multifamily properties, although as also discussed above, a "temporary adjustment factor" applied to Freddie Mac's purchases of qualifying mortgages on large multifamily properties.

Bonus points for small multifamily properties. Each unit financed in a small multifamily property that qualified for any of the housing goals was counted as two units in the numerator (and one unit in the denominator) in calculating goal performance for that goal. For example, if a GSE financed a mortgage on a 40-unit property in which 10 of the units qualified for the low- and moderate-income goal, 20 units would be entered in the numerator and 40 units in the denominator for this property in calculating goal performance.

Small multifamily bonus points thus encouraged the GSEs to play a larger role in this market, and also to purchase mortgages on such properties in which large shares of the units qualified for the housing goals. Some evidence may be gleaned from the data provided to HUD by the GSEs for 2001–02.

Fannie Mae financed 37,403 units in small multifamily properties in 2001 that were eligible for the low- and moderate-income goal, and 58,277 such units in 2002, a two-year increase of more than 700 percent from the 7,196 such units financed in 2000. Small multifamily properties also accounted for a greater share of Fannie Mae's multifamily business in 2001–02—7.4 percent of total multifamily units financed in 2001 and 13.2 percent in 2002, up from 2.5 percent in 2000. However, HUD's 2000 rule reported information from the 1991 Residential Finance Survey that small multifamily properties accounted for 37 percent of all multifamily units, thus Fannie Mae was still less active in this market than in the market for large multifamily properties.[223]

Within the small multifamily market, there was no evidence that Fannie Mae targeted affordable properties to a greater extent in 2001–02 than in 2000. That is, 87 percent of Fannie Mae's small multifamily units qualified for the low- and moderate-income goal in 2000; this fell to 75 percent in 2001, but rose to 89 percent in 2002.

Freddie Mac financed 50,299 units in small multifamily properties in 2001 that were eligible for the low- and moderate-income goal and 42,772 such units in 2002, a two-year increase of more than 1300 percent from the 2,996 units financed in 2000. Small multifamily properties also accounted for a significantly greater share of Freddie Mac's multifamily business in 2001—16.1 percent of total multifamily units financed in 2001 and 13.4 percent in 2002, up from 1.8 percent in 2000.

Within the small multifamily market, there was some evidence that Freddie Mac targeted affordable properties to a greater extent in 2001–02 than in 2000. That is, 87 percent of Freddie Mac's small multifamily units qualified for the low- and moderate-income goal in 2000; this rose to 96 percent in 2001 and 94 percent in 2002.

In summary, then, there is evidence that bonus points for small multifamily properties had an impact on Fannie Mae's role in this market in 2001–02 and an even larger impact on Freddie Mac's role in this market. In addition, Fannie Mae has announced a program to increase its role in this market further in future years.[224]

[222] Exclusion of loans with missing information had a greater impact on Fannie Mae's goal performance than on Freddie Mac's goal performance.

[223] **Federal Register**, October 31, 2000, Footnote 145, p. 65141.

[224] "Fannie Courting Multifamily Sellers; Small Banks Balking," *American Banker*, January 13, 2003, p. 1.

Bonus points for single-family rental properties. Above a threshold, each unit financed in a 2–4 unit property with at least one owner-occupied unit (referred to as "OO24s" below) that qualified for any of the housing goals was counted as two units in the numerator (and one unit in the denominator) in calculating goal performance for that goal in 2001–03. The threshold was equal to 60 percent of the average number of such qualifying units over the previous five years. For example, Fannie Mae financed an average of 50,030 low- and moderate-income units in these types of properties between 1996 and 2000, and 101,423 such units in 2001. Thus Fannie Mae received 71,405 bonus points in this area in 2001—that is, 101,423 minus 60 percent of 50,030. So 172,828 units were entered in the numerator for these properties in calculating low- and moderate-income goal performance.

Single-family rental bonus points thus encouraged the GSEs to play a larger role in this market, and also to purchase mortgages on such properties in which large shares of the units qualified for the housing goals. As for small multifamily bonus points, again some evidence may be gleaned from the data provided to HUD by the GSEs for 2001–02.

Fannie Mae financed 175,103 units in OO24s in 2001 that were eligible for the low- and moderate-income goal and 229,632 such units in 2002, a two-year increase of nearly 200 percent from the 77,930 units financed in 2000. However, Fannie Mae's total single-family business increased at approximately the same rate as its OO24 business in 2001 and 2002, thus the share of its business accounted for by OO24s was the same in 2001–02 as in 2000—4 percent.

Within the OO24 market, there was no evidence that Fannie Mae targeted affordable properties to a greater extent in 2001–02 than in 2000. That is, approximately 55–60 percent of Fannie Mae's OO24 units qualified for the low- and moderate-income goal in each of these three years.

Freddie Mac financed 96,050 units in OO24s in 2001 that were eligible for the low- and moderate-income goal and 146,222 such units in 2002, also a two-year increase of nearly 200 percent from the 49,993 units financed in 2000. However, Freddie Mac's total single-family business increased at approximately the same rate as its OO24 business in 2001–02, thus the share of its business accounted for by OO24s was the same in 2002 as in 2000—4 percent.

As for Fannie Mae, within the OO24 market there was no evidence that Freddie Mac targeted affordable properties to a greater extent in 2001–02 than in 2000. That is, 68–69 percent of Fannie Mae's OO24 units qualified for the low- and moderate-income goal in each year from 2000 through 2002.

5. Effects of 2000 Census on Scoring of Loans Toward the Low- and Moderate-Income Housing Goal

Background. Scoring of housing units under the Low- and Moderate-Income Housing Goal is based on data for mortgagors' incomes for owner-occupied units, rents for rental units, and area median incomes, as follows:

For single-family owner-occupied units:

• The mortgagors' income at the time of mortgage origination.

• The median income of an area specified as follows: (i) For properties located in Metropolitan Statistical Areas (MSAs), the area is the MSA; and (ii) for properties located outside of MSAs, the area is the county or the non-metropolitan portion of the State in which the property is located, whichever has the larger median income, as of the year of mortgage origination (which may be for the current year or a prior year).

For rental units in single-family properties with rent data are available (assuming no income data available for actual or prospective tenants):

• The unit rent (or average rent for units of the same type) at the time of mortgage origination.

• The area median income as specified for single-family owner-occupied units.

For rental units in multifamily properties where rent data are available.

• The unit rent (or the average rent for units of the same type) at the time of mortgage acquisition by the GSE.

• The area median income as specified for single-family owner-occupied units, but as of the year the GSE acquired the mortgage.

For rental units in multifamily properties where rent data are not available, the GSE may apply HUD-estimated rents which are based on the following area data;

• The median rent in the census tract where the property is located, as of the most recent decennial census.

• The area median income as specified for single-family owner-occupied units, but as of the most recent decennial census.

Thus, scoring loans under the Low- and Moderate-Income Goal requires a data series showing annual median incomes for MSAs, non-metropolitan counties, and the non-metropolitan portions of states; and decennial census data on median incomes for census tracts.[225]

For scoring loans purchased by the GSEs year-by-year from 1993 through 2002, area median income estimates produced by HUD's Economic and Market Analysis Division were used. An example will illustrate the estimation procedure. To generate the area median income estimates that were used to score GSE loans in 2002, data from the 1990 census on 1989 area median incomes were adjusted to 2002 using Bureau of Labor Statistics survey data on rates of change in average incomes for MSAs and counties between 1989 and 1999, data from the Census Bureau's Current Population Survey on rates of change in median family incomes for the nine Census Divisions between 1989 and 2000, and an assumed 4.0 percent per year inflation factor between 2000 and 2002.[226, 227]

2005 Procedure. Relative to the above procedure, scoring of loans purchased by the GSEs in and after 2005 will be affected by two factors. First, the Economic and Market Analysis Division has begun to incorporate data from the 2000 census into its procedure for estimating annual area median incomes and American Community Survey data are becoming available at increasingly finer levels of geographical detail for use in annual updating. Beginning in 2005 Bureau of Labor Statistics data on rates of inflation in average wages will not be used. For 2005, the procedure for estimating area median incomes will be to adjust 2000 census data on 1999 area median incomes to 2003 using data from the Census Bureau's American Community Survey (ACS) on rates of change in average incomes for States between 1999 and 2003, with a further adjustment to 2005 based on an appropriate annual inflation factor.[228] Increasingly more detailed ACS data will be available and will be used in subsequent years, as ACS estimates for metropolitan and micropolitan areas and counties become available.

The second factor is the Office of Management and Budget's June, 2003, re-specification of MSA boundaries based on analysis of 2000 census data.[229]

Analysis. For purposes of specifying the level of the Low- and Moderate-Income Housing Goal, HUD developed a methodology for scoring loans purchased by the GSEs in past years through 2002 as though the re-benchmarking of area median income estimates to the 2000 census and the 2003 re-designation of MSAs had been in effect and HUD had been using an ACS-based estimation procedure at the time the estimates for these years were prepared. For this purpose, HUD created a series of annual estimates of median incomes for MSAs, non-metropolitan counties, and the non-metropolitan portions of states. For 2000, the estimates were 1999 census medians trended by three-fourths of the 4.0 percent annual

[225] In New England, MSAs were defined through mid-2003 in terms of Towns rather than Counties, and the portion of a New England county outside of any MSA was regarded as equivalent to a county in establishing the metropolitan or non-metropolitan location of a property. The MSA definitions established by the Office of Management and Budget (OMB) in June, 2003 defined MSAs in New England in terms of counties.

[226] The procedure is explained in detail in annual releases entitled "HUD Methodology for Estimating FY [year] Median Family Incomes" for years 1993 through 2002, issued by the Economic and Market Analysis Division, Office of Economic Affairs, PD&R, U.S. Department of Housing and Urban Development.

[227] The procedure applicable to the decennial census data used to generate estimated rents is explained in connection with data used to define Underserved Areas in Appendix B.

[228] Transition from the 2002 methodology to the 2005 methodology is occurring in stages in 2003 and 2004. To generate the area median income estimates used to score GSE loans in 2003, data from the 2000 census on 1999 area median incomes were adjusted to 2001 using Bureau of Labor Statistics survey data on rates of change in average incomes for MSAs and counties between 1999 and 2000, data on rates of change in median incomes for the United States and individual States between 1999 and 2001 from Census Bureau's Current Population Survey and American Communities Survey, and an assumed 3.5 percent per year inflation factor between 2001 and 2003. (See "HUD Methodology for Estimating FY 2003 Median Family Incomes," issued by the Economic and Market Analysis Division, *op cit.*) A similar procedure has been used to generate area median income estimates for scoring GSE loans in 2004.

[229] HUD has deferred application of the 2003 MSA specification to 2005, pending completion of the present rulemaking process.

trending factor (to adjust the figures from mid-1999 to April 1, 2000). For 2001, the estimates were based on one-and-three-fourths years of trending, since no data would have been available to use for updating. The 2002 estimates would have used one year of data and 1.75 years of trending. The 2003 estimates would have used two years of data plus 1.75 years of trending. Area median incomes from 1989 to 1999 were estimated based on trend-lines between 1989 and 1999 census data. The 2003 OMB MSA designations were applied.

The resulting estimates of area median incomes for MSAs, non-metropolitan counties, and the non-metropolitan parts of States, were used to re-score loans purchased by the GSEs between 1999 and 2002, and were used further in estimating the share of loans originated in metropolitan areas that would be eligible to score toward the Low- and Moderate-Income Housing Goal, from HMDA data. The results of the retrospective GSE analysis are provided in Table A.10. The results of the GSE-HMDA comparative analysis are presented in the next section.

Table A.10 shows three sets of estimates for each GSE, based respectively on the counting rules in place in 2001–2002 (but disregarding the bonus points and Temporary Adjustment Factor), on the addition of 2000 census re-benchmarking, and finally on the addition of both 2000 census re-benchmarking and 2003 MSA specification.

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Table A.10

Effects of 2000 Census on Scoring Toward Low- and Moderate-Income Goal

	1999	2000	2001	2002
Fannie Mae:				
Benchmark	46.8%	51.3%	49.2%	49.0%
With 2000 Re-benchmarking	46.9%	51.3%	49.2%	49.1%
Adding 2003 MSAs	46.3%	51.2%	48.7%	47.9%
Freddie Mac:				
Benchmark	46.6%	50.6%	47.7%	46.5%
With 2000 Re-benchmarking	46.6%	50.6%	47.7%	46.2%
Adding 2003 MSAs	46.0%	50.2%	47.0%	45.0%

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6. GSEs Compared With the Primary Conventional Conforming Mortgage Market

This section and the next five sections (Sections E.7 to E.12) provide a detailed analysis of the extent to which the GSEs' loan purchases mirror or depart from the patterns found in the primary mortgage market. As in Section C.5, the GSEs' affordable lending performance is also compared with the performance of depository lenders such as commercial banks and thrift institutions. Dimensions of lending considered include the three "goals-qualifying" categories—special affordable borrowers, less-than-median income borrowers, and underserved areas. The special affordable category consists mainly of very-low-income borrowers, or borrowers who have an annual income less than 60 percent of area median income. Because this category is more targeted than the broadly-defined less-than-median-income (or low-mod) category, the discussion below will often focus on the special affordable category as well as the underserved areas category which adds a neighborhood dimension (low-income and high-minority census tracts) to the analysis. This section will also compare the performance of Fannie Mae and Freddie Mac in funding first-time homebuyers with that of primary lenders in the conventional conforming market.

The remainder of this introductory section E.6 provides a list of the major and specific findings which are presented in detail in the following Sections E.7 through 12. Sections 7 and 8 define the primary mortgage market and discuss some technical issues related to the use of the GSE and HMDA data. Sections 8 and 9 compare the GSEs' performance with market performance for home purchase and first-time homebuyer loans, while Section 10 does the same for total single family loans (that is, refinance loans and home purchase loans). Section 11 examines GSE purchases in individual metropolitan areas. Following these analyses, Section 12 examines the overall market share of the GSEs in important submarkets such as first-time homebuyers.

a. Main Findings on GSEs' Performance in the Single-Family Market

There are six main findings from this analysis concerning the GSEs' purchases of single-family-owner mortgages:

1. While Freddie Mac has improved its affordable lending performance in recent years, it has consistently lagged the conventional conforming market in funding affordable home purchase loans for special affordable and low-moderate-income borrowers and underserved neighborhoods targeted by the housing goals.[230] However, Freddie Mac's recent performance (2001 and 2002) has been much closer to the market than its earlier performance.

2. In general, Fannie Mae's affordable lending performance has been better than Freddie Mac's. But like Freddie Mac, Fannie Mae's average performance during past periods (*e.g.*, 1993–2002, 1996–2002, 1999–2002) has been below market levels. However, it is encouraging that Fannie Mae markedly improved its affordable lending performance relative to the market during 2001 and 2002, the first two years of HUD's higher housing goal levels. Fannie Mae's average performance during 2001 and 2002 approached the market on the special affordable and underserved areas categories and matched the market on the low-mod category. Under one measure of GSE and market activity, Fannie Mae matched the market during 2002 on the special affordable category and slightly outperformed the market on the low-mod and underserved areas categories. In this case, which is referred to in the text as the "purchase year" approach, Fannie Mae's performance is based on comparing its purchases of all loans (both seasoned loans and newly-originated mortgages) during a particular year with loans originated in the market in that year. When Fannie Mae's performance is measured on an "origination year" basis (that is, allocating Fannie Mae's purchases in a particular year to the year that the purchased-loan was originated), Fannie Mae matched the market in the low- and moderate-income category during 2002, and lagged the market slightly on the other two categories.

3. Both Fannie Mae and Freddie lag the conventional conforming market in funding first-time homebuyers, and by a rather wide margin. Between 1999 and 2001, first-time homebuyers accounted for 27 percent of each GSE's purchases of home loans, compared with 38 percent for home loans originated in the conventional conforming market.

4. The GSEs have accounted for a significant share of the total (government as well as conventional) market for home purchase loans, but their market share for each of the affordable lending categories (*e.g.*, low-income borrowers and census tracts, high-minority census tracts) has been less than their share of the overall market.

5. The GSEs also account for a very small share of the market for important groups such as minority first-time homebuyers. Considering the total mortgage market (both government and conventional loans), it is estimated that the GSEs purchased only 14 percent of loans originated between 1999 and 2001 for African-American and Hispanic first-time homebuyers, or one-third of their share (42 percent) of all home purchase loans originated during that period. Considering the conventional conforming market and the same time period, it is estimated that the GSEs purchased only 31 percent of loans originated for African-American and Hispanic first-time homebuyers, or about one-half of their share (57 percent) of all home purchase loans in that market.

6. The GSEs' small share of the first-time homebuyer market could be due to the preponderance of high (over 20 percent) downpayment loans in their mortgage purchases.

b. *Specific Findings on GSE Performance in the Single-Family Market*

This section presents 17 specific findings from the analyses reported in Sections E.7 through 12; they are grouped under the following five topic-headings:

(b.1) Longer-term Performance of the GSEs;
(b.2) Performance of the GSEs During Recent Years;
(b.3) The GSEs' Funding First-time Homebuyer Loans;
(b.4) Performance of the GSEs Based on Total (Home Purchase and Refinance) Loans;
(b.5) GSE Market Shares; and,
(b.6) Additional Findings.

(b.1) Longer-Term Performance of the GSEs

The longer-run performance of the GSEs is examined between 1993 and 2002 (which covers the period since the housing goals were put into effect) and between 1996 and 2002 (which covers the period under the current definitions of the housing goals). Of the two borrower-income goals, the analysis below will typically focus on the special affordable category, which is a more targeted category than the rather broadly defined low- and moderate-income category.

(1) Since the early nineties, the mortgage industry has introduced new affordable lending programs and has allowed greater flexibility in underwriting lower-income loans. There is evidence that these programs are paying off in terms of more mortgages for low-income and minority borrowers. As noted earlier, Fannie Mae and Freddie Mac have played an active role in this upsurge of affordable lending, as indicated by the high growth rates of their goals-qualifying business.

- Between 1993 and 2002, the GSEs' purchases of home loans in metropolitan areas increased by 57 percent.[231] Their purchases of home loans for the three housing goals increased at much higher rates—264 percent for special affordable loans, 142 percent for low- and moderate-income loans, and 112 percent for loans in underserved census tracts.

(2) Both Fannie Mae and Freddie Mac have improved their purchases of affordable loans since the housing goals were put in place, as indicated by the increasing share of their business going to the three goals-qualifying categories. (*See* Table A.15 in Section E.9.)

- Between 1992 and 2002, the special affordable share of Fannie Mae's business more than doubled, rising from 6.3 percent to 16.3 percent, while the underserved areas share increased more modestly, from 18.3 percent to 26.7 percent. The figures for Freddie Mac are similar. The special affordable share of Freddie Mac's business rose from 6.5 percent to 15.8 percent, while the underserved areas share also increased but more modestly, from 18.6 percent to 25.8 percent.

(3) While both GSEs improved their performance, they have lagged the primary

[230] The "affordable lending performance" of Fannie Mae and Freddie Mac refers to the performance of the GSEs in funding loans for low-income and underserved borrowers through their purchase (or guarantee) of loans originated by primary lenders. It does not, of course, imply that the GSEs themselves are lenders originating loans in the primary market.

[231] Throughout this analysis, the terms "home loan" and "home mortgage" will refer to a "home purchase loan," as opposed to a "refinance loan." As noted earlier, the mortgage data reported in this paper are for metropolitan areas, unless stated otherwise. Restricting the GSE data to metropolitan areas is necessary to make it comparable with the HMDA-reported conventional primary market data, which is more reliable for metropolitan areas. The analysis of first-time homebuyers in Sections E.9 and E.12 cover both metropolitan and non-metropolitan areas.

market in providing affordable loans to low-income borrowers and underserved neighborhoods. Freddie Mac's average performance, in particular, fell far short of market performance during the 1990s. Fannie Mae's average performance was better than Freddie Mac's during the 1993–2002 period as well as during the 1996–2002 period, which covers the period under HUD's currently-defined housing goals.

• Between 1993 and 2002, 11.8 percent of Freddie Mac's mortgage purchases were for special affordable borrowers, compared with 12.7 percent of Fannie Mae's purchases, 15.4 percent of loans originated by depositories, and 15.4 percent of loans originated in the conventional conforming market (without estimated B&C loans).[232]

• Considering the underserved areas category for the 1996–2002 period, 21.7 percent of Freddie Mac's purchases financed properties in underserved neighborhoods, compared with 23.5 percent of Fannie Mae's purchases, 24.9 percent of loans originated by depositories, and 25.4 percent of loans originated in the conventional conforming market.

(b.2) Performance of the GSEs During Recent Years

The recent performance of the GSEs is examined for the four-year period between 1999 and 2002 and then for 2001 and 2002, which were the first two years that the GSEs operated under the higher goal targets established by HUD in the 2000 Rule. As explained below, the most interesting recent trend concerned Fannie Mae, which improved its performance during 2001 and 2002, at a time when the conventional conforming market was showing little change in affordable lending.

(4) During the recent 1999-to-2002 period, both Fannie Mae and Freddie Mac fell significantly below the market in funding affordable loans.

• Between 1999 and 2002, special affordable loans accounted for 14.4 percent of Fannie Mae's purchases, 14.5 percent of Freddie Mac's purchases, and 16.4 percent of loans originated in the market; thus, the "Fannie-Mae-to-market" ratio was 0.88 and the "Freddie-Mac-to-market" ratio was also 0.88.

• During the same period, underserved area loans accounted for 24.0 percent of Fannie Mae's purchases, 22.9 percent of Freddie Mac's purchases, and 25.8 percent of loans originated in the market; the "Fannie-Mae-to-market" ratio was 0.93 and the "Freddie-Mac-to-market" ratio was only 0.89.[233]

(5) After experiencing declines from 1997 to 1999, Fannie Mae's affordable lending performance improved between 2000 and 2002.

• After declining from 23.0 percent in 1997 to 20.4 percent in 1999, the share of Fannie Mae's purchases financing properties in underserved areas jumped by three percentage points to 23.4 percent in 2000, and then increased further to 26.7 percent by 2002.

• After declining from 13.2 percent in 1998 to 12.5 percent in 1999, the share of Fannie Mae's purchases going to special affordable loans rebounded to 13.3 percent in 2000, 14.9 percent in 2001, and 16.3 percent in 2002.

(6) Freddie Mac's performance on the two borrower-income categories improved between 2000 and 2002, but not as much as Fannie Mae's performance. Freddie Mac's performance on the underserved areas category increased substantially between 2001 and 2002.

• The share of Freddie Mac's single-family-owner business going to special affordable home loans increased from 9.2 in 1997 to 14.7 percent in 2000 before falling to 14.4 percent in 2001 and rising to 15.8 percent in 2001.

• Freddie Mac's purchases of underserved area loans increased at a modest rate from 19.8 percent in 1997 to 22.3 percent in 2001, before sharply jumping to 25.8 percent in 2002.

(7) The long-standing pattern of Fannie Mae outperforming Freddie Mac was reversed during 1999 and 2000. But that pattern returned in 2001 and 2002 when Fannie Mae outperformed Freddie Mac on all three goals-qualifying categories.

• Fannie Mae and Freddie Mac had practically the same performance in 1992 on the three housing goal categories—special affordable loans accounted for 6.3 percent of Fannie Mae's purchases and 6.5 percent of Freddie Mac's purchases, for a "Fannie-Mae-to-Freddie-Mac" ratio of 0.97. The 1992 ratio for underserved areas was also 0.98 and that for low-mod, 1.02. Reflecting Fannie Mae's much better performance, the special affordable "Fannie-Mae-to-Freddie-Mac" ratio had risen to 1.27 by 1997, the underserved area ratio to 1.17, and the low-mod ratio to 1.10.

• However, in 1999, the "Fannie-Mae-to-Freddie-Mac" ratio for each of the three goals-qualifying categories fell to slightly below one. 1999 was the first year since 1992 that Freddie Mac had outperformed Fannie Mae in purchasing affordable home loans (although only by a very slight margin).

• In 2000, Freddie Mac's sharper increases in special affordable and low-mod purchases further reduced the "Fannie-Mae-to-Freddie-Mac" ratios for these two categories to 0.90 and 0.96, respectively. Fannie Mae's sharper increase in underserved areas funding resulted in the "Fannie-Mae-to-Freddie-Mac" ratio rising from slightly below one (0.98) in 1999 to 1.06 in 2000.

• Fannie Mae's stronger performance during 2001 and 2002 returned the "Fannie-Mae-to-Freddie-Mac" ratios for special affordable and low-mod loans to above one (1.03 for both), indicating better performance for Fannie Mae. The "Fannie-Mae-to-Freddie-Mac" ratio (1.03) for the underserved area category remained above one in 2002.

(8) While Freddie Mac has consistently improved its performance relative to the market, it continued to lag the market in funding affordable home loans in 2001 and 2002.

• Unlike Fannie Mae, Freddie Mac had not made any progress through 1997 in closing its gap with the market. The "Freddie Mac-to-market" ratio for the special affordable category actually declined from 0.63 in 1992 to 0.59 in 1997. But Freddie Mac's sharp improvement in special affordable purchases resulted in the "Freddie-Mac-to-market" ratio rising to 0.88 by 2000. After declining from 0.84 in 1992 to 0.80 in 1997, the "Freddie-Mac-to-market" ratio for underserved areas had risen only modestly to 0.84 by the year 2000. Thus, Freddie Mac's improvements prior to 2001 allowed it to close its gap with the market, mainly for the special affordable category where its gap had been the widest.

• During 2001 and 2002, Freddie Mac continued to close its gap with the market. By 2002, all three "Freddie-Mac-to-market" ratios were higher than in 2000, although they continued to fall below one: special affordable (0.97), low-mod (0.97), and underserved areas (0.98). Thus, during 2002, Freddie Mac lagged the market on all three goals-qualifying categories.

(9) Through 1998, Fannie Mae had significantly improved its performance relative to the market. But as a result of shifts in its purchases of affordable loans, Fannie Mae lagged the market even further in 2000 than it had in some earlier years. During 2001 and 2002, Fannie Mae again improved its performance relative to the market.

• The above analysis and the data reported under this specific finding (9) are based on the "purchase year" approach for measuring GSE activity. The purchase year approach assigns GSE purchases of both prior-year (seasoned) and newly-originated mortgages to the calendar year in which they were purchased by the GSE; this results in an inconsistency with the HMDA-reported market data, which covers only newly-originated mortgages. Sections E.9 and E.10 also report the results of an alternative "origination year" approach that assigns GSE purchases to their year of origination, placing them on a more consistent basis with the HMDA-reported market data. The findings from the origination-year approach are discussed under specific finding (10).

• Fannie Mae's decline in performance during 1999 resulted in the "Fannie-Mae-to-market" ratio falling sharply to 0.74 for special affordable and to 0.81 for underserved areas. In 2000, Fannie Mae improved and reversed its declining trend, as the "Fannie-Mae-to-market" ratios increased to 0.79 for special affordable purchases and to 0.89 for underserved area purchases.

• During 2001, Fannie Mae increased its special affordable percentage by 1.6 percentage points to 14.9 percent, which was only 0.7 percentage point below the market's performance of 15.6 percent. Fannie Mae

[232] Unless otherwise noted, the conventional conforming market data reported in this section exclude an estimate of B&C loans; the less-risky A-minus portion of the subprime market is included in the market definition. See Section E.7 and Appendix D for a discussion of primary market definitions and the uncertainty surrounding estimates of the number of B&C loans in HMDA data. As noted there, B&C loans are much more likely to be refinance loans rather than home purchase loans.

[233] Fannie Mae had a particularly poor year during 1999. Therefore, the text also reports averages for 2000–2002, dropping the year 1999 (see Table A.13 in Section E.9). While Fannie Mae's performance is closer to the market, it continues to fall below market levels during the 2000–2002 period.

increased its low-mod percentage from 40.8 percent to 42.9 percent at the same time that the low-mod share of the primary market was falling from 44.4 percent to 42.9 percent, placing Fannie Mae at the market's performance. Similarly, Fannie Mae increased its underserved area percentage from 23.4 percent in 2000 to 24.4 percent in 2001 while the underserved area share of the primary market was falling from 26.4 percent to 25.2 percent, placing Fannie Mae at 0.8 percentage point from the market's performance.

- During 2002, Fannie Mae continued to improve its performance on all three goals categories. Using the purchase-year approach to measure GSE performance, Fannie Mae matched the market on the special affordable category (16.3 percent for both), led the market on the low-mod category (45.3 percent for Fannie Mae compared with 45.2 percent for the market), and led the market on the underserved area category (26.7 percent for Fannie Mae versus 26.4 percent for the market). As explained in the next specific finding, measuring Fannie Mae's performance on the more consistent origination-year basis gives somewhat different results.

(10) This analysis addresses several technical issues involved in measuring GSE performance. The above analysis was based on the "purchase year" approach, as defined in (9) above. An alternative "origination year" approach has also been utilized, which assigns GSE purchases to their year of origination, placing them on a more consistent basis with the HMDA-reported market data. While the average results (*e.g.*, 1999–2002 GSE performance) are similar under the two reporting approaches, GSE performance in any particular year can be affected, depending on the extent to which the GSE has purchased goals-qualifying seasoned loans in that particular year.

- The choice of which approach to follow particularly affected conclusions about Fannie Mae's performance relative to the market. Under the origination-year approach, Fannie Mae lagged the market on all three housing goal categories during 2001 and on the special affordable and underserved area categories during 2002. In 2002, Fannie Mae essentially matched the market on the low-mod category (45.4 percent for Fannie Mae compared with 45.2 percent of the market).

(b.3) The GSEs' Funding of First-Time Homebuyer Loans

(11) The GSEs' funding of first-time homebuyers has been compared to that of primary lenders in the conventional conforming market. Both Fannie Mae and Freddie lag the market in funding first-Time homebuyers, and by a rather wide margin.

- First-time homebuyers account for 27 percent of each GSE's purchases of home loans, compared with 38 percent for home loans originated in the conventional conforming market.

(b.4) Performance of the GSEs Based on Total (Home Purchase and Refinance) Loans

(12) The GSEs' acquisitions of total loans (including refinance loans as well as home purchase loans) were also examined. The main results indicate that while the GSEs have improved their performance they have consistently lagged the market in funding loans (home purchase and refinance) that qualify for the housing goals. (*See* Table A.20 of Section E.10, which is based on the purchase-year approach for measuring GSE activity.)

- *1999–2002.* During the recent 1999-to-2002 period, both Fannie Mae and Freddie Mac fell significantly below the market in funding affordable loans. Between 1999 and 2002, special affordable loans accounted for 13.8 percent of Fannie Mae's purchases, 13.8 percent of Freddie Mac's purchases, and 15.7 percent of loans originated in the market; thus, the "Fannie-Mae-to-market" ratio and the "Freddie-Mac-to-market" ratio were each 0.88 during this period.
- During the same period, underserved area loans accounted for 23.8 percent of Fannie Mae's purchases, 23.1 percent of Freddie Mac's purchases, and 25.7 percent of loans originated in the market; thus, the "Fannie-Mae-to-market" ratio was 0.93 and the "Freddie-Mac-to-market" ratio was 0.90.[234]
- *2002.* During this year of heavy refinancing, Fannie Mae's performance approached but fell below market performance. The "Fannie-Mae-to-market" ratios were 0.98 for special affordable loans, 0.99 for low-mod loans, and 0.99 for underserved area loans. The "Freddie-Mac-to-market" ratios were 0.04–0.05 lower: 0.93 for special affordable loans, 0.94 for low-mod loans, and 0.94 for underserved area loans.

(b.5) GSE Market Shares

This analysis includes an expanded "market share" analysis that documents the GSEs' contribution to important segments of the home purchase and first-time homebuyer markets.

(13) The GSEs account for a significant share of the total (government as well as conventional conforming) market for home purchase loans. However, the GSEs' market share for each of the affordable lending categories is much less than their share of the overall market.

- The GSEs' purchases were estimated to be 46 percent of all home loans originated in metropolitan areas between 1999 and 2002 but only 29 percent of loans originated for African-American and Hispanic borrowers, 37 percent of loans originated for low-income borrowers, and 36 percent for properties in underserved areas. The GSEs' market share for the various affordable lending categories increased during 2001 and 2002, but the above-mentioned pattern remained.
- A study by staff from the Federal Reserve Board suggests that the GSEs have a much more limited role in the affordable lending market than is suggested by the data presented above.[235] The Fed study, which combined market share, downpayment, and default data, concluded that the GSEs play a very minimal role in providing credit support and assuming credit risk for low-income and minority borrowers; for example, the study concluded that in 1995 the GSEs provided only four percent of the credit support going to African-Americans and Hispanic borrowers.
- Section V of this study begins to reconcile these different results by examining the role of the GSEs in the first-time homebuyer market and the downpayment characteristics of mortgages purchased by the GSEs.

(14) The market role of the GSEs appears to be particularly low in important market segments such as minority first-time homebuyers.

- Recent analysis has estimated that the GSEs' share of the market for first-time African-American and Hispanic homebuyers was only 14.3 percent between 1999 and 2001, or about one-third of their share (41.5 percent) of all home purchases during that period. This analysis includes the total market, including government and conventional loans.
- A similar market share analysis was conducted for the conventional conforming market. Between 1999 and 2001, the GSEs' purchases accounted for 56.6 percent of all home loans originated in the conventional conforming market of both metropolitan areas and non-metropolitan areas. Their purchases of first-time homebuyer loans, on the other hand, accounted for only 39.8 percent of all first-time homebuyer loans originated in that market.
- The GSEs have funded an even lower share of the minority first-time homebuyer market in the conventional conforming market. Between 1999 and 2001, the GSEs purchases of African-American and Hispanic first-time homebuyer loans represented 30.9 percent of the conventional conforming market for these loans. Thus, while the GSEs have accounted for 56.6 percent of all home loans in the conventional conforming market, they have accounted for only 30.9 percent of loans originated in that market for African-American and Hispanic first-time homebuyers.

(15) A noticeable pattern among the lower-income-borrower loans purchased by the GSEs is the predominance of loans with high downpayments. This pattern of purchasing mainly high downpayment loans is one factor explaining why the Fed study found such a small market role for the GSEs. It may be the explanation for the small role of Fannie Mae and Freddie Mac in the first-time homebuyer market. Further study of this issue is needed.

- During 2001 and 2002, approximately 50 percent of Fannie Mae's special affordable, low-mod, and underserved areas loans had downpayments of at least 20 percent, a percentage only slightly smaller than the corresponding percentage (53 percent) for all Fannie Mae's home loan purchases. Similar patterns of high downpayments on the goals-qualifying loans were evident in Freddie

[234] As explained in Section E.9, deducting B&C loans from the market totals has more impact on the market percentages for total (both home purchase and refinance) loans than for only home purchase loans. The effects of excluding B&C loans from the total market can be seen by comparing the third and sixth columns of data in Table A.19 in Section E.10.

[235] See Glenn B. Canner, Wayne Passmore, and Brian J. Surette, "Distribution of Credit Risk Among Providers of Mortgages to Lower-Income and Minority Homebuyers" in Federal Reserve Bulletin, 82(12): 1077–1102, December, 1996.

Mac's 2001 and 2002 purchases, as well as in prior years for both GSEs.

(b.6) Additional Findings

This analysis examines two additional topics related to minority first-time homebuyers and the use of HMDA data for measuring the characteristics of loans originated in the conventional conforming market.

(16) The share of the GSEs' purchases for minority first-time homebuyers was much less than the share of newly-originated mortgages in the conventional conforming market for those homebuyers.

• Between 1999 and 2001, minority first-time homebuyers accounted for 6.6 percent of Fannie Mae's purchases of home loans, 5.8 percent of Freddie Mac's purchases, and 10.6 percent of home loans originated in the conventional conforming market. For this subgroup, Fannie Mae's performance is 62 percent of market performance, while Freddie Mac's performance is 55 percent of market performance.

(17) Some studies have concluded that HMDA data overstate the share of market loans going to low-income borrowers and underserved areas. This analysis does not support that conclusion.

• This analysis compares the low-income and underserved areas characteristics of the GSEs' purchases of newly-originated ("current-year") loans as reported both by the GSEs" own data and by HMDA data.[236] For recent years, HMDA data on loans sold to the GSEs do not always have higher percentages of low-income and underserved areas loans than the GSEs' own data on their purchases of newly-originated mortgages. For example, from 1996–2002, both HMDA and Fannie Mae reported that special affordable loans accounted for about 13 percent of Fannie Mae's purchases of newly-originated loans. HMDA reported a 21.9 underserved areas percentage for Fannie Mae, which was rather similar to the underserved areas percentage (22.4 percent) reported by Fannie Mae itself. Given that similar patterns were observed for Freddie Mac's mortgage purchases, it appears that there is no upward bias in the HMDA-based market benchmarks used in this study.

7. Definition of Primary Market

Conventional Conforming Market. The market analysis section is based mainly on HMDA data for mortgages originated in the conventional conforming market of metropolitan areas during the years 1992 to 2002. Only conventional loans with a principal balance less than or equal to the conforming loan limit are included; the conforming loan limit was $300,700 in 2002—these are called "conventional conforming loans." The GSEs" purchases of FHA-insured, VA-guaranteed, and Rural Housing Service loans are excluded from this analysis. The conventional conforming market is used as the benchmark against which to evaluate the GSEs because that is the market definition Congress requires that HUD consider when setting the affordable housing goals. However, as discussed in Section II, some have questioned whether lenders in the conventional market are doing an adequate job meeting the credit needs of minority borrowers, which suggests that this market provides a low benchmark.[237]

Manufactured Housing Loans. In their comments on the proposed 2000 Rule, both GSEs raised questions about whether loans on manufactured housing should be excluded when comparing the primary market with the GSEs. The GSEs purchase these loans, but they have not played a significant role in the manufactured housing loan market. As emphasized by HUD in its 2000 GSE Rule, manufactured housing is an important source of home financing for low-income families and for that reason, should be included in any analysis of affordable lending. However, for comparison purposes, data are also presented for the primary market defined without manufactured housing loans. Because this analysis focuses on metropolitan areas, it does not include the substantial number of manufactured housing loans originated in non-metropolitan areas.

Subprime Loans. Both GSEs also raised questions about whether subprime loans should be excluded when comparing the primary market with their performance. In its final 2000 GSE Rule, HUD argued that borrowers in the A-minus portion of the subprime market could benefit from the standardization and lower interest rates that typically accompany an active secondary market effort by the GSEs. A-minus loans are not nearly as risky as B&C loans and the GSEs have already started purchasing A-minus loans (and likely the lower "B" grade subprime loans as well). The GSEs themselves have mentioned that a large portion of borrowers in the subprime market could qualify as "A credit." This analysis includes the A-minus portion of the subprime market, or conversely, excludes the B&C portion of that market.

Unfortunately, HMDA does not identify subprime loans, much less separate them into their A-minus and B&C components.[238] Randall M. Scheessele at HUD has identified approximately 200 HMDA reporters that primarily originate subprime loans and account for about 60–70 percent of the subprime market.[239] To adjust HMDA data for B&C loans, this analysis follows HUD's 2000 Rule which assumed that the B&C portion of the subprime market accounted for one-half of the loans originated by the subprime lenders included in Scheessele's list.[240] As shown below, the effects of adjusting the various market percentages for B&C loans are minor mostly because the analysis in this section focuses on home purchase loans, which historically have accounted for less than one quarter of the mortgages originated by subprime lenders—the subprime market is mainly a refinance market.[241]

Lender-Purchased Loans in HMDA. When analyzing HMDA data, Fannie Mae includes in its market totals those HMDA loans identified as having been purchased by the reporting lender, above and beyond loans that were originated by the reporting lender.[242] Fannie Mae contends that there are a subset of loans originated by brokers and subsequently purchased by wholesale lenders that are neither reported by the brokers nor the wholesale lenders as originations but are reported by the wholesale lenders as purchased loans. According to Fannie Mae, these HMDA-reported purchased loans should be added to HMDA-reported originated loans to arrive at an estimate of total mortgage originations.

This rule's market definition includes only HMDA-reported originations; purchased loans are excluded from the market definition. While some purchased loans may not be reported as originations in HMDA (the Fannie Mae argument), there are several reasons for assuming that most HMDA-reported purchased loans are also reported in HMDA as market originations. *First,* Fed staff have told HUD that including purchased loans would result in double counting mortgage originations.[243] *Second,*

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[236] In this comparison, a higher special affordable percentage for HMDA-reported mortgage originations that lenders report as also being sold to the GSEs—as compared with the special affordable percentage for newly-originated mortgages that the GSEs report as being actually purchased by them—would suggest that HMDA market data are biased; that is, in this situation, the special affordable percentage for all mortgage originations reported in HMDA would likely be larger than the special affordable percentage for all new mortgage originations, including those not reported in HMDA as well as those reported in HMDA.

[237] The market definition in this section is narrower than the "Total Market" data presented earlier in Tables A.1 and A.2, which included all home loans below the conforming loan limit, that is, government loans as well as conventional conforming loans. The market share analysis reported in Section E.12 also examine the GSEs' role in the overall market.

[238] And there is some evidence that many subprime loans are not even reported to HMDA, although there is nothing conclusive on this issue. See *Fair Lending/CRA Compass*, June 1999, p. 3.

[239] The list of subprime lenders as well as Scheessele's list of manufactured housing lenders are available at *http://www.huduser.org/publications/hsgfin.html.*

[240] The one-half estimate is conservative as some observers estimate that B&C loans account for only 30–40 percent of the subprime market. However, varying the B&C share from 50 percent to 30 percent does not significantly change the following analysis of home purchase loans because subprime loans are mainly for refinance purposes. Overstating the share of B&C loans in this manner also allows for any differences in HMDA reporting of different types of loans—for example, if B&C loans account for 35 percent of all subprime loans, then assuming that they account for 50 percent is equivalent to assuming that B&C loans are reported in HMDA at 70 percent of the rate of other loans.

[241] The reductions in the market shares are more significant for total loans, which include refinance as well as home purchase loans; for data on total loans, see Table A.19 in Section 10. Subprime lenders have been focusing more on home purchase loans recently. The home purchase share of loans originated by the subprime lenders in Scheessele's list increased from 26 percent in 1999 to 36 percent in 2000 before dropping to about 30 percent during the heavy refinancing years of 2001 and 2002.

[242] In 2001 (2002), lenders reported in HMDA that they purchased 851,735 (906,684) conventional conforming, home purchase loans in metropolitan areas; this compares with 2,763,230 (2,929,197) loans that these same lenders reported that they originated in metropolitan areas.

[243] *See* Randall M. Scheeselle, *HMDA Coverage of the Mortgage Market*, Housing Finance Working

Continued

comparisons of HMDA-reported FHA data with data reported by FHA supports the Fed's conclusion. For instance, FHA's own data indicate that during 2001 FHA insured 752,319 home purchase loans in metropolitan areas; the sum of HMDA-reported purchased home loans and HMDA-reported originated home loans in metropolitan areas alone yields a much higher figure of 845,176 FHA-insured loans during 2001.[244] While these calculations are for the FHA market (rather than the conventional market), they suggest that including HMDA-reported purchased loans in the market definition would overstate mortgage origination totals. *Third*, Abt Associates surveyed nine wholesale lenders and questioned them concerning their guidelines for reporting in HMDA loans purchased from brokers. Most of these lenders said brokered loans were reported as originations if they [the wholesale lender] make the credit decision; this policy is consistent with the Fed's guidelines for HMDA reporting. Abt Associates concluded that "brokered loans do seem more likely to be reported as originations * * *."[245]

Finally, it should be noted that including purchased loans in the market definition does not significantly change the goals-qualifying shares of the market, mostly because borrower income data are missing for the majority of purchased loans. In addition, the low-income and underserved area shares for purchased and originated loans are rather similar. In 2001, the following shares for the conventional conforming home purchase market were obtained for purchased and originated loans: Low-income (25.8 percent for purchased loans, 28.3 percent for market originations), low-mod income (41.3 percent, 43.2 percent), and underserved areas (24.2 percent, 25.8 percent). In 2002, the comparisons were as follows: low-income (26.6 percent for purchased loans, 29.7 percent for market originations), low-mod income (42.3 percent, 45.3 percent), and underserved areas (28.8 percent, 27.2 percent).[246]

8. Technical Issues: Using HMDA Data To Measure the Characteristics of GSE Purchases and Mortgage Market Originations [247]

This section discusses important technical issues concerning the use of HMDA data for measuring the GSEs' performance relative to the characteristics of mortgages originated in the primary market. The first issue concerns the reliability of HMDA data for measuring the borrower income and census tract characteristics of loans sold to the GSEs. Fannie Mae, in particular, contends that HMDA data understates the percentages of its business that qualify for the three housing goals. In its comments on the proposed 2000 Rule, Fannie Mae questioned HUD's reliance on HMDA data for measuring its performance. As discussed below, HMDA data on loans sold to the GSEs do not include prior-year (seasoned) loans that are sold to the GSEs. Since about one-fourth of GSE purchases in any particular year involve loans originated in prior years, HMDA data will not provide an accurate measure of the goals-qualifying characteristics of the GSEs' total purchases when the characteristics of prior-year loans differ from those of newly-originated, current-year loans.

A related issue concerns the appropriate definition of the GSE data when making annual comparisons of GSE performance with the market. On the one hand, the GSE annual data can be expressed on a purchase-year basis, which means that all GSE purchases in a particular year would be assigned to that particular year. Alternatively, the GSE annual data can be expressed on an origination-year basis, which means that GSE purchases in a particular year would be assigned to the calendar year that the GSE-purchased mortgage was originated; for example, a GSE's purchase during 2001 of a loan originated in 1999 would be assigned to 1999, the year the loan was originated. These two approaches are discussed further below.

A final technical issue concerns the reliability of HMDA for measuring the percentage of goals-qualifying loans in the primary market. Both GSEs refer to findings from a study by Jim Berkovec and Peter Zorn concerning potential bias in HMDA data.[248] Based on a comparison of the borrower and census tract characteristics between Freddie-Mac-purchased loans (from Freddie Mac's own data) and loans identified in 1993 HMDA data as sold to Freddie Mac, Berkovec and Zorn conclude that HMDA data overstate the percentage of conventional conforming loans originated for lower-income borrowers and for properties located in underserved census tracts. If HMDA data overstate the percentage of goals-qualifying loans, then HUD's market benchmarks (which are based on HMDA data) will also be overstated. The analysis below does not support the Berkovec and Zorn findings—it appears that HMDA data do not overstate the share of goals-qualifying loans in the market. The discussion below of the GSEs' purchases of prior-year and current-year loans also highlights the strategy of purchasing seasoned loans that qualify for the housing goals. The implications of this strategy for understanding recent shifts in the relative performance of Fannie Mae and Freddie Mac are discussed below in Section E.9.

a. GSEs' Purchases of "Prior-Year" and "Current-Year" Mortgages

There are two sources of loan-level information about the characteristics of mortgages purchased by the GSEs—the GSEs themselves and HMDA data. The GSEs provide detailed data on their mortgage purchases to HUD on an annual basis. As part of their annual HMDA reporting responsibilities, lenders are required to indicate whether their new mortgage originations or the loans that they purchase (from affiliates and other institutions) are sold to Fannie Mae, Freddie Mac or some other entity. There have been numerous studies by HUD staff and other researchers that use HMDA data to compare the borrower and neighborhood characteristics of loans sold to the GSEs with the characteristics of all loans originated in the market. One question is whether HMDA data, which is widely available to the public, provides an accurate measure of GSE performance, as compared with the GSEs' own data.[249] Fannie Mae has argued that HMDA data understate its past performance, where performance is defined as the percentage of Fannie Mae's mortgage purchases accounted for by one of the goal-qualifying categories. As explained below, over the past six years, HMDA has provided rather reliable national-level information on the goals-qualifying percentages for the GSEs' purchases of "current-year" (*i.e.*, newly-originated) loans, but not for their purchases of "prior-year" loans.[250]

In any given calendar year, the GSEs can purchase mortgages originated in that calendar year or mortgages originated in a prior calendar year. In 2001 and 2002, for example, purchases of prior-year mortgages accounted for approximately 20 percent of

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Paper No. HF–007. Office of Policy Development and Research, U.S. Department of Housing and Urban Development, July, 1998.

[244] In this example, HMDA-reported purchased loans insured by FHA have been reduced from 411,930 to 100,251 by a procedure that accounts for missing data and overlapping purchased and originated loans. See Harold L. Bunce, *The GSEs' Funding of Affordable Loans: A 2000 Update*, Working Paper HF–013, Office of Policy and Development and Research, HUD, April 2002, for an alternative analysis showing that a market estimate based on adding HMDA-reported purchased loans to HMDA-reported originations would substantially overstate the volume of FHA mortgage originations in metropolitan areas.

[245] *See* Chapter III, "Reporting of Brokered and Correspondent Loans under HMDA", in *Exploratory Study of the Accuracy of HMDA Data*, by Abt Associates Inc. under contract for the Office of Policy Development and Research, HUD, February 12, 1999, page 18.

[246] The percentage shares for purchased loans are obtained after eliminating purchased loans without data and purchased loans that overlap with originated loans. The calculations included 138,536 purchased loans for 2001 and 182,290 purchased loans for 2002.

[247] Readers not interested in these technical issues may want to proceed to Section E.9, which compares GSE performance to the primary market.

[248] See Jim Berkovec and Peter Zorn, "How Complete is HMDA? HMDA Coverage of Freddie Mac Purchases," The *Journal of Real Estate Research*, Vol. II, No. 1, Nov. 1, 1996.

[249] For another discussion of this issue, see Randall M. Scheessele, *HMDA Coverage of the Mortgage Market*, Housing Finance Working Paper HF–007, Office of Policy Development and Research, Department of Housing and Urban Development, July 1998. Scheessele reports that HMDA data covered 81.6 percent of the loans acquired by Fannie Mae and Freddie Mac in 1996. The main reason for the under-reporting of GSE acquisitions is a few large lenders failed to report the sale of a significant portion of their loan originations to the GSEs. Also see the analysis of HMDA coverage by Jim Berkovec and Peter Zorn. "Measuring the Market: Easier Said than Done," *Secondary Mortgage Markets*. McLean VA: Freddie Mac, Winter 1996, pp. 18–21; as well as the Berkovec and Zorn study cited in the above footnote.

[250] Between 1993 and 1996, the GSEs' purchases of prior-year loans were not as targeted as they were after 1996; thus, during this period, HMDA provided reasonable estimates of the goals-qualifying percentages of the GSEs' purchases of all (both current-year and prior-year) loans, with a few exceptions (see Table A.11).

the home loans purchased by each GSE.[251]

[251] During the 1990s, the GSEs increased their purchases of seasoned loans; see Paul B. Manchester, *Goal Performance and Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac, 1998–2000,* Housing Finance Working Paper No. HF–015, Office of Policy Development and Research, HUD, May 2001.

HMDA data provide information mainly on newly-originated mortgages that are sold to the GSEs'that is, HMDA data on loans sold to the GSEs will not include many of their purchases of prior-year loans. The implications of this for measuring GSE performance can be seen in Table A.11, which provides annual data on the borrower and census tract characteristics of GSE purchases, as measured by HMDA data and by the GSEs' own data. Table A.11 divides each of the GSEs' goals-qualifying percentages for a particular acquisition year into two components, the percentage for "prior-year" loans and the percentage for "current-year" loans.

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Table A.11

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1992-2002

Borrower and Tract Characteristics	Fannie Mae Data Prior Year	Fannie Mae Data Current Year	Fannie Mae Data All	HMDA Data for Fannie Mae	Freddie Mac Data Prior Year	Freddie Mac Data Current Year	Freddie Mac Data All	HMDA Data for Freddie Mac	Conforming Market (W/O B&C Loans[1])
Special Affordable									
1992				6.3				6.5	10.4
1993	8.3	8.2	8.2	8.8	5.1	7.5	7.3	7.8	12.6
1994	9.7	10.9	10.7	11.4	7.7	8.2	8.2	9.2	14.1
1995	13.4	11.0	11.4	10.5	9.3	8.3	8.4	8.9	14.4
1996	10.8	10.3	10.4	10.5	8.5	8.9	8.8	9.4	15.0
1997	16.1	10.3	11.7	10.5	9.3	9.1	9.2	9.4	15.2
1998	18.1	12.0	13.2	10.7	12.1	11.4	11.5	9.7	15.4
1999	12.1	12.6	12.5	12.5	13.2	12.7	12.8	12.6	17.0
2000	13.5	13.2	13.3	13.7	17.9	13.4	14.7	13.3	16.8
2001	18.1	14.2	14.9	13.4	17.9	13.3	14.4	12.3	15.6
2002	18.8	15.8	16.3	15.5	15.8	15.8	15.8	14.5	16.3
Less Than Area Median Income									
1992				29.2				28.7	34.4
1993	30.8	33.8	33.5	35.0	25.2	32.5	31.9	32.3	38.9
1994	36.1	39.4	38.8	40.1	32.0	34.1	33.7	35.6	41.8
1995	39.0	38.2	38.3	37.1	34.2	32.5	32.8	33.9	41.4
1996	36.0	37.3	37.0	37.7	32.3	34.1	33.7	35.3	42.2
1997	42.3	37.0	38.3	37.5	34.2	34.8	34.7	35.4	42.5
1998	45.9	39.6	40.9	38.1	36.9	37.7	37.6	36.2	42.8
1999	38.0	40.6	40.0	40.2	39.4	41.2	40.8	41.0	44.8
2000	39.8	41.1	40.8	42.0	47.3	40.9	42.7	41.3	44.4
2001	45.3	42.3	42.9	41.5	43.8	40.5	41.3	39.2	42.9
2002	45.3	45.4	45.3	45.6	42.4	44.4	44.0	43.5	45.2
Underserved Areas									
1992				18.3				18.6	22.2
1993	23.8	19.3	20.3	18.2	19.4	18.0	18.2	17.6	21.9
1994	26.5	23.5	24.2	22.5	21.0	19.2	19.6	19.2	24.3
1995	27.4	23.8	24.6	22.8	22.3	19.2	19.9	19.1	25.4
1996	23.4	21.8	22.3	21.6	22.2	18.9	19.6	19.0	24.9
1997	29.1	20.6	23.0	21.0	22.1	19.1	19.7	18.6	24.9
1998	28.3	20.8	22.7	19.6	21.9	19.3	19.8	17.4	24.2
1999	21.9	20.0	20.4	20.3	23.1	20.3	20.9	19.3	25.2
2000	26.6	22.4	23.4	22.5	23.9	21.2	22.0	20.9	26.4
2001	28.3	23.3	24.4	22.0	25.7	21.3	22.3	19.5	25.2
2002	32.7	25.5	26.7	24.6	29.4	25.0	25.8	21.4	26.4

Notes: The Fannie Mae and Freddie Mac data for their purchases of "Prior Year" mortgages, "Current Year" mortgages, and "All" mortgages are from the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The "HMDA Data for (GSE)" are those mortgages that HMDA identifies as being sold to the GSEs. The Conforming Market data are from HMDA data. Mortgages with a loan amount greater than six times borrower income are excluded for the purposes of the low- and moderate-income and special affordable analyses. In both the GSE and market analyses, mortgages classified as special affordable include mortgages from very-low-income borrowers and low-income borrowers living in low-income census tracts. Because missing value percentages differ between GSE and HMDA data, mortgages with missing data are excluded from both the GSE and market data.

[1] The adjustment assumes that B&C loans represent one-half of the subprime market. The adjustment for home purchase loans is small because subprime (B&C) loans are mainly refinance loans. For further discussion, see text.

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Consider Fannie Mae's special affordable purchases in 2002. According to Fannie Mae's own data, 16.3 percent of its purchases during 2002 were special affordable loans. According to HMDA data, only 15.5 percent of loans sold to Fannie Mae fell into the special affordable category. In this case, HMDA data underestimate the special affordable share of Fannie Mae's purchases during 2002. What explains these different patterns in the GSE and HMDA data? The reason that HMDA data underestimate the special affordable percentage of Fannie Mae's 2002 purchases can be seen by disaggregating Fannie Mae's purchases during 2002 into their prior-year and current-year components. Table A.11 shows that the overall figure of 16.3 percent for special affordable purchases is a weighted average of 18.8 percent for Fannie Mae's purchases during 2002 of prior-year mortgages and 15.8 percent for its purchases of current-year purchases. The HMDA-reported figure of 15.5 percent is based mainly on newly-mortgaged (current-year) loans that lenders reported as being sold to Fannie Mae during 2002. The HMDA figure is similar in concept to the current-year percentage from the GSEs' own data. And the HMDA figure and the GSE current-year figure are practically the same in this case (15.5 versus 15.8 percent). Thus, the relatively large share of special affordable mortgages in Fannie Mae's purchases of prior-year mortgages explains why Fannie Mae's own data show an overall (both prior-year and current-year) percentage of special affordable loans that is higher than that reported for Fannie Mae in HMDA data.

b. Reliability of HMDA Data

With the above explanation of the basic differences between GSE-reported and HMDA-reported loan information, issues related to the reliability of HMDA data can now be discussed. Table A.12 presents the same information as Table A.11, except that the data are aggregated for the years 1993–5, 1996–2002, and 1999–2002. Comparing HMDA-reported data on GSE purchases with GSE-reported current-year data suggests that, on average, HMDA data have provided reasonable estimates of the goals-qualifying percentages for the GSEs' current-year purchases (with the exception of Freddie Mac's underserved area loans, as discussed below). For example, Fannie Mae reported that 13.0 percent of the current-year loans it purchased between 1996 and 2002 were for special affordable borrowers. In their HMDA submissions, lenders reported a nearly identical figure of 12.7 percent for the special affordable share of loans that they sold to Fannie Mae. The corresponding numbers for Freddie Mac were 12.4 percent reported by them and 11.9 percent reported by HMDA. During the same period, both Fannie Mae and HMDA reported that approximately 22 percent of current-year loans purchased by Fannie Mae financed properties in underserved areas. However, Freddie Mac reported that 21.0 percent of the current-year loans it purchased between 1996 and 2002 financed properties in underserved areas, a figure somewhat higher than the 19.5 percent that HMDA reported as underserved area loans sold to Freddie Mac during that period.[252]

[252] Freddie Mac's underserved area figure for 2002 showed a particularly large discrepancy—as shown in Table A.11, Freddie Mac reported that 25.0 percent of the current-year loans it purchased during 2002 financed properties in underserved areas, a figure much higher than the 21.4 percent that HMDA reported as underserved area loans sold to Freddie Mac during 2002. This is the largest discrepancy in Table A.11, and it is not clear what explains it. This downward bias for HMDA data, is the opposite of that suggested by Berkovec and Zorn, who argued that affordability percentages from HMDA data are biased upward.

Table A.12

HMDA Versus GSE Reporting of GSE Loan Characteristics
Single-Family-Owner Home Loans in Metropolitan Areas, 1993-2002

Borrower and Tract Characteristics	Fannie Mae: GSE-Reported Current-Year Loan Purchases	Fannie Mae: HMDA-Reported GSE Purchases	Fannie Mae: Ratio: HMDA-Reported/ GSE Reported	Freddie Mac: GSE-Reported Current-Year Loan Purchases	Freddie Mac: HMDA-Reported GSE Purchases	Freddie Mac: Ratio: HMDA-Reported/ GSE Reported
Special Affordable						
1993-1995	9.9	10.2	1.03	8.0	8.6	1.08
1996-2002	13.0	12.7	0.98	12.4	11.9	0.96
1999-2002	14.1	13.9	0.99	13.9	13.2	0.95
Less than Area Median Income						
1993-1995	36.8	37.2	1.01	33.0	33.9	1.03
1996-2002	41.0	40.9	1.00	39.6	39.2	0.99
1999-2002	42.6	42.6	1.00	41.9	41.2	0.98
Underserved Areas						
1993-1995	22.0	21.1	0.96	18.8	18.6	0.99
1996-2002	22.4	21.9	0.98	21.0	19.5	0.93
1999-2002	23.1	22.6	0.98	22.1	20.3	0.92

Source: The Fannie Mae and Freddie Mac "current year" data include information on their purchases of home loan originated in the same year they acquired the loans. The data are from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. The "HMDA-Reported" data include information on conventional conforming loans sold to the GSEs as reported by lenders in HMDA. Loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

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The facts that the GSE (both Fannie Mae and Freddie Mac) and HMDA figures for special affordable and low-mod loans are similar, and that the Fannie Mae and HMDA figures for underserved areas are similar, suggest that the Berkovec and Zorn conclusions about HMDA being upward biased are wrong.[253] For the 1996-to-2002 period, the discrepancies reported in Table A.11 as well as Table A.12 are mostly consistent with HMDA being biased in a downward direction, not an upward direction as Berkovec and Zorn contend.[254] In particular, the Freddie-Mac-reported underserved area percentage being larger than the HMDA-reported underserved area percentage suggests a downward bias in HMDA. The more recent and complete (Fannie Mae data as well as Freddie Mac data) analysis does not support the Berkovec and Zorn finding that HMDA overstates the goals-qualifying percentages of the market.[255]

c. Purchase-Year Versus Origination-Year Reporting of GSE Data

In comparing the GSEs' performance to the primary market, HUD has typically expressed the GSEs' annual performance on a purchase-year basis. That is, all mortgages (including both current-year mortgages and prior-year mortgages) purchased by a GSE in a particular year are assigned to the year of GSE purchase. The approach of including a GSE's purchases of both "current-year" and "prior-year" mortgages gives the GSE full credit for their purchase activity in the year that the purchase actually takes place; this approach is also consistent with the statutory requirement for measuring GSE performance under the housing goals. However, this approach results in an obvious "apples to oranges" problem with respect to the HMDA-based market data, which include only newly-originated mortgages (*i.e.*, current-year mortgages). To place the GSE and market data on an "apples to apples" basis, HUD has also used an alternative approach that expresses the GSE annual data on an origination-year basis. In this case, all purchases by a GSE in any particular year would be fully reported but they would be allocated to the year that they were originated, rather than to the year they were purchased. Under this approach, a GSE's data for the year 2000 would not only include that GSE's purchases during 2000 of newly-originated mortgages but also any year-2000-originations purchased in later years (*i.e.*, during 2001 and 2002 in this analysis). This approach places the GSE and the market data on a consistent, current-year basis. In the above example, the market data would present the income and underserved area characteristics of mortgages originated in 2000, and the GSE data would present the same characteristics of all year-2000-mortgages that the GSE has purchased to date (*i.e.*, through year 2002).[256]

Below, results will be presented for both the purchase-year and origination-year approaches. Following past HUD studies that have compared GSE performance with the primary market, most of the analysis in this section reports the GSE data on a purchase-year basis; however, the main results are repeated with the GSE data reported on an origination-year basis. This allows the reader to compare any differences in findings about how well the GSEs have been doing relative to the market.

9. Affordable Lending by the GSEs: Home Purchase Loans

This section compares the GSEs' affordable lending performance with the primary market for the years 1993–2002. The analysis in this section begins by presenting the GSE data on a purchase-year basis. As discussed above, the GSE data that are reported to HUD include their purchases of mortgages originated in prior years as well as their purchases of mortgages originated during the current year. The market data reported by HMDA include only mortgages originated in the current year. This means that the GSE-versus-market comparisons are defined somewhat inconsistently for any particular calendar year. Each year, the GSEs have newly-originated loans available for purchase, but they can also purchase loans from a large stock of seasoned (prior-year) loans currently being held in the portfolios of depository lenders. One method for making the purchase-year data more consistent is to aggregate the data over several years, instead of focusing on annual data. This provides a clearer picture of the types of loans that have been originated and are available for purchase by the GSEs. This approach is taken in Table A.13, which is discussed below. Another method for making the GSE and market data consistent is to express the GSE data on an origination-year basis; that approach is taken in Table A.16, which is discussed after presenting the annual results on a purchase-year basis.

a. Longer-Term Performance, 1993–2002 and 1996–2002

Table A.13 summarizes the funding of goals-qualifying mortgages by the GSEs, depositories and the conforming market for the ten-year period between 1993 and 2002. Data are also presented for two important sub-periods: 1993–95 (for showing how much the GSEs have improved their performance since the early-to-mid 1990s); and 1996–2002 (for analyzing their performance since the current definitions of the housing goals were put into effect). Given the importance of the GSEs for expanding homeownership, this section focuses on home purchase mortgages, and the next section will examine first-time homebuyer loans. Section IV below will briefly discuss the GSEs' overall performance, including refinance and home purchase loans. Several points stand out concerning the affordable lending performance of Freddie Mac and Fannie Mae over the two longer-term periods, 1993–2002 and 1996–2002.

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[253] The data in Table A.12 that support Berkovec and Zorn are the 1993–95 special affordable and low-mod data (particularly for Freddie Mac) that show HMDA over reporting percentages by more than a half percentage point. Otherwise, the data in Table A.12, as well as Table A.11, do not present a picture of HMDA's having an upward bias in reporting targeted loans. In fact, the recent years' data suggest a downward bias in HMDA's reporting of targeted loans.

[254] Of course, on an individual year basis, the GSEs' current-year data can differ significantly from the HMDA-reported data on GSE purchases. The other annual data reported in Table A.11 show a mixture of results—in some cases the HMDA percentage is larger than the GSE—current year" percentage (e.g., Fannie Mae's special affordable purchases in 2000) while in other cases the HMDA percentage is smaller than the GSE current year percentage (*e.g.*, Freddie Mac's underserved areas purchases in recent years). As noted in the text, the differential is typically in the opposite direction to that predicted by Berkovec and Zorn, particularly on the underserved areas category.

[255] Table A.12 also includes aggregates for the more recent period, 1999–2002. The ratios of HMDA-reported-to-GSE-reported averages for this sub-period are similar to those reported for 1996–2002.

[256] Under the origination-year approach, GSE performance for any specific origination year (say year 2000) at the end of a particular GSE purchase year (say year 2002) is subject to change in the future years. Table A.16 (in Section E.9 below) reports that 13.7 percent of year-2000 mortgage originations that Fannie Mae purchased through year 2002 qualify as special affordable; the special affordable share for the market was 16.8 percent in 2000, which indicates that, to date, Fannie Mae has lagged the primary market in funding special affordable mortgages originated during 2000. However, Fannie Mae's special affordable performance could change in the future as Fannie Mae continues to purchase year-2000 originations during 2003 and the following years. Of course, whether Fannie Mae's future purchases result in it ever leading the 2000-year market is not known at this time.

Table A.13

GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1993-2002

Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Ratio Fannie Mae/ Freddie Mac	Depository		Conforming Market W/O B&C	Ratio of GSE to Market (W/O B&C)	
				Total	Portfolio		Fannie Mae	Freddie Mac
Special Affordable								
1993-2002	12.7 %	11.8 %	1.08	15.4 %	16.9 %	15.4 %	0.82	0.77
1993-1995	10.0	8.0	1.25	14.6	17.0	13.7	0.73	0.58
1996-2002	13.5	12.8	1.05	15.6	16.8	16.0	0.84	0.80
1999-2002	14.4	14.5	0.99	16.4	16.9	16.4	0.88	0.88
2000-2002	15.0	14.9	1.01	16.4	17.1	16.2	0.93	0.92
Less than Area Median Income								
1993-2002	40.2 %	38.3 %	1.05	42.8 %	43.3 %	43.0 %	0.93	0.89
1993-1995	36.7	32.8	1.12	41.8	44.0	40.8	0.90	0.80
1996-2002	41.2	39.8	1.04	43.1	43.0	43.6	0.94	0.91
1999-2002	42.5	42.3	1.00	44.2	43.1	44.3	0.96	0.95
2000-2002	43.2	42.7	1.01	44.2	43.3	44.2	0.98	0.97
Underserved Areas								
1993-2002	23.3 %	21.2 %	1.10	24.7	26.5	25.1 %	0.93	0.84
1993-1995	22.8	19.2	1.19	24.1	26.8	24.0	0.95	0.80
1996-2002	23.5	21.7	1.08	24.9	26.4	25.4	0.93	0.85
1999-2002	24.0	22.9	1.05	25.7	26.8	25.8	0.93	0.89
2000-2002	24.9	23.4	1.06	26.1	27.2	26.0	0.96	0.90

Source: The Fannie Mae and Freddie Mac data include information on all their purchases of home loans and are from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. The Depository and Conforming Market data are from HMDA; loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. "Total Depositories" data are loans originated by HMDA reporters regulated by FDIC, OTS, OCC, FRB, and the National Credit Union Administration; they consist mainly of banks, thrifts, and their subsidieries. The "Depository Portfolio" data refer to new originations that are not sold by banks and thrift institutions and thus are retained in depository portfolios. "Conforming Market W/O B&C" data are the average market percentages after deducting estimates of B&C loans (see text for explanation). Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

Freddie Mac lagged both Fannie Mae and the primary market in funding affordable home loans in metropolitan areas between 1993 and 2002. During that period, 11.8 percent of Freddie Mac's mortgage purchases were for special affordable (mainly very-low-income) borrowers, compared with 12.7 percent of Fannie Mae's purchases, 15.4 percent of loans originated by depositories,[257] and 15.4 percent of loans originated in the conforming market without B&C loans.[258]

Although Freddie Mac consistently improved its performance during the 1990s, a similar pattern characterized the 1996–2002 period. During that period, 39.8 percent of Freddie Mac's purchases were for low- and moderate-income borrowers, compared with 41.2 percent of Fannie Mae's purchases, 43.1 percent of loans originated by depositories, and 43.6 percent of loans originated in the conventional conforming market. Over the same period, 21.7 percent of Freddie Mac's purchases financed properties in underserved neighborhoods, compared with 23.5 percent of Fannie Mae's purchases, 24.9 percent of depository originations, and 25.4 percent of loans originated in the primary market.

Fannie Mae's affordable lending performance was better than Freddie Mac's over the 1993 to 2002 period as well as during the 1996 to 2002 period. However, Fannie Mae lagged behind depositories and the overall market in funding affordable loans during both of these periods (see above paragraph). Between 1996 and 2002, the "Fannie-Mae-to-market" ratio was only 0.84 on the special affordable category, obtained by dividing Fannie Mae's performance of 13.5 percent by the market's performance of 16.0 percent. Fannie Mae's market ratio was 0.94 on the low-mod category and 0.93 on the underserved area category. The "Freddie-Mac-to-market" ratios were lower'0.80 for special affordable, 0.91 for low-mod, and 0.85 for underserved areas.

The above analysis has defined the market to exclude B&C loans, which HUD believes is the appropriate market definition. However, to gauge the sensitivity of the results to how the market is defined, Table A.14 shows the effects on the market percentages for different definitions of the conventional conforming market, such as excluding manufactured housing loans, small loans, and all subprime loans (*i.e.*, the A-minus portion of the subprime market as well as the B&C portion). For example, the average special affordable (underserved area) market percentage for 1996–2002 would fall by about 0.2 (0.6) percentage point if the remaining subprime loans (*i.e.*, the A-minus loans) were also excluded from the market totals. Excluding manufactured housing loans in metropolitan areas would reduce the above market percentage for special affordable (underserved area) loans by 1.5 (1.1) percentage points. The above findings with respect to the GSEs' longer-term performance are not much affected by the choice of market definition.

[257] As shown in Table A.13, the depository percentage is higher (16.9 percent) if the analysis is restricted to those newly-originated loans that depositories do not sell (the latter being a proxy for loans held in depositories' portfolios). Note that during the recent, 1999-to-2002 period (also reported in Table A.13), there is less difference between the two depository figures.

[258] Unless stated otherwise, the market in this section is defined as the conventional conforming market without estimated B&C loans.

Table A.14

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages, 1996-2002
Various Market Definitions

			Conventional Conforming Market Originations								
Borrower and Tract Characteristics	Fannie Mae Purchases	Freddie Mac Purchases	Total Market	W/O Mfg Loans Only	W/O Loans Less Than $15K	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O B&C Loans	W/O B&C and Mfg Loans	W/O B&C and LT $15K Loans	W/O B&C and LT $15K W/O Mfg
Special Affordable											
1996	10.4	8.8	15.0	13.3	14.2	12.8	15.0	15.0	13.3	14.2	12.8
1997	11.7	9.2	15.3	13.5	14.6	13.0	15.3	15.2	13.4	14.5	12.9
1998	13.2	11.5	15.6	13.7	15.0	13.4	15.2	15.4	13.4	14.9	13.1
1999	12.5	12.8	17.3	15.3	16.8	15.0	16.7	17.0	14.9	16.5	14.6
2000	13.3	14.7	17.1	15.6	16.5	15.3	16.4	16.8	15.2	16.2	14.9
2001	14.9	14.4	15.8	14.9	15.5	14.6	15.5	15.6	14.7	15.3	14.4
2002	16.3	15.8	16.4	16.0	16.1	15.8	16.2	16.3	15.9	16.0	15.7
1996-2002	13.5	12.8	16.1	14.7	15.6	14.4	15.8	16.0	14.5	15.5	14.2
1999-2002	14.4	14.5	16.6	15.5	16.2	15.2	16.2	16.4	15.2	16.0	14.9
2000-2002	15.0	14.9	16.4	15.5	16.0	15.2	16.0	16.2	15.3	15.8	15.0
Less Than Area Median Income											
1996	37.0	33.7	42.2	40.0	41.4	39.4	42.2	42.2	39.9	41.4	39.4
1997	38.3	34.7	42.5	40.1	41.8	39.6	42.4	42.5	40.0	41.7	39.5
1998	40.8	37.6	43.0	40.7	42.5	40.3	42.7	42.8	40.4	42.3	40.0
1999	40.0	40.8	45.2	42.9	44.7	42.5	44.4	44.8	42.4	44.3	42.0
2000	40.8	42.7	44.8	43.0	44.1	42.6	43.9	44.4	42.5	43.8	42.1
2001	42.9	41.3	43.2	42.0	42.7	41.6	42.7	42.9	41.8	42.5	41.3
2002	45.3	44.0	45.3	44.9	45.0	44.5	45.0	45.2	44.7	44.8	44.4
1996-2002	41.2	39.8	43.9	42.2	43.3	41.7	43.4	43.6	41.9	43.1	41.4
1999-2002	42.5	42.3	44.6	43.2	44.1	42.8	44.0	44.3	42.9	43.8	42.5
2000-2002	43.2	42.7	44.4	43.4	43.9	42.9	43.9	44.2	43.1	43.7	42.7
Underserved Areas											
1996	22.3	19.6	25.0	23.5	24.5	23.1	24.8	24.9	23.4	24.5	23.0
1997	23.0	19.7	25.2	23.7	24.8	23.3	24.7	24.9	23.4	24.5	23.1
1998	22.7	19.8	24.6	23.1	24.3	22.8	23.6	24.2	22.5	23.8	22.3
1999	20.4	20.9	25.8	24.4	25.5	24.1	24.6	25.2	23.7	24.9	23.5
2000	23.4	22.0	27.1	26.1	26.8	25.8	25.6	26.4	25.3	26.8	25.0
2001	24.4	22.3	25.8	25.2	25.5	24.9	24.6	25.2	24.5	24.9	24.2
2002	26.7	25.8	27.2	27.0	27.0	26.7	25.6	26.4	26.2	26.2	25.9
1996-2002	23.5	21.7	25.9	24.9	25.6	24.6	24.8	25.4	24.3	25.0	24.0
1999-2002	24.0	22.9	26.5	25.7	26.2	25.4	25.1	25.8	25.0	25.5	24.7
2000-2002	24.9	23.4	26.7	26.1	26.4	25.8	25.3	26.0	25.4	25.7	25.1

Source: The Fannie Mae and Freddie Mac percentages for 1996 to 2002 are based on the loan-level mortgage purchase data that they provide to HUD. All mortgages are conventional conforming home purchase mortgages. The Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (mfg), subprime, and B&C loans. Special affordable includes very low-income census tracts. Data with missing values are excluded.

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b. Recent Performance, 1999–2002

This and the next subsection focus on the average data for 1999–2002 in Table A.13 and the annual data reported in Table A.14. As explained below, the annual data are useful for showing shifts in the relative positions of Fannie Mae and Freddie Mac that began in 1999, and for highlighting the improvements made by Fannie Mae during 2001 and 2002 (which were the first two years under HUD's higher goal levels) and by Freddie Mac during 2002. Between 1993 and 1998, Freddie Mac's performance fell below Fannie Mae's, but a sharp improvement in Freddie Mac's performance during 1999 pushed it pass Fannie Mae on all three goals-qualifying categories. In 2000, Fannie Mae improved its underserved areas performance enough to surpass Freddie Mac on that category, while Freddie Mac continued to out-perform Fannie Mae on the borrower-income categories (special affordable and low-mod). During 2001 and 2002, Fannie Mae improved its performance enough to surpass Freddie Mac on all three goals-qualifying categories and to essentially match the market during these two years.

Consider first the average data for 1999–2002 reported in Table A.13. During this recent period, Freddie Mac's average performance was similar to Fannie Mae's performance for the borrower income categories. Between 1999 and 2002, 14.5 percent of Freddie Mac's purchases and 14.4 percent Fannie Mae's mortgage purchases consisted of special affordable loans, compared with a market average of 16.4 percent. In addition, Freddie Mac purchased low-mod loans at about the same rate as Fannie Mae during this period—42.3 percent for the Freddie Mac, 42.5 percent for Fannie Mae, and 44.3 percent for the market. Freddie Mac (22.9 percent) purchased underserved area loans at a lower rate than Fannie Mae (24.0 percent) and the primary market (25.8 percent). As these figures indicate, both Fannie Mae and Freddie Mac continued to lag the market during this recent four-year period. Both GSEs' market ratios were 0.88 for special affordable loans and approximately 0.95 for low-mod loans. Although less than one (where one indicates equal performance with the market), the "Fannie-Mae-to-market" ratio (0.93) for the underserved area category was higher than the "Freddie-Mac-to-market" ratio (0.89).

Fannie Mae had an uncharacteristically poor year in 1999. Thus, averages for 2000–2002 are also presented in Table A.13, dropping 1999. These data show an increase in Fannie Mae's performance relative to the market, particularly on the special affordable and underserved areas categories. Between 2000 and 2002, special affordable (underserved area) loans accounted for 15.0 percent (24.9 percent) of Fannie Mae's purchases, compared with 16.2 percent (26.0 percent) for the market.

Table A.14 shows the effects on the market percentages for 1999–2002 (as well as 2000–2002) of different definitions of the conventional conforming market. Excluding manufactured housing loans (as well as B&C loans) in metropolitan areas would reduce the 1999–2002 market percentage for special affordable loans from 16.4 percent to 15.2 percent, which would raise the GSEs' market ratios from approximately 0.88 to 0.95. Similarly, excluding manufactured housing loans would reduce the 1999–2002 market percentage for underserved areas from 25.8 percent to 25.0 percent, which would raise Fannie Mae's market ratio from 0.93 to 0.96 and Freddie Mac's, from 0.89 to 0.92. As shown in Table A.14, Fannie Mae is even closer to the market averages if the year 1999 is dropped—over the 2000–2002 period, Fannie Mae's performance on the underserved area category is practically at market levels under the alternative definitions of the market, and its performance on the special affordable and low-mod categories to close to market levels.

c. GSEs' Performance—Annual Data

Freddie Mac's Annual Performance. As shown by the annual data reported in Table A.15, Freddie Mac significantly improved its purchases of goals-qualifying loans during the 1990s. Its purchases of loans for special affordable borrowers increased from 6.5 percent of its business in 1992 to 9.2 percent in 1997, and then jumped to 14.7 percent in 2000 before falling slightly to 14.4 percent in 2001 and rising again to 15.8 percent in 2002. The underserved areas share of Freddie Mac's purchases increased at a more modest rate, rising from 18.6 percent in 1992 to 22.3 percent by 2001; it then jumped to 25.8 percent in 2002.

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Table A.15

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas Goal-Qualifying Home Purchase Mortgages, 1992-2002

					Ratio of GSE to Market (W/O B&C)	
Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Ratio of Fannie Mae to Freddie Mac	Conforming Market (W/O B&C Loans)	Fannie Mae	Freddie Mac
Special Affordable						
1992	6.3 %	6.5 %	0.97	10.4 %	0.61	0.63
1993	8.2	7.3	1.12	12.6	0.65	0.58
1994	10.7	8.2	1.30	14.1	0.76	0.58
1995	11.4	8.4	1.36	14.4	0.79	0.58
1996	10.4	8.8	1.18	15.0	0.69	0.59
1997	11.7	9.2	1.27	15.2	0.77	0.61
1998	13.2	11.5	1.15	15.4	0.86	0.75
1999	12.5	12.8	0.98	17.0	0.74	0.75
2000	13.3	14.7	0.90	16.8	0.79	0.88
2001	14.9	14.4	1.03	15.6	0.96	0.92
2002	16.3	15.8	1.03	16.3	1.00	0.97
Less Than Area Median Income						
1992	29.2	28.7	1.02	34.4	0.85	0.83
1993	33.5	31.9	1.05	38.9	0.86	0.82
1994	38.8	33.7	1.15	41.8	0.93	0.81
1995	38.3	32.8	1.17	41.4	0.93	0.79
1996	37.0	33.7	1.10	42.2	0.88	0.80
1997	38.3	34.7	1.10	42.5	0.90	0.82
1998	40.8	37.6	1.09	42.8	0.95	0.88
1999	40.0	40.8	0.98	44.8	0.89	0.91
2000	40.8	42.7	0.96	44.4	0.92	0.96
2001	42.9	41.3	1.04	42.9	1.00	0.96
2002	45.3	44.0	1.03	45.2	1.00	0.97
Underserved Areas						
1992	18.3	18.6	0.98	22.2	0.82	0.84
1993	20.3	18.2	1.12	21.9	0.93	0.83
1994	24.2	19.6	1.23	24.3	1.00	0.81
1995	24.6	19.9	1.24	25.4	0.97	0.78
1996	22.3	19.6	1.14	24.9	0.90	0.79
1997	23.0	19.7	1.17	24.9	0.92	0.79
1998	22.7	19.8	1.15	24.2	0.94	0.82
1999	20.4	20.9	0.98	25.2	0.81	0.83
2000	23.4	22.0	1.06	26.4	0.89	0.83
2001	24.4	22.3	1.09	25.2	0.97	0.88
2002	26.7	25.8	1.03	26.4	1.01	0.98

Source: The Fannie Mae and Freddie Mac percentages for 1993 to 2002 are from the loan-level mortgage purchase data that they provide to HUD; the 1992 GSE data are from HMDA. All mortgages are conventional conforming home purchase mortgages. The Conforming Market data are from HMDA; see text for an explanation of the market adjustment for B&C loans. Loans with a loan-to-income-ratio greater than six are excluded from the borrower income calculations. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

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With its improved performance, Freddie Mac closed its gap with the market in funding goals-qualifying loans. In 2002, special affordable loans accounted for 15.8 percent of Freddie Mac's purchases and 16.3 percent of loans originated in the conventional conforming market, which produces a "Freddie-Mac-to-market" ratio of 0.97 (15.8 divided by 16.3). Table A.15 shows the trend in the "Freddie-Mac-to-market" ratio from 1992 to 2002 for each of the goals-qualifying categories. For the special affordable and low-mod categories, Freddie Mac's performance relative to the market remained flat (at approximately 0.60 and 0.80, respectively) through 1997; by 2002, the "Freddie-Mac-to-market" ratios had risen to 0.97 for both the special affordable and low-mod categories.

Surprisingly, Freddie Mac did not make much progress during the 1990s closing its gap with the market on the underserved areas category. The "Freddie-Mac-to-market" ratio for underserved areas was approximately the same in 2000 (0.83) as it was in 1992 (0.84). While it rose to 0.88 in 2001, that was due more to a decline in the market level than to an improvement in Freddie Mac's performance. However, due to a substantial increase in Freddie Mac's underserved area percentage from 22.3 percent in 2001 to 25.8 percent in 2002, Freddie Mac's performance approached market performance (26.4 percent) during 2002. [259] In the ten years under the housing goals, the year 2002 represented the first time that Freddie Mac's performance in purchasing home loans in underserved areas had ever been within two percentage points of the market's performance.[260]

Fannie Mae's Annual Performance. With respect to purchasing affordable loans, Fannie Mae followed a different path than Freddie Mac. Fannie Mae improved its performance between 1992 and 1998 and made much more progress than Freddie Mac in closing its gap with the market. In fact, by 1998, Fannie Mae's performance was close to that of the primary market for some important components of affordable lending. In 1992, special affordable loans accounted for 6.3 percent of Fannie Mae's purchases and 10.4 percent of all loans originated in the conforming market, giving a "Fannie Mae-to-market" ratio of 0.61. By 1998, this ratio had risen to 0.86, as special affordable loans had increased to 13.2 percent of Fannie Mae's purchases and to 15.4 percent of market originations. A similar trend in market ratios can be observed for Fannie Mae on the underserved areas category. In 1992, underserved areas accounted for 18.3 percent of Fannie Mae's purchases and 22.2 percent of market originations, for a "Fannie Mae-to-market" ratio of 0.82. By 1998, underserved areas accounted for 22.8 percent of Fannie Mae's purchases and 24.2 percent of market originations, for a higher "Fannie Mae-to-market" ratio of 0.94.[261]

The year 1999 saw a shift in the above patterns, with Fannie Mae declining in overall performance while the share of goals-qualifying loans in the market increased. Between 1998 and 1999, the special affordable share of Fannie Mae's business declined from 13.2 percent to 12.5 percent while this type of lending in the market increased from 15.4 percent to 17.0 percent. For this reason, the "Fannie-Mae-to-market" ratio for special affordable loans declined sharply from 0.86 in 1998 to 0.74 in 1999. The share of Fannie Mae's purchases in underserved areas also declined, from 22.7 percent in 1998 to 20.4 percent in 1999, which lowered the "Fannie-Mae-to-market" ratio from 0.94 to 0.81.

After declining in 1999, Fannie Mae's performance rebounded in 2000, particularly on the underserved areas category. Fannie Mae's underserved areas percentage jumped by three percentage points from 20.4 percent in 1999 to 23.4 percent in 2000. The 2000 figure was similar to its level in 1997 but below Fannie Mae's peak performances of 24–25 percent during 1994 and 1995. Between 1999 and 2000, the "Fannie-Mae-to-market" ratio for underserved areas increased from 0.82 to 0.89. Fannie Mae improved its performance on the special affordable goal at a more modest rate. Fannie Mae's special affordable percentage increased by 0.8 percentage points from 12.5 percent in 1999 to 13.3 percent in 2000. The 2000 figure was similar to its previous peak level (13.2 percent) in 1998). The "Fannie-Mae-to-market" ratio for special affordable loans increased from 0.74 in 1999 to 0.79 in 2000, with the latter figure remaining below Fannie Mae's peak market ratio (0.86) in 1998.

Fannie Mae continued its improvement in purchasing targeted home loans during 2001, at a time when the conventional conforming market was experiencing a decline in affordable lending, and again in 2002, at a time when the conventional conforming market was increasing enough to return approximately to its year-2000 level. Thus, during the 2000-to-2002 period, Fannie Mae significantly improved its targeted purchasing performance while the primary market originated targeted home loans at about the same rate in 2002 as it did in 2000. As a result, Fannie Mae's performance during 2001 approached the market on the special affordable and underserved area categories and matched the market on the low-mod category. In 2002, Fannie Mae matched the market on the special affordable category, and slightly outperformed the market on the low-mod and underserved areas categories.

As shown in Table A.15, Fannie Mae increased its special affordable percentage by 1.6 percentage points, from 13.3 percent in 2000 to 14.9 percent in 2001, and then increased it further to 16.3 percent in 2002, the latter being the same as the market's performance of 16.3 percent. The "Fannie-Mae-to-market" ratio for special affordable loans jumped from 0.79 in 2000 to 1.00 in 2002. Between 2000 and 2001, Fannie Mae increased its low-mod percentage from 40.8 percent to 42.9 percent at the same time that the low-mod share of the primary market was falling from 44.4 percent to 42.9 percent, placing Fannie Mae at the market's performance in 2001. During 2002, the low-mod share of Fannie Mae's purchases of home loans increased further to 45.3 percent, placing Fannie Mae 0.1 percentage point above the market performance of 45.2 percent. Fannie Mae increased its underserved area percentage from 23.4 percent in 2000 to 24.4 in 2001 percent while the underserved area share of the primary market was falling from 26.4 percent to 25.2 percent, placing Fannie Mae at less than one percentage point from the market's performance. The "Fannie-Mae-to-market" ratio for underserved area loans was 0.97 in 2001. During 2002, the underserved area share of Fannie Mae's purchases of home loans increased further to 26.7 percent, placing Fannie Mae slightly ahead of market performance (26.4 percent).

Table A.14 reports Fannie Mae's 2001 and 2002 performance under alternative definitions of the primary market. As shown there, the above results of Fannie Mae's improvement relative to the market during 2001 and 2002 are further reinforced when lower market percentages are used.

Changes in the "Fannie-Mae-to-Freddie-Mac" Performance Ratio. The above discussion documents shifts in the relative performance of Fannie Mae and Freddie Mac over the past few years. To highlight these changing patterns, Table A.15 reports the ratio of Fannie Mae's performance to Freddie Mac's performance for each goals category for the years 1992 to 2002. As shown there, the "Fannie-Mae-to-Freddie-Mac" ratio for the special affordable category increased from approximately one in 1992 (indicating equal performance) to over 1.3 during the 1994–97 period, indicating that Fannie Mae clearly out-performed Freddie Mac during this period. Between 1997 and 2000, Freddie Mac substantially increased its special affordable share (from 9.2 percent to 14.7 percent), causing the "Fannie-Mae-to-Freddie-Mac" ratio to fall from 1.27 in 1997 to 0.90 in 2000 (indicating Freddie Mac surpassed Fannie Mae). But Fannie Mae's stronger performance during 2001 and 2002 returned the ratio to above one (1.03 in both years), indicating slightly better performance for Fannie Mae (e.g., 16.3 percent in 2002 versus 15.8 percent for Freddie Mac). The "Fannie-Mae-to-Freddie-Mac" performance ratio for low-mod loans followed a similar pattern, standing at 1.03 in 2002 (45.3 percent for Fannie Mae versus 44.0 percent for Freddie Mac).

Prior to 2000, the "Fannie-Mae-to-Freddie-Mac" ratio for underserved areas had also followed a pattern similar to that outlined above for special affordable loans, but at a lower overall level—rising from about one in 1992 (indicating equal performance) to approximately 1.2 during the 1994–97

[259] Table A.14 reports annual market percentages that exclude the effects of manufactured housing, small loans, and subprime loans. Freddie Mac's performance is closer to the market average under the alternative market definitions, particularly during 2001 and 2002.

[260] Prior to 2002, Freddie Mac's performance on the underserved areas category had not approached the market even under the alternative market definitions reported in Table A.14.

[261] Freddie Mac, on the other hand, fell further behind the market during this period. In 1992, Freddie Mac had a slightly higher underserved areas percentage (18.6 percent) than Fannie Mae (18.3 percent). However, Freddie Mac's underserved areas percentage had only increased to 19.8 percent by 1998 (versus 22.7 percent for Fannie Mae). Thus, the "Freddie Mac-to-market" ratio fell from 0.84 in 1992 to 0.82 in 1998.

period, before dropping to slightly below one (0.98) in 1999. However, Fannie Mae increased its underserved areas percentage from 20.4 percent in 1999 to 24.4 percent in 2001 while Freddie Mac only increased its percentage from 20.9 percent to 22.3 percent. This resulted in the "Fannie-Mae-to-Freddie-Mac" ratio rising from 0.98 in 1999 to 1.09 in 2001. But during 2002, Freddie Mac's underserved area percentage jumped by 3.5 percentage points to 25.8 percent, while Fannie Mae's increased at a more modest rate (by 2.3 percentage points) to 26.7 percent, with the result being that the "Fannie-Mae-to-Freddie-Mac" ratio for underserved area loans fell from 1.09 in 2001 to 1.03 in 2002.

To conclude, while Freddie Mac ended the 1990s on a more encouraging note than Fannie Mae, the past three years (2000, 2001, and 2002) have seen a substantial improvement in Fannie Mae's performance on all three goals-qualifying categories. Fannie Mae ended the 1990s with a decline in affordable lending performance at the same time that Freddie Mac was improving and the share of goals-qualifying loans was increasing in the market. Both GSEs' performance during 2000 was encouraging—Freddie Mac continued to improve, particularly with respect to the borrower-income categories, while Fannie Mae reversed its declining performance, particularly with respect to underserved areas. During 2000, Freddie Mac outperformed Fannie Mae on the special affordable and low-mod categories, while Fannie Mae purchased a higher percentage of loans in underserved areas. During 2001, Fannie Mae continued to improve its performance while Freddie Mac's performance remained about the same and the market's originations of affordable loans declined somewhat. The result was that during 2001 Fannie Mae outperformed Freddie Mac on all three goals-qualifying categories, and even matched the market on the low-mod category. During 2002, both Fannie Mae and Freddie Mac again improved their performance; Fannie Mae continued to outperform Freddie Mac and even matched the market on the special affordable category and slightly outperformed the market on the low-mod and underserved area categories. While Freddie Mac lagged the market on all three goals-qualifying categories during 2002, it had significantly closed its gap with the market by the end of 2002, particularly on the underserved area category.

GSE Purchases of Seasoned Loans. When the GSE data are expressed on a purchase-year basis (as in the above analysis), one factor which affects each GSE's performance concerns their purchases of seasoned (prior-year) loans. As shown in Table A.11, Fannie Mae followed a strategy of purchasing targeted seasoned loans between 1996 and 1998, and again during the past three years—all years when Fannie Mae improved its overall affordable lending performance. For example, consider Fannie Mae's underserved area performance of 24.4 percent during 2001, which was helped by its purchases of seasoned mortgages on properties located in underserved neighborhoods. The underserved area percentage for Fannie Mae's purchases of newly-originated (current-year) mortgages was only 23.3 percent in 2001, or 1.9 percentage points below the market average of 25.2 percent. Fannie Mae obtained its higher overall percentage (24.4 percent) by purchasing seasoned loans with a particularly high concentration (28.3 percent) in underserved areas. Similarly, during 2001, the special affordable share of Fannie Mae's purchases of newly-originated mortgages was only 14.2 percent, or 1.4 percentage points below the market average of 15.6 percent. Again, Fannie Mae improved its overall performance by purchasing seasoned loans with a high percentage (18.1) of special affordable loans, enabling Fannie Mae to reduce its gap with the market to 0.7 percentage points—14.9 percent versus 15.6 percent.

As shown in Table A.11, Freddie Mac also followed a strategy of purchasing seasoned special affordable loans mainly during 2000 and 2001. Prior to 2000, Freddie Mac had not pursued such a strategy, or at least not to the same degree as Fannie Mae. During the 1997–99 period, Freddie Mac's purchases of prior-year mortgages and newly-originated mortgages had similar percentages of special affordable (and low-mod) borrowers. Over time, there have been small differentials between Freddie Mac's prior-year and newly-originated mortgages for the underserved areas category but they have been smaller than the differentials for Fannie Mae (*see* Table A.11).

d. GSEs' Annual Purchases of Home Loans—Origination-Year Basis

Table A.16 reports GSE purchase data for 1996 to 2002 on an origination-year basis. Recall that in this case, mortgages purchased by a GSE in any particular calendar year are allocated to the year that the mortgage was originated, rather than to the year that the mortgage was purchased (as in subsections C.1–C.3 above). This approach places the GSE and the market data on a consistent, current-year basis, as explained earlier.

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Table A.16

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase Mortgages
1996-2002 GSE Data Reported on an Origination-Year Basis[1]

Borrower and Tract Characteristics	Fannie Mae Purchases	Freddie Mac Purchases	Ratio of Fannie Mae to Freddie Mac	Conventional Conforming Market Originations (W/O B&C)	Ratio of GSE to Market (W/O B&C) Fannie Mae	Ratio of GSE to Market (W/O B&C) Freddie Mac
Special Affordable						
1996	11.5	9.4	1.22	15.0	0.77	0.63
1997	11.2	10.0	1.12	15.2	0.74	0.66
1998	12.3	12.2	1.01	15.4	0.80	0.79
1999	13.1	14.0	0.94	17.0	0.77	0.82
2000	13.7	14.0	0.98	16.8	0.82	0.83
2001	14.4	13.5	1.07	15.6	0.92	0.87
2002[2]	15.8	15.8	1.00	16.3	0.97	0.97
1996-2002	13.3	12.9	1.03	16.0	0.83	0.81
1999-2002	14.3	14.3	1.00	16.4	0.87	0.87
2000-2002	14.7	14.4	1.02	16.2	0.91	0.89
Less Than Area Median Income						
1996	38.5	34.5	1.12	42.2	0.91	0.82
1997	37.9	35.7	1.06	42.5	0.89	0.84
1998	39.7	38.8	1.02	42.8	0.93	0.91
1999	41.0	42.3	0.97	44.8	0.92	0.94
2000	41.4	41.3	1.00	44.4	0.93	0.93
2001	42.3	40.6	1.04	42.9	0.99	0.95
2002[2]	45.4	44.4	1.02	45.2	1.00	0.98
1996-2002	41.2	40.0	1.03	43.6	0.94	0.92
1999-2002	42.6	42.1	1.01	44.3	0.96	0.95
2000-2002	43.1	42.1	1.02	44.2	0.98	0.95
Underserved Areas						
1996	23.3	19.6	1.19	24.9	0.94	0.79
1997	21.8	19.7	1.11	24.9	0.88	0.79
1998	21.2	20.0	1.06	24.2	0.88	0.83
1999	21.3	21.5	0.99	25.2	0.85	0.85
2000	23.4	22.2	1.05	26.4	0.89	0.84
2001	23.8	22.4	1.06	25.2	0.94	0.89
2002[2]	25.5	25.0	1.02	26.4	0.97	0.95
1996-2002	23.0	21.6	1.06	25.4	0.91	0.85
1999-2002	23.6	22.8	1.04	25.8	0.91	0.88
2000-2002	24.3	23.2	1.05	26.0	0.93	0.89

Source: See text and notes to previous tables for variable definitions and market methodology.

[1] In this table, GSE data are reported on an "origination-year" basis rather than on a "purchase-year" basis (as are the previous tables on home purchase loans). This means that prior-year loans that the GSEs purchase in a particular calendar year are allocated back to their year of origination. For example, mortgages originated in 2000 but purchased by the GSEs in 2002 would be allocated to 2000 (the year of origination). Thus, the GSE percentages for 2000 represent GSE purchases (in 2000 and in 2001 and in 2002) of mortgages originated in 2000. For this reason, the GSE data in this table are more consistent with the market data. Market percentages are for current-year mortgage originations, based on HMDA data.

[2] The data for 2002 represent only the GSEs' purchases during 2002 of mortgages originated during 2002, as there are not yet any subsequent years in which to report originations. Of course, during 2003 (and during following years), the GSEs will purchase subsequent years in which to report originated in 2002, which would at that time be incorporated into the data for the year 2002.

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In general, the comparisons of Freddie Mac's and the market's performance are similar to those discussed in Sections E.9.a–c above, except for some differences on the special affordable category. The "Freddie Mac to market" ratios in Table A.16 show that Freddie Mac has improved its performance but has also consistently lagged the primary market in funding mortgages covered by the housing goals.

The "Fannie Mae to market" ratios in Table A.16 show that Fannie Mae has improved its performance, and has generally outperformed Freddie Mac, but has lagged the primary market in funding mortgages covered by the housing goals. Under the origination-year approach, Fannie Mae lagged the market on all three housing goal categories during 2001 and on the special affordable and underserved area categories during 2002. In 2002, low- and moderate-income loans accounted for 45.4 percent of Fannie Mae's purchases and 45.2 percent of the market originations, placing Fannie Mae 0.2 percentage points above the market.

e. GSEs' Purchases of First-Time Homebuyer Mortgages—1999 to 2001

While not a specific housing goal category, mortgages for first-time homebuyers are an important component of the overall home loan market. Making financing available for first-time homebuyers is one approach for helping young families enter the homeownership market. Therefore, this section briefly compares the GSEs' funding of first-time homebuyer loans with that of primary lenders in the conventional conforming market.

During the past few years, the GSEs have increased their purchases of first-time homebuyer loans. Fannie Mae's annual purchases of first-time homebuyer loans increased from approximately 287,000 in 1999 to 373,000 in 2002, while Freddie Mac's annual purchases increased from 199,000 to 259,000 during the same period.[262] However, since 1999, the first-time homebuyer share of the GSEs' purchases of home loans has remained relatively flat, varying within the 25–28 percent range.[263]

Table A.17 compares the first-time homebuyer share of GSE purchases with the corresponding share of home loans originated in the conventional conforming market. Readers are referred to recent work by Bunce and Gardner[264] for the derivation of the estimates of first-time homebuyer market shares reported in Table A.17. This analysis does not include year 2002 data because market data from the American Housing Survey are not yet available for that year. Between 1999 and 2001, first-time homebuyers accounted for 26.5 percent of Fannie Mae's purchases of home loans, 26.5 percent of Freddie Mac's, and 37.6 percent of home loans originated in the conventional conforming market. Thus, both Fannie Mae and Freddie Mac fell substantially short of the primary market in financing first-time homebuyers during this time period. The GSEs' performance was only 70.5 percent of market performance (26.5 percent divided by 37.6 percent).

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[262] These figures include estimates of first-time homebuyer loans for those home purchase loans with a missing first-time homebuyer indicator; the estimates were obtained by multiplying the GSE's first-time homebuyer share (based only on data with a first-time homebuyer indicator) by the number of loans with a missing first-time homebuyer indicator.

[263] The first-time homebuyer share for Fannie Mae was almost 35 percent between 1996 and 1998; it then dropped to 30 percent in 1998 and to 26 percent in 1999. The first-time homebuyer share for Freddie Mac was approximately 29 percent in 1996 and 1997 before dropping to about 25 percent in 1998 and 1999.

[264] See Harold L. Bunce and John L. Gardner, "First-time Homebuyers in the Conventional Conforming Market: The Role of the GSEs" (unpublished paper), January 2004.

Table A.17

First-Time Homebuyer Mortgages as a Share of All Conventional Conforming Home Purchase Mortgages, for GSEs' Purchases and Market Originations, 1999-2001 And 1996-2001 Averages

1999-2001 Averages	Fannie Mae	Freddie Mac	Both GSEs	Conventional Conforming Market
All First-Time Homebuyers	26.5%[1]	26.5%	26.5%	37.6%[3]
African-American and Hispanic First-Time Homebuyers	4.0%	3.4%	3.8%	6.9%
Minority First-Time Homebuyers	6.6%[2]	5.8%	6.2%	10.6%[4]
1996-2001 Averages				
All First-Time Homebuyers	29.3%	26.9%	28.3%	38.4%
African-American and Hispanic First-Time Homebuyers	4.3%	3.1%	3.8%	6.8%
Minority First-Time Homebuyers	6.9%	5.3%	6.3%	10.2%

Notes: These data cover the entire U.S. (i.e., both metropolitan and non-metropolitan areas). The first-time homebuyer concept for the market analysis is homebuyers who have never owned a home. The concept for the GSEs is purchasers who have not owned a home within the past three years. The market analysis is based on GSE, HMDA, and American Housing Survey data. See Bunce and Gardner (2004) for the methodology for estimating the market first-time homebuyer percentages. Because the percentages for the GSEs include seasoned loans and the market ratios include only current-year mortgage originations, the GSE ratios tend to overstate the GSEs' business shares in each category, compared to mortgage origination activity in a given year.

Interpretations:

[1] First-time homebuyer mortgages were 26.5% of all home purchase mortgages purchased by Fannie Mae in 1999-2001.

[2] Minority first-time homebuyer mortgages were 6.6% of all home purchase mortgages purchased by Fannie Mae in 1999-2001.

[3] First-time homebuyer mortgages were 37.6% of all home purchase mortgage originations in the conventional conforming market during 1999-2001.

[4] Minority first-time homebuyer mortgages were 10.6% of all home purchase mortgage origintions in the conventional conforming market during 1999-2001.

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Table A.17 also reports first-time homebuyer shares for African Americans and Hispanics and for all minorities. Between 1999 and 2001, African-American and Hispanic first-time homebuyers accounted for 4.0 percent of Fannie Mae's purchases of home loans, 3.4 percent of Freddie Mac's purchases, and 6.9 percent of home loans originated in the conventional conforming market. For this subgroup, Fannie Mae's performance is 58 percent of market performance, while Freddie Mac's performance is 49 percent of market performance. The group of all minority first-time homebuyers accounted for 6.6 percent of Fannie Mae's purchases of home loans, 5.8 percent of Freddie Mac's purchases, and 10.6 percent of home loans originated in the conventional conforming market. In this case, Fannie Mae's performance is 62 percent of market performance, while Freddie Mac's performance is 55 percent of market performance.

Section E.12 below will continue this examination of first-time homebuyers by presenting market share analysis that estimates the GSEs' overall importance in the funding of first-time homebuyers.

f. Low- and Moderate-Income Subgoal for Home Purchase Loans

The Department is proposing to establishing a subgoal of 45 percent for each GSE's purchases of home purchase loans for low- and moderate-income families in the single-family-owner market of metropolitan areas for 2005, with the proposed subgoal rising to 46 percent for 2006 and 47 percent for 2007 and 2008. If the GSEs meet this subgoal, they will be leading the primary market by approximately one percentage point in 2005 and by three percentage points in 2007–08, based on historical data (*see* below). This *home purchase* subgoal will encourage the GSEs to expand homeownership opportunities for lower-income homebuyers who are expected to enter the housing market over the next few years. As detailed in Section I, there are four specific reasons for establishing this subgoal: (1) The GSEs have the expertise, resources, and ability to lead the single-family-owner market, which is their "bread and butter" business; (2) the GSEs have historically lagged the primary market for low- and moderate-income loans, not lead it; (3) the GSEs can improve their funding of first-time homebuyers and help reduce troublesome disparities in homeownership and access to mortgage credit; and (4) there are ample opportunities for the GSEs to expand their purchases in important and growing market segments such as the market for minority first-time homebuyers. Sections E.9 and G of this appendix provide additional information on opportunities for an enhanced GSE role in the home purchase market and on the ability of the GSEs to lead that market.

As shown in Tables A.13 and A.15, low- and moderate-income families accounted for an average of 44.3 percent of home purchase loans originated in the conventional conforming market of metropolitan areas between 1999 and 2002; the figure is 43.6 percent if the average is computed for the years between 1996 and 2002. Loans in the B&C portion of the subprime market are excluded from these market averages. To reach the proposed 45-percent subgoal for 2005, both GSEs would have to improve their historical performance—Fannie Mae by 0.8 percentage points over its average performance of 44.2 percent in 2001 and 2002, and Freddie by 2.4 percentage points over its average performance of 42.6 percent during the same period. To reach the 47 percent subgoal in 2007–08, each GSE's performance would have to increase by an additional two percentage points.

As explained earlier, HUD will be re-benchmarking its median incomes for metropolitan areas and non-metropolitan counties based on 2000 Census median incomes, and will be incorporating the effects of the new OMB metropolitan area definitions. As explained in Appendix D, HUD projected the effects of these two changes on the low- and moderate-income shares of the single-family-owner market for the years 1999–2002. These estimates will be referred to as "projected data" while the 1990-based data reported in the various tables will be referred to as "historical data." With the historical data, the average low-mod share of the conventional conforming market (without B&C loans) was 44.3 percent for home purchase loans (weighted average of 1999–2002 percentages in Table A.13); the corresponding average with the projected data was 43.1 percent, a differential of 1.2 percentage points. The projected low-mod percentages for each year between 1999 and 2002 were as follows (with the historical percentages from Table A.15 in parentheses): 44.0 (44.8) percent for 1999; 43.7 (43.7) percent for 2000; 41.6 (42.9) percent for 2001; and 43.1 (45.2) percent for 2002. The differentials between the projected and historical data are larger in 2001 (1.3 percentage points) and 2002 (2.1 percentage points) than in 1999 (0.8 percentage point) and 2000 (0.7 percentage point). It appears that the low-mod share for single-family-owners in the conventional conforming market will be at least one percentage point less due to the re-benchmarking of area median incomes and the new OMB definitions of metropolitan areas. Thus, based on projected data, the 45-percent (47 percent) subgoal for 2005 (2007) is approximately two (four) percentage points above the 1999–2002 market average.

The estimated low-mod percentages between 1999 and 2002 for Fannie Mae were as follows (with the historical percentages from Table A.15 in parentheses): 39.2 (40.0) percent for 1999; 40.1 (40.8) percent for 2000; 41.7 (42.9) percent for 2001; and 43.6 (45.3) percent for 2002; Fannie Mae's average low-mod performance between 1999 and 2002 based on the projected data was 41.4 percent, compared with 42.5 percent based on historical data. To reach the 45-percent subgoal (47 percent) subgoal for 2005 (2007) based on projected data, Fannie Mae would have to improve its performance by 2.3 (4.3) percentage points over its estimated average performance of 42.7 percent in 2001 and 2002, or by 1.4 (3.4) percentage points over its estimated 2002 low-mod performance of 43.6 percent.

The estimated low-mod percentages between 1999 and 2002 for Freddie Mac were as follows (with the historical percentages from Table A.15 in parentheses): 40.0 (40.8) percent for 1999; 41.7 (42.7) percent for 2000; 39.8 (41.3) percent for 2001; and 42.1 (44.0) percent for 2002; Freddie Mac's average low-mod performance between 1999 and 2002 based on the projected data was 40.9 percent, compared with 42.3 percent based on historical data. To reach the 45-percent subgoal based on projected data, Freddie Mac would have to improve its performance by 4.0 percentage points over its projected average performance of 41.0 percent in 2001 and 2002, or by 2.9 percentage points over its projected 2002 low-mod performance of 42.1 percent.

The subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas. HMDA data for non-metropolitan areas are not reliable enough to serve as a market benchmark. The Department is also setting home purchase subgoals for the other two goals-qualifying categories, as explained in Appendices B and C.

10. GSEs Purchases of Total (Home Purchase and Refinance) Loans

Section E.9 examined the GSEs' acquisitions of home purchase loans, which is appropriate given the importance of the GSEs for expanding homeownership opportunities. To provide a complete picture of the GSEs' mortgage purchases in metropolitan areas, Tables A.18, A.19, A.20, and A.21 report the GSEs' purchases of all single-family-owner mortgages, including both home purchase loans and refinance loans.[265]

Table A.18 provides a long-run perspective on the GSEs' overall performance. Between 1993 and 2002, as well as during the 1996–2002 period, each GSE's performance was 80–86 percent of market performance for the special affordable category, 91–95 percent of market performance for the low-mod category, and 88–92 percent of market performance for the underserved areas category. For example, between 1996 and 2002, underserved areas accounted for 23.2 percent of Fannie Mae's purchases and 22.4 percent of Freddie Mac's purchases, compared with 25.5 percent for the conventional conforming market (without B&C loans). Similarly, for special affordable loans, both GSEs lagged the market during the 1996–2002 period—Fannie Mae and Freddie Mac averaged approximately 13.0 percent while the market was over two percentage points higher at 15.2 percent.

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[265] The GSE total (home purchase and refinance) data in Tables A.18–A.20 are presented on a purchase-year basis; Table A.21 presents similar data on an origination-year basis.

Table A.18

GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase and Refinance Mortgages, 1993-2002

Borrower and Tract Characteristics	Fannie Mae	Freddie Mac	Ratio of Fannie Mae to Freddie Mac	Conventional Conforming Market		Ratio of GSE to Market (W/O B&C)	
				Total	(W/O B&C Loans)	Fannie Mae	Freddie Mac
Special Affordable							
1993-2002	11.9 %	11.5 %	1.03	15.0 %	14.4 %	0.83	0.80
1993-1995	8.3	7.2	1.15	11.6	11.4	0.73	0.63
1996-2002	13.0	12.7	1.02	15.9	15.2	0.86	0.84
1999-2002	13.8	13.8	1.00	16.3	15.7	0.88	0.88
2000-2002	14.2	13.9	1.02	15.8	15.3	0.93	0.91
Less than Area Median Income							
1993-2002	38.7 %	37.5 %	1.03	42.1 %	41.3 %	0.94	0.91
1993-1995	33.0	31.0	1.06	37.0	36.8	0.90	0.84
1996-2002	40.3	39.4	1.02	43.5	42.6	0.95	0.92
1999-2002	41.5	40.9	1.01	44.2	43.3	0.96	0.94
2000-2002	42.1	40.8	1.03	43.7	42.9	0.98	0.95
Underserved Areas							
1993-2002	22.9 %	21.9 %	1.05	25.9 %	25.0 %	0.92	0.88
1993-1995	21.9	20.3	1.08	23.5	23.2	0.94	0.88
1996-2002	23.2	22.4	1.04	26.5	25.5	0.91	0.88
1999-2002	23.8	23.1	1.03	26.7	25.7	0.93	0.90
2000-2002	24.3	23.1	1.05	26.3	25.4	0.96	0.91

Source: The Fannie Mae and Freddie Mac data include information on all their single-family-owner mortgage purchases from the loan-level data that they provide to HUD. All mortgages are conventional conforming mortgages. "Conventional Conforming Market" data are from HMDA; loans with a loan-to-income ratio greater than six are excluded from the borrower income calculations. The numbers in the "W/O B&C Loans" column are the average market percentages after deducting B&C loans from the adjacent "Total" market column (see text for explanation). Special affordable includes very low-income borrowers and low-income borrowers in low-income census tracts. Data with missing values are excluded.

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Similar to the patterns discussed for home purchase loans, Fannie Mae has tended to outperform Freddie Mac. This can be seen by examining the various "Fannie-Mae-to-Freddie-Mac" ratios in Table A.18, which are all equal to or greater than one. Over the recent 1999–2002 period, Fannie Mae and Freddie Mac continued to lag the overall market on all three goals-qualifying categories. Special affordable (underserved area) loans averaged 13.8 (23.8) percent of Fannie Mae's purchases, 13.8 (23.1) percent of Freddie Mac's purchases, and 15.7 (25.7) percent of market originations. Considering both GSEs, the market ratio was 0.88 for special affordable loans, approximately 0.95 for low-mod loans, and slightly over 0.90 for underserved area loans. As with home purchase loans, dropping the year 1999 and characterizing recent performance by the 2000–2002 period improves the performance of both GSEs relative to the market, but particularly Fannie Mae. Over the 2000–2002 period, the "Fannie-Mae-to-market" ratio was 0.93 for Special Affordable loans, 0.98 for low-mod loans, and 0.96 for underserved area loans.

The above analysis has defined the market to exclude B&C loans. Table A.19 shows the effects on the market percentages of different definitions of the conventional conforming market. For example, the average 1999–2002 market share for special affordable (underserved areas) loans would fall to 15.1 (25.3) percent if manufactured housing loans in metropolitan areas were excluded from the market definition along with B&C loans. In this case, the market ratio for Fannie Mae (Freddie Mac) would be was 0.91 (0.91) for special affordable loans, 0.97 (0.96) for low-mod loans, and 0.94 (0.91) for underserved area loans.

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Table A.19

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase and Refinance Mortgages, 1996-2002
Various Market Definitions

			Conventional Conforming Market Originations						
Borrower and Tract Characteristics	Fannie Mae Purchases	Freddie Mac Purchases	Total Market	W/O Mfg and Less Than $15K Loans	W/O Subprime Loans	W/O B&C Loans	W/O B&C and Mfg Loans	W/O B&C and LT $15K Loans	W/O B&C, Mfg, and LT $15K
Special Affordable									
1996	10.5	9.4	15.3	13.7	14.4	14.8	13.7	14.1	13.2
1997	11.5	10.1	16.4	14.8	14.8	15.6	14.5	15.0	14.0
1998	11.1	11.0	14.2	13.2	12.6	13.5	12.7	13.1	12.4
1999	12.4	13.4	18.3	17.0	16.1	17.3	16.2	16.9	15.9
2000	14.5	16.1	19.3	18.0	17.1	18.3	17.3	17.7	16.9
2001	13.9	13.3	15.0	14.4	13.9	14.5	14.1	14.2	13.9
2002	14.3	13.6	15.1	14.8	14.2	14.6	14.5	14.5	14.4
1996-2002	13.0	12.7	15.9	15.0	14.4	15.2	14.5	14.8	14.2
1999-2002	13.8	13.8	16.3	15.6	14.9	15.7	15.1	15.3	14.9
2000-2002	14.2	13.9	15.8	15.3	14.6	15.3	14.8	15.0	14.6
Less Than Area Median Income									
1996	37.0	34.8	42.4	40.4	41.4	41.9	40.5	41.2	39.8
1997	38.0	36.1	43.7	41.8	41.9	42.9	41.4	42.2	40.8
1998	37.4	36.7	40.9	39.6	38.9	39.9	38.9	39.5	38.6
1999	39.3	41.2	46.3	44.7	43.7	45.1	43.8	44.6	43.4
2000	42.3	44.3	47.4	45.9	44.9	46.3	45.1	45.6	44.6
2001	41.7	40.2	42.3	41.6	40.9	41.6	41.2	41.3	40.9
2002	42.2	40.1	43.2	42.9	41.9	42.6	42.4	42.4	42.2
1996-2002	40.3	39.4	43.5	42.3	41.7	42.6	41.8	42.2	41.4
1999-2002	41.5	40.9	44.2	43.3	42.4	43.3	42.7	43.0	42.4
2000-2002	42.1	40.8	43.7	42.9	42.1	42.9	42.5	42.6	42.1
Underserved Areas									
1996	22.9	20.7	26.7	25.3	25.3	26.0	25.0	25.6	24.6
1997	23.3	21.4	27.8	26.6	25.5	26.7	25.7	26.3	25.3
1998	21.1	20.8	24.8	23.9	22.4	23.6	23.0	23.4	22.7
1999	21.7	23.3	28.2	27.3	25.4	26.9	26.1	26.7	25.9
2000	25.2	24.6	30.3	29.4	27.3	28.9	28.2	28.6	27.9
2001	24.2	22.5	25.7	25.3	23.9	24.9	24.6	24.7	24.4
2002	24.0	22.9	25.2	25.0	23.4	24.3	24.2	24.2	24.1
1996-2002	23.2	22.4	26.5	25.8	24.3	25.5	24.9	25.2	24.7
1999-2002.	23.8	23.1	26.7	26.2	24.5	25.7	25.3	25.5	25.1
2000-2002	24.3	23.1	26.3	25.9	24.3	25.4	25.1	25.2	24.9

Source: The Fannie Mae and Freddie Mac percentages are based on the loan-level data that they provide to HUD. All mortgages are conventional conforming home purchase and refinance mortgages. The Conventional Conforming Market data are from HMDA; loans with a loan-to-income-ratio greater than six are excluded from all borrower income calculations. See the text for an explanation of the adjustments for manufactured housing (Mfg), subprime, and B&C loans. Special affordable includes very low-income borrowers and low-income borrowers living in low-income census tracts. Data with missing values are excluded.

Shifts in performance occurred during 2001 and 2002, the first two years under HUD's higher housing goal targets. Table A.20 shows that both GSEs improved their overall performance between 1999 and 2000, but they each fell back a little during the heavy refinancing year of 2001. But the primary market (without B&C loans) experienced a much larger decline in affordable lending during the refinancing wave than did either of the GSEs. Fannie Mae stood out in 2001 because of its particularly small decline in affordable lending. Between 2000 and 2001, Fannie Mae's special affordable lending fell by only 0.6 percentage points while Freddie Mac's fell by 2.8 percentage points and the market's fell by 3.8 percentage points. The corresponding percentage point declines for the underserved areas category were 1.0 for Fannie Mae, 1.9 for Freddie Mac, and 4.0 for the market. By the end of 2001, Fannie Mae led Freddie Mac in all three goals-qualifying categories, and had erased its gap with the low-mod market, but continued to lag the market on the special affordable and underserved areas categories.

Table A.20

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas Goal-Qualifying Home Purchase and Refinance Mortgages, 1997-2002

Borrower and Tract Characteristics	Fannie Mae Purchases	Freddie Mac Purchases	Ratio of Fannie Mae to Freddie Mac	Conventional Conforming Market Originations (W/O B&C)	Ratio of GSE to Market (W/O B&C)	
					Fannie Mae	Freddie Mac
Special Affordable Borrower						
1997	11.5	10.1	1.14	15.6	0.74	0.65
1998	11.1	11.0	1.01	13.5	0.82	0.81
1999	12.4	13.4	0.93	17.3	0.72	0.77
2000	14.5	16.1	0.90	18.3	0.79	0.88
2001	13.9	13.3	1.05	14.5	0.96	0.92
2002	14.3	13.6	1.05	14.6	0.98	0.93
Less Than Area Median Income Borrower						
1997	38.0	36.1	1.05	42.9	0.89	0.84
1998	37.4	36.7	1.02	39.9	0.94	0.92
1999	39.3	41.2	0.95	45.1	0.87	0.91
2000	42.3	44.3	0.95	46.3	0.91	0.96
2001	41.7	40.2	1.04	41.6	1.00	0.97
2002	42.2	40.1	1.05	42.6	0.99	0.94
Underserved Areas						
1997	23.3	21.4	1.09	26.7	0.87	0.80
1998	21.1	20.8	1.01	23.6	0.89	0.88
1999	21.7	23.3	0.93	26.9	0.81	0.87
2000	25.2	24.6	1.02	28.9	0.87	0.85
2001	24.2	22.5	1.08	24.9	0.97	0.90
2002	24.0	22.9	1.05	24.3	0.99	0.94

Source: Special affordable includes very low-income borrowers plus low-income borrowers living in low-income census tracts. Very low-income (low-income) is defined as income less than or equal to 60 (80) percent of area median income. An underserved area is defined as a census tract with median income at or below 90 percent of the area median income; or a census tract with median income at or below 120 percent of the median inocme areas and a minority population of 30 percent or greater. Data with missing values are excluded.

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During the refinancing wave of 2002, Fannie Mae improved slightly on the special affordable and low-mod categories and declined slightly on the underserved area category. Freddie Mac showed slight improvement on the special affordable and underserved area categories and remained about the same on the low-mod category. The market showed the same pattern as Fannie Mae. The end result of these changes can be seen by considering the market ratios in Table A.20. In 2002, special affordable loans accounted for 14.3 percent of Fannie Mae's purchases and 14.6 percent of loans originated in the non-B&C portion of the conventional conforming market, yielding a "Fannie-Mae-to-market" ratio of 0.98. Since Fannie Mae's market ratio for the special affordable category stood at 0.79 in 2000, Fannie Mae substantially closed its gap with the market during 2001 and 2002. During this period, Fannie Mae also mostly eliminated its market gap for the other two goals-qualifying categories. In 2002, underserved area loans accounted for 24.0 percent of Fannie Mae's purchases and 24.3 percent of loans originated in the non-B&C portion of the conventional conforming market, yielding a "Fannie-Mae-to-market" ratio of 0.99, or approximately one. During 2002, low-mod loans accounted for 42.2 percent of Fannie Mae's purchases and 42.6 percent of loans originated in the market, yielding a "Fannie-Mae-to-market" ratio of 0.99, or approximately one (also note that Fannie Mae slightly outperformed the low-mod market during 2001). Thus, while Fannie Mae continued to lag the market in 2002 on each of the three goals-qualifying categories, it was close to the market on the low-mod and underserved area categories, in particular.

Freddie Mac significantly lagged the single-family (home purchase and refinance loans combined) market during 2001 and 2002. In 2002, the "Freddie-Mac-to-market" ratios were 0.93 for special affordable loans, 0.94 for low-mod loans, and 0.94 for underserved area loans.

Subprime Loans. Table A.14 in Section E.9 showed that the goals-qualifying shares of the home purchase market did not change much when originations by subprime lenders are excluded from the analysis; the reason is that subprime lenders operate primarily in the refinance market. Therefore, in this section's analysis of the total market (including refinance loans), one would expect the treatment of subprime lenders to significantly affect the market estimates and, indeed, this is the case. For the year 2001, excluding subprime loans reduced the goal-qualifying shares of the *total* market as follows: special affordable, from 15.0 to 13.9 percent; low-mod, from 42.3 to 40.9 percent; and underserved areas, from 25.7 to 23.9 percent. (*See* Table A.19.) Similar declines take place in 2002.

As explained earlier, the comparisons in this appendix have defined the market to exclude the B&C portion of the subprime market. Industry observers estimate that A-minus loans account for about two-thirds of all subprime loans while the more risky B&C loans account for the remaining one-third. As explained earlier, this analysis reduces the goal-qualifying percentages from the HMDA data by half the differentials between (a) the market (unadjusted) and (b) the market without the specialized subprime lenders identified by Scheessele. As shown in Table A.19, accounting for B&C loans in this manner reduces the year 2001 HMDA-reported goal-qualifying shares of the total (home purchase and refinance) conforming market as follows: special affordable, from 15.0 to 14.5 percent; low-mod, from 42.3 to 41.6 percent; and underserved areas, from 25.7 to 24.9 percent. Obviously, the GSEs' performance relative to the market will depend on which market definition is used (much as it did with the earlier examples of excluding manufactured housing loans in metropolitan areas from the market definition). For example, defining the conventional conforming market to exclude subprime loans, rather than only B&C loans, would increase Fannie Mae's 2002 special affordable (underserved area) market ratio from 0.98 to 1.01 (0.99 to 1.03). Similarly, it would increase Freddie Mac's special affordable (underserved area) market ratio from 0.93 to 0.96 (0.94 to 0.98). For the broader-defined low-mod category, redefining the market to exclude subprime loans, rather than only B&C loans, would increase Fannie Mae's (Freddie Mac's) market ratio from 0.99 to 1.01 (0.94 to 0.96).

Table A.21 reports GSE purchase data for total (home purchase and refinance) loans on an origination-year basis. The "Freddie Mac-to-market" ratios in Table A.21 show that Freddie Mac has lagged the primary market in funding mortgages covered by the housing goals. The "Fannie Mae-to-market" ratios in Table A.21 show that except for the low-mod category in 2002 Fannie Mae has lagged the primary market in funding home purchase and refinance mortgages covered by the housing goals.

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Table A.21

Annual Trends in GSE Purchases and Single-Family Lending in Metropolitan Areas
Goal-Qualifying Home Purchase and Refinanace Mortgages
1996-2002 GSE Data Reported on an Origination-Year Basis1

Borrower and Tract Characteristics	Fannie Mae Purchases	Freddie Mac Purchases	Ratio of Fannie Mae to Freddie Mac	Conventional Conforming Market Originations (W/O B&C)	Ratio of GSE to Market (W/O B&C) Fannie Mae	Ratio of GSE to Market (W/O B&C) Freddie Mac
Special Affordable						
1996	11.4	9.9	1.15	14.8	0.77	0.67
1997	11.1	10.7	1.04	15.6	0.71	0.69
1998	10.7	11.4	0.94	13.5	0.79	0.84
1999	13.9	15.0	0.93	17.3	0.80	0.87
2000	14.8	15.9	0.93	18.3	0.81	0.87
2001	13.4	12.7	1.06	14.5	0.92	0.88
2002 [2]	14.4	13.5	1.07	14.6	0.99	0.92
1996-2002	13.0	12.8	1.02	15.2	0.86	0.84
1999-2002	14.0	13.8	1.01	15.7	0.89	0.88
2000-2002	14.0	13.6	1.03	15.3	0.92	0.89
Less Than Area Median Income						
1996	38.2	35.6	1.07	41.9	0.91	0.85
1997	37.6	36.7	1.02	42.9	0.88	0.86
1998	36.7	37.3	0.98	39.9	0.92	0.93
1999	41.5	43.3	0.96	45.1	0.92	0.96
2000	42.8	43.8	0.98	46.3	0.92	0.95
2001	41.1	39.3	1.05	41.6	0.99	0.94
2002 [2]	42.8	40.3	1.06	42.6	1.00	0.95
1996-2002	40.4	39.5	1.02	42.6	0.95	0.93
1999-2002	42.0	41.0	1.02	43.3	0.97	0.95
2000-2002	42.1	40.4	1.04	42.9	0.98	0.94
Underserved Areas						
1996	23.7	21.0	1.13	26.0	0.91	0.81
1997	22.1	21.5	1.03	26.7	0.83	0.81
1998	20.5	21.2	0.97	23.6	0.87	0.90
1999	22.8	24.3	0.94	26.9	0.85	0.90
2000	25.4	25.2	1.01	28.9	0.88	0.87
2001	23.6	22.4	1.05	24.9	0.95	0.90
2002 [2]	23.7	22.3	1.06	24.3	0.98	0.92
1996-2002	23.0	22.4	1.03	25.5	0.90	0.88
1999-2002	23.7	23.1	1.03	25.7	0.92	0.90
2000-2002	23.9	22.8	1.05	25.4	0.94	0.90

Source: See text and notes to previous tables for variable definitions and market methodology.

[1] In this table, GSE data are reported on an "origination-year" basis rather than on a "purchase-year" basis (as are the previous tables on home purchase and refinance loans). This means that prior-year loans that the GSEs purchase in a particular calendar year are allocated back to their year of origination. For example, mortgages originated in 2000 but purchased by the GSEs in 2002 would be allocated to 2000 (the year of origination). Thus, the GSE percentages for 2000 represent GSE purchases (in 2000 and in 2001 and in 2002) of mortgages originated in 2000. For this reason, the GSE data in this table are more consistent with the market data. Market percentages are for current-year mortgage originations, based on HMDA data.

[2] The data for 2002 represent only the GSEs' purchases during 2002 of mortgages originated during 2002, as there are not yet any subsequent years in which to report originations to report. Of course, during 2003 (and during following years), the GSEs will purchase prior-year loans originated in 2002, which would at that time be incorporated into the data for the year 2002.

11. GSE Mortgage Purchases in Individual Metropolitan Areas

While the above analyses, as well as earlier studies, concentrate on national-level data, it is also instructive to compare the GSEs' purchases of mortgages in individual metropolitan areas (MSAs). In this section, the GSEs' purchases of single-family owner-occupied home purchase loans are compared to the market in individual MSAs. There are three steps. *First*, goals-qualifying percentages for conventional conforming mortgage originations (without B&C loans) are computed for each year and for each MSA, based on HMDA data. *Second*, corresponding goals-qualifying percentages are computed for each GSE's purchases for each year and for each MSA. These two sets of percentages are the same as those used in the aggregate analysis discussed in the above sections. *Third*, the "GSE-to-market" ratio is then calculated by dividing each GSE percentage by the corresponding market percentage. For example, if it is calculated that one of the GSEs' purchases of low- and moderate-income loans in a particular MSA is 40 percent of their overall purchases in that MSA, while 44 percent of all home loans (excluding B&C loans) in that MSA qualify as low-mod, then the GSE-to-market ratio is 40/44 (or 0.91). The goals-qualifying ratios for Fannie Mae and Freddie Mac can be compared for each MSA in a similar manner.

Tables A.22, A.23, and A.24 summarize the performance of the GSEs within MSAs for 2000, 2001 and 2002 originations of home purchase loans. A GSE's performance is determined to be lagging the market if the ratio of the GSE housing goal loan purchases to their overall purchases is less than 99 percent of that same ratio for the market. (The analysis was conducted where the "lag" determination is made at 98 percent instead of 99 percent and the results showed little change.) In the example given in the above paragraph, that GSE would be considered lagging the market. Tables A.22 (2000), A.13 (2001) and A.24 report the number of MSAs in which each GSE under-performs the market with respect to each of the three housing goal categories. The following points can be made from this data:

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Table A.22

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category 2000 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	331	100.0%	331	100.0%	331	100.0%
Fannie Mae Lags the Market	296	89.4%	269	81.3%	299	90.3%
Freddie Mac Lags the Market	292	88.2%	282	85.2%	299	90.3%
Fannie Mae Lags Freddie Mac	158	47.7%	126	38.1%	153	46.2%
Freddie Mac Lags Fannie Mae	153	46.2%	190	57.4%	168	50.8%

Source: Fannie Mae and Freddie Mac data are from the loan-level data they provide to HUD. The market data are conforming originations as reported in HMDA data.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 2000) purchased by the GSEs between 2000 and 2002 for loans originated in 2000. Loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable analyses.

In general, a GSE is determined to lag the market (or lag the other GSE) for a category (i.e., underserved area, low- and moderate-income, or special affordable defined as very low-income occupant or low-income occupant in low-income area) if the ratio of the share of category loans in that GSE's purchases to the share of category loans in market originations (or in the other GSE's purchases) is less than 99%. Exceptions to this procedure are as follows:

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by each of the GSEs, that MSA is excluded from the analysis for that category.

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by one of the GSEs, that GSE is counted as not lagging the market in that MSA for that category regardless of the calculated ratio.

If, for loans in a category in an MSA, there are 5 or more loans reported in the HMDA data and fewer than 5 loans purchased by each of the GSEs, then neither GSE is counted as lagging the other GSE in that MSA for that category regardless of the calculated ratio.

Table A.23

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category 2001 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	331	100.0%	331	100.0%	331	100.0%
Fannie Mae Lags the Market	267	80.7%	202	61.0%	261	78.9%
Freddie Mac Lags the Market	260	78.5%	275	83.1%	279	84.3%
Fannie Mae Lags Freddie Mac	166	50.2%	83	25.1%	117	35.3%
Freddie Mac Lags Fannie Mae	147	44.4%	223	67.4%	201	60.7%

Source: Fannie Mae and Freddie Mac data are from the loan-level data they provide to HUD. The market data are conforming originations as reported in HMDA data.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 2001) purchased by the GSEs between 2001 and 2002 for loans originated in 2001. Loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable analyses.

In general, a GSE is determined to lag the market (or lag the other GSE) for a category (i.e., underserved area, low- and moderate-income, or special affordable defined as very low-income occupant or low-income occupant in low-income area) if the ratio of the share of category loans in that GSE's purchases to the share of category loans in market originations (or in the other GSE's purchases) is less than 99%. Exceptions to this procedure are as follows:

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by each of the GSEs, that MSA is excluded from the analysis for that category.

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by one of the GSEs, that GSE is counted as not lagging the market in that MSA for that category regardless of the calculated ratio.

If, for loans in a category in an MSA, there are 5 or more loans reported in the HMDA data and fewer than 5 loans purchased by each of the GSEs, then neither GSE is counted as lagging the other GSE in that MSA for that category regardless of the calculated ratio.

Table A.24

Analysis of GSEs' Purchases Across MSAs by Housing Goal Category 2002 Originations

	Underserved Areas		Low-Mod Income		Special Affordable	
Number of MSAs Analyzed	331	100.0%	331	100.0%	331	100.0%
Fannie Mae Lags the Market	248	74.9%	133	40.2%	204	61.6%
Freddie Mac Lags the Market	193	58.3%	234	70.7%	235	71.0%
Fannie Mae Lags Freddie Mac	203	61.3%	73	22.1%	121	36.6%
Freddie Mac Lags Fannie Mae	116	35.0%	237	71.6%	196	59.2%

Source: Fannie Mae and Freddie Mac data are from the loan-level data they provide to HUD. The market data are conforming originations as reported in HMDA data.

Notes: The GSE loans in this analysis include all single-family owner-occupied conventional conforming home purchase mortgages in metropolitan areas (as defined by OMB in 2002) purchased by the GSEs in 2002 for loans originated in 2002. Loans with a loan-to-income ratio greater than six are excluded from Low-Mod Income and Special Affordable analyses.

In general, a GSE is determined to lag the market (or lag the other GSE) for a category (i.e., underserved area, low- and moderate-income, or special affordable defined as very low-income occupant or low-income occupant in low-income area) if the ratio of the share of category loans in that GSE's purchases to the share of category loans in market originations (or in the other GSE's purchases) is less than 99%. Exceptions to this procedure are as follows:

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by each of the GSEs, that MSA is excluded from the analysis for that category.

If, for loans in a category in an MSA, there are fewer than 5 loans reported in the HMDA data and fewer than 5 loans purchased by one of the GSEs, that GSE is counted as not lagging the market in that MSA for that category regardless of the calculated ratio.

If, for loans in a category in an MSA, there are 5 or more loans reported in the HMDA.data and fewer than 5 loans purchased by each of the GSEs, then neither GSE is counted as lagging the other GSE in that MSA for that category regardless of the calculated ratio.

Fannie Mae's improvement between 2000 and 2002 shows up clearly in these tables. In 2000, Fannie Mae lagged the market in 296 (89 percent) of the 331 MSAs in the purchase of underserved area loans; this number decreased to 267 (81 percent) MSAs in 2001 and to 248 (75 percent) MSAs in 2002. Fannie Mae's improvement was even greater for special affordable and low-mod loans; in the latter case, Fannie Mae lagged the market in 133 (40 percent) MSAs in 2002, compared with 269 (81 percent) MSAs in 2000.

Freddie Mac's improvement between 2000 and 2002 was greater for underserved area loans. In 2000, Freddie Mac lagged the market in 292 (88 percent) of the 331 MSAs in the purchase of underserved area loans; this number decreased to 260 (79 percent) MSAs in 2001 and to 193 (58 percent) MSAs in 2002. Freddie Macs made less improvement on the special affordable and low-mod categories; in the former case, Freddie Mac lagged the market in 234 (71 percent) MSAs in 2002, compared with 282 (85 percent) MSAs in 2000.

Freddie Mac outperformed Fannie Mae during 2002 in 65 percent of the MSAs, even though Freddie Mac's average national performance was below Fannie Mae's in that year (see Table A.16 in Section E.9.d); this suggests that Freddie Mac performs better in small MSAs, as compared with Fannie Mae. This is also consistent with the fact that Fannie Mae lagged the market in 75 percent of the MSAs during 2002, even though its average national performance was only slightly below market performance (see Table A.16); this suggests Fannie Mae does better in large MSAs, as compared with small MSAs.

In its comments on the 2000 Proposed Rule, Fannie Mae raised several concerns about HUD's comparisons between Fannie Mae and the primary market at the metropolitan statistical area level. Essentially, Fannie Mae questioned the relevance of any analysis at the local level, given that the housing goals are national-level goals. HUD believes that its metropolitan-area analyses support and clarify the national analyses on GSE performance. While official goal performance is measured only at the national level, HUD believes that analyses of, for example, the numbers of MSAs where Fannie Mae and Freddie Mac lead or lag the local market increases public understanding of the GSEs' performance. For example, if the national aggregate data showed that one GSE lagged the market in funding loans in underserved areas, it would be of interest to the public to determine if this reflected particularly poor performance in a few large MSAs or if it reflected shortfalls in many MSAs. In this case, an analysis of individual MSA data increases public understanding of that GSE's performance.

12. GSE Market Shares: Home Purchase and First-Time Homebuyer Loans

This section examines the role that the GSEs have played in the overall affordable lending market for home loans. There are two differences from the above analyses in Sections E.9 and E.10. The *first difference* is that this section focuses on "market share" percentages rather than "distribution of business" percentages. A "market share" percentage measures the share of loans with a particular borrower or neighborhood characteristic that is funded by a particular market sector (such as FHA or the GSEs). In other words, a "market share" percentage measures a sector's share of all home loans originated for a particular targeted group. The "market share" of a sector depends not only on the degree to which that sector concentrates its business on a targeted group (*i.e.*, its "distribution of business" percentage) but also on the size, or overall mortgage volume, of the sector. If an industry sector has a large "market share" for a targeted group, then that sector is making an important contribution to meeting the credit needs of the group. Both "distribution of business" and "market share" data are important for evaluating the GSEs" performance. In fact, given the large size of the GSEs', one would expect that a "market share" analysis would highlight their importance to the affordable lending market.

The *second difference* is that this section also examines the role of the GSEs in the total market for home loans, as well as in the conventional conforming market. Such an approach provides a useful context for commenting on the contribution of Fannie Mae and Freddie Mac to overall affordable lending, particularly given evidence that conventional lenders have done a relatively poor job providing credit access to disadvantaged families, which renders the conventional market a poor benchmark for evaluating GSE performance. The analysis of first-time homebuyers conducts the market share analysis in terms of both the total market Section E.12.b) and the conventional conforming market (Section E.12.c).

While the GSEs have accounted for a large share of the overall market for home purchase loans, they have accounted for a very small share of the market for important groups such as minority first-time homebuyers. But as this section documents, the GSEs have been increasing their share of the low-income and minority market, which provides an optimistic note on which to go forward.

Section E.12.a uses HMDA and GSE data to estimate the GSEs' share of home loans originated for low-income and minority borrowers and their neighborhoods. Sections E.12.b and E.12.c summarize recent research on the role of the GSEs in the first-time homebuyer market. Section E.12.d examines the downpayment characteristics of home loans purchased by the GSEs, a potentially important determinant of the GSEs' ability to reach first-time homebuyers.

a. GSEs' Share of Home Purchase Lending

Table A.25 reports market share estimates derived by combining HMDA market data with GSE and FHA loan-level data. To understand these estimates, consider the GSE market share percentage of 46 percent for "All Home Purchase Loans" at the bottom of the first column in the table. That market share percentage is interpreted as follows:

It is estimated that home loans acquired by Fannie Mae and Freddie Mac during the years 1999 to 2002, totaled 46 percent of all home loans originated in metropolitan areas during that period.

It should be noted that "all home loans" refers to all government (FHA and VA) loans plus all conventional loans less than the conforming loan limit; in other words, only "jumbo loans" are excluded from this analysis.[266] The analysis is restricted to metropolitan areas because HMDA data (the source of the market estimates) are reliable only for metropolitan areas. B&C originations are included in the market data, since the purpose here is to gauge the GSEs' role in the overall mortgage market. As discussed in Section E.9, excluding B&C loans, or even all subprime loans, would not materially affect this analysis of the home loan market since subprime loans are mainly for refinance purposes. The analysis below frequently combines purchases by Fannie Mae and Freddie Mac since previous sections have compared their performance relative to each other.

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[266] Following the purchase-year approach used in Sections E.9 and E.10, the GSE purchase data include their acquisitions of "prior-year" as well as "current-year" mortgages, while the market data include only newly-originated (or "current year") mortgages.

Table A.25

FHA-Insured Loans and GSE Purchases as Shares of Home Purchase Mortgages Originated in Metropolitan Areas During 1999-2002

	GSE Purchases			FHA-Insured
	1999-2002	2001	2002	1999-2002
Low-Income Borrowers	37%	40%	43%	26% [1]
African-American and Hispanic Borrowers	29	32	34	33
Low-Income Tracts	34	38	44	26
High Minority Tracts	37	40	45	26
Underserved Areas[2]	36	39	44	25
All Home Purchase Loans	46	48	50	18

Source: 1999, 2000, 2001, and 2002 GSE, FHA, and HMDA data.

Notes: The FHA figures refer to percentages of all newly-mortgaged home purchase mortgage loans (except jumbo loans above the conforming loan limit) in metropolitan areas that were FHA insured during 1999, 2000, 2001, and 2002; the FHA data are from FHA. The GSE figures are defined differently-- they include GSE purchases in metropolitan areas during 1999 to 2002, of 1999-2002 conventional conforming mortgage originations and originations prior to 1999. (About 28% of the GSEs' 1999 purchases were mortgages originated prior to 1999.) Borrower and race percentages are calculated by reallocating missing FHA, GSE, and conventional market data for these variables. FHA had fewer cases with missing data than the GSEs and the market. As with the FHA data, the GSE purchases are expressed as a percentage of the total market in metropolitan areas. In this table, the "total market" includes all (government and conventional) home purchase mortgages originated in metropolitan areas during 1999, 2000, 2001, and 2002 that were below each year's conforming loan limit. The market data assume that HMDA covers 85 percent of the metropolitan mortgage market. A lower coverage assumption would increase the market totals and thus reduce the GSE and FHA market shares.

[1] That is, it is estimated that FHA insured 26 percent of all home purchase loans (below the conforming loan limit) that were originated for low-income borrowers in metropolitan areas during 1999-2002.

[2] Metropolitan census tracts with (1) median income less than or equal to 90 percent of AMI or (2) minority concentration greater than or equal to 30 percent and tract median income less than or equal to 120 percent of AMI.

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The GSE market share percentage for "Low-Income Borrowers" at the top of the first column of Table A.25 has a similar interpretation:

It is estimated that home loans for low-income borrowers acquired by Fannie Mae and Freddie Mac between 1999 and 2002 totaled 37 percent of all home loans originated for low-income borrowers in metropolitan areas.

According to the data in Table A.25, the GSEs account for a major portion of the market for targeted groups. For example, purchases by Fannie Mae and Freddie Mac represented 37 percent of the low-income-borrower market and 34–37 percent of the markets in low-income, high-minority, and underserved census tracts. Thus, access to credit in these historically underserved markets depends importantly on the purchase activities of Fannie Mae and Freddie Mac. However, the data in Table A.25 show that the GSEs' role in low-income and minority markets is significantly less than their role in the overall home loan market. Fannie Mae and Freddie Mac accounted for 46 percent of all home loans but only 36 percent of the loans financing properties in underserved neighborhoods. Their market share was even lower for loans to African-American and Hispanic borrowers—29 percent, or 17 percentage points less than the GSEs' overall market share of 46 percent.

An encouraging finding is that the GSEs have increased their presence in the affordable lending market during 2001 and 2002, when they accounted for 38–45 percent of the loans financing properties in low-income, high-minority, and underserved neighborhoods and for 32–34 percent of loans for African-American and Hispanic borrowers. These market share figures for the GSEs are much higher than their performance during the two earlier years, 1999 and 2000.

To provide additional perspective, Table A.25 also reports market share estimates for FHA.[267] During the 1999–2002 period, FHA's overall market share was less than half of the GSEs' market share, as FHA insured only 18 percent of all home mortgages originated in metropolitan areas. However, FHA's share of the underserved segments of the market are not far below the GSEs' share, and in one case actually higher by a significant margin. For instance, between 1999 and 2001, FHA insured 26 percent of all mortgages originated in low-income census tracts, which was only eight percentage points less than the GSEs' market share of 34 percent in low-income census tracts. FHA's share of the market was particularly high for African-American and Hispanic borrowers, as FHA insured 33 percent of all home loans originated for these borrowers between 1999 and 2002—a figure four percentage points higher than the GSEs' share of 29 percent.[268] Thus, during the 1999–2002 period, FHA's overall market share was only two-fifths (39 percent) of the GSEs' combined market share, but its share of the market for loans to African Americans and Hispanics was 14 percent larger than the GSEs' share of that market.

The data for the two recent years (2001 and 2002) indicate a larger market role for Fannie Mae and Freddie Mac relative to FHA. While the GSEs continued to have a much larger share of the overall market than FHA (48–50 percent for the GSEs versus 14–17 percent for FHA), their share of home loans for African Americans and Hispanics jumped to 32–34 percent during 2001 and 2002, which was higher than the percentage share for FHA (27–32 percent). The differentials in market share between FHA and the GSEs on the other affordable lending categories listed in Table A.25 were lower in 2001 and 2002 than in earlier years.

b. The GSEs' Share of the Total First-Time Homebuyer Market

This section summarizes two recent analyses of mortgage lending to first-time homebuyers; these two studies examine the total mortgage market, including both government and conventional loans originated throughout the U.S. (*i.e.*, in both metropolitan areas and non-metropolitan areas). Section E.12.c will summarize a third study of first-time homebuyers that focuses on the conventional conforming market. All three studies are market share studies that examine the GSEs' role in the first-time homebuyer market.

First, a study by Bunce concluded that the GSEs have played a particularly small role in funding minority first-time homebuyers.[269] Because HMDA does not require lenders to report information on first-time homebuyers, Bunce used data from the American Housing Survey to estimate the number of first-time homebuyers in the market. Using American Housing Survey data on home purchases from 1997 to 1999, Bunce estimated that the GSEs' share of the market for first-time African-American and Hispanic homebuyers was only 10–11 percent, or less than one-third of their share (36 percent) of all home purchases during that period. FHA's share of this market was 36 percent, or twice its share (18 percent) of all home purchases.[270] These data highlight the small role that the GSEs have played in the important market for minority first-time homebuyers.

Bunce, Neal and Vandenbroucke (BNV) recently updated through 2001 the study by Bunce. In addition, BNV developed an improved methodology that combined industry, HMDA and AHS data to estimate the number of first-time homebuyers (by race and ethnicity) in the mortgage market during the years 1996 to 2001.[271] BNV's analysis includes the total mortgage

[267] As explained in Section E.7, the GSEs' affordable lending performance is evaluated relative to the conventional conforming market, as required by Congress in the 1992 GSE Act that established the housing goals. However, it is insightful to examine their overall role in the mortgage market and to contrast them with other major sectors of the market such as FHA. There is no intention here to imply that the GSEs should purchase the same types of loans that FHA insures.

[268] As explained in the notes to Table A.25, HMDA data are the source of the market figures. It is assumed that HMDA data cover 85 percent of all mortgage originations in metropolitan areas. If HMDA data covered higher (lower) percentages of market loans, then the market shares for both the GSEs and FHA would be lower (higher).

[269] See Harold L. Bunce, *The GSEs' Funding of Affordable Loans: A 2000 Update*, Housing Finance Working Paper No. HF–013, Office of Policy Development and Research, HUD, April 2002.

[270] Bunce explains numerous assumptions and caveats related to combining American Housing Survey data on homebuyers with FHA and GSE data on mortgages. For example, the American Housing Survey (AHS) data used by Bunce included both financed home purchases and homes purchased with cash. If only financed home purchases were used, the market shares of both FHA and the GSEs would have been slightly higher (although the various patterns would have remained the same). The AHS defines first-time homebuyers as buyers who have never owned a home, while FHA and the GSEs define a first-time homebuyer more expansively as buyers who have not owned a home in the past three years. If it were possible to re-define the FHA and GSE data to be consistent with the AHS data, the FHA and GSE first-time homebuyer shares would be lower (to an unknown degree). For additional caveats with the AHS data, also see David A. Vandenbroucke, Sue G. Neal, and Harold L. Bunce, "First-Time Homebuyers: Trends from the American Housing Survey," November 2001, *U.S. Housing Market Condition*, a quarterly publication of the Office of Policy Development and Research at HUD. In some years, home purchases as measured by the AHS declined while home purchases as measured by other data sources (*e.g.*, HMDA) increased. In addition, the AHS home purchase data for separate minority groups (*e.g.*, African-Americans, Hispanics) sometimes exhibited shifts inconsistent with other sources.

[271] BNV's methodology for estimating first-time borrowers consists of three steps: (1) Estimate the total number of home purchase loans originated during a particular year using a mortgage market model that they develop; (2) disaggregate the home purchase loans in step (1) into racial and ethnic groups using HMDA data for metropolitan areas; and (3) for each racial and ethnic group in step (2), estimate the number of first-time homebuyers using mortgage and first-time homebuyer information from the American Housing Survey.

market, that is, the government, conventional conforming, and jumbo sectors of the mortgage market.

Table A.26 presents the key market shares estimated by BNV for the GSEs and FHA. The first figure (40.7) in Table A.26 is interpreted as follows: purchases of home loans by Fannie Mae and Freddie Mac totaled 40.7 percent of all home loans financed between 1996 and 2001. Going down the first column shows that the GSEs' share of the first-time homebuyer market was 24.5 percent during the 1996–to–2001—a market share significantly lower than their overall market share of 40.7 percent.

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Table A.26

Role of GSEs in First-Time Homebuyer Market
Market Shares, 1996-2001

GSE (FHA) Share of Market for:	1996-2001		1999-2001				2001			
	GSEs	FHA	Fannie Mae	Freddie Mac	GSEs	FHA	Fannie Mae	Freddie Mac	GSEs	FHA
1. All Homebuyers	40.7 % [1]	16.6 %	23.8 %	17.7 %	41.5 %	16.4 %	28.1 %	20.6 %	48.7 %	. 16.7 %
a. African-American and Hispanic	23.8	32.0	14.9	9.4	24.3	31.2	19.6	11.1	30.7	30.9
b. Minority	28.9	27.5	18.1	11.3	29.4	26.8	22.9	13.6	36.5	25.5
2. First-Time Homebuyers	24.5	30.9	14.4	9.7	24.1	31.2	16.9	11.6	28.5	30.7
a. African-American and Hispanic	14.0	44.8	9.1	5.2	14.3	46.5	12.6	7.1	19.7	46.1
b. Minority	17.3 [2]	38.7	10.8	6.4	17.2	39.1	14.7	8.5	23.2	37.8

Source: Bunce, Neal, and Vandenbroucke (2003). GSE home purchase loan data are from the loan-level data they report to HUD. The GSE first-time homebuyer data are from the census tract file of the Public Use Data Base. Missing race and ethnicity data are re-allocated based on the race and ethnicity percentage distribution of the non-missing data. FHA home purchase loan data are from FHA. The market includes all home purchase mortgages (government, conventional conforming, and jumbo loans); see text for explanations of mortgage market estimates for all homebuyers and first-time homebuyers.

[1] Interpreted as follows: Purchases of home loans by the GSEs between 1996 and 2001 totaled 40.7 percent of all home loans originated during that period.

[2] Interpreted as follows: Purchases of home loans by the GSEs between 1996 and 2001 totaled 17.3 percent of all home loans originated for minority first-time homebuyers during that period.

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FHA's greater focus on first-time homebuyers is also reflected in the market share data reported in Table A.26. While FHA insured only 16.6 percent of all home loans originated between 1996 and 2001, it insured 30.9 percent of all first-time-homebuyer loans during that period. The GSEs, on the other hand, accounted for a larger share (40.7 percent) of the overall home purchase market but a smaller share (24.5 percent) of the first-time homebuyer market.

Table A.26 also reports home purchase and first-time homebuyer information for minorities. During the more recent 1999-to-2001 period, the GSEs' loan purchases represented 41.5 percent of all home mortgages but only 24.3 percent of home loans for African-American and Hispanic families, and just 14.3 percent of home loans for African-American and Hispanic first-time homebuyers. During this period, the GSEs' role in the market for first-time African-American and Hispanic homebuyers was only one-third of their role in the overall home loan market (14.3 percent versus 41.5 percent).

FHA, on the other hand, accounted for a much larger share of the minority first-time homebuyer market than it did of the overall homebuyer market. Between 1999 and 2001, FHA insured 46.5 percent of all loans for African-American and Hispanic first-time homebuyers—a market share that was almost three times its overall market share of 16.4 percent.[272] While FHA's market share was two-fifths of the GSEs' share of the overall home purchase market (16.4 percent versus 41.5 percent), FHA's market share was over three times the GSEs' share of the market for first-time African-American and Hispanic homebuyers (46.5 percent versus 14.3 percent). This finding that the GSEs have played a relatively minor role in the first-time minority market is similar to the conclusion reached by the Fed researchers (see below) and Bunce (2002) that the GSEs have provided little credit support to this underserved borrower group.

The results reported in Table A.26 for the year 2001 suggest some optimism concerning the GSEs' role in the first-time homebuyer market. As explained in earlier sections, both GSEs, but particularly Fannie Mae, improved their affordable lending performance during 2001, at a time when the overall market's performance was slightly declining. This improvement is reflected in the higher first-time market shares for the GSEs during the year 2001, compared with the two previous years, 1999 and 2000 (not reported). The GSEs' share of the market for first-time African-American and Hispanic homebuyers jumped from about 11–12 percent during 1999 and 2000 to 19.7 percent in 2001. Fannie Mae's share of this market almost doubled during this period, rising from 7.0 percent in 1999 to 12.6 percent in 2001. Thus, while the GSEs continue to play a relatively small role in the minority first-time homebuyer market, during 2001 they improved their performance in this area.[273]

c. The GSEs' Share of the Conventional Conforming, First-Time Homebuyer Market

Bunce and Gardner (2004) recently conducted an analysis of first-time homebuyers for the conventional conforming market. The Bunce and Gardner analysis used a similar methodology to the study by Bunce, Neal, and Vandenbroucke of first-time homebuyers in the total mortgage market. Bunce and Gardner restricted their analysis to the funding of first-time homebuyers in the conventional conforming market, which is the market where Fannie Mae and Freddie Mac operate. Their market share results are summarized in Table A.27.

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[272] See Bunce, Neal, and Vandenbroucke, *op. cit.*, for comparisons of various estimates of the market shares for FHA and the GSEs using different data bases and estimation methods. One can compare (a) the 1999–2001 market shares for FHA and the conventional conforming market in metropolitan areas calculated using the same methodology as Table A.25 *with* (b) the 1999–2001 market share estimates reported in Table A.25 for the entire mortgage market (including jumbo loans and covering non-metropolitan areas as well as metropolitan areas). The results are strikingly consistent. For the 1999–to–2001 period, the FHA share of the overall (African American and Hispanic) home loan market is estimated to be 19.0 percent (35.8 percent) under (a) versus 16.4 percent (31.2 percent) under (b). Lower percentage shares are expected for (b) because (b) includes jumbo loans. For the same period, the GSE share of the overall (African American and Hispanic) home loan market is estimated to be 46.0 percent (25–28 percent) under (a) versus 41.5 percent (24.3 percent) under (b).

[273] For other analyses of the GSEs' market role, see the following study by economists at the Federal Reserve Board: Glenn B. Canner, Wayne Passmore, and Brian J. Surette, "Distribution of Credit Risk among Providers of Mortgages to Lower-Income and Minority Homebuyers" in *Federal Reserve Bulletin*, 82(12): 1077–1102, December, 1996. This study considered several characteristics of the GSEs' loan purchases (such as amount of downpayment) and concluded that the GSEs have played a minimal role in providing credit support for underserved borrowers.

Table A.27

GSEs' Share of Conventional Conforming Loans for All Homebuyers and for First-Time Homebuyers, 1996-2001

	1999-2001	1996-2001
All Homebuyers		
Fannie Mae Purchases	32.5%	32.4%
Freddie Mac Purchases	24.0%	23.2%
Both GSEs' Purchases	56.6%	55.5%
African-American and Hispanic Homebuyers		
Fannie Mae Purchases	27.7%	28.3%
Freddie Mac Purchases	17.5%	16.7%
Both GSEs' Purchases	45.2%	45.0%
Minority Homebuyers		
Fannie Mae Purchases	31.4%	31.9%
Freddie Mac Purchases	19.5%	18.8%
Both GSEs' Purchases	50.9%	50.7%
All First-Time Homebuyers		
Fannie Mae Purchases	22.9%	24.7%
Freddie Mac Purchases	16.9%	16.3%
Both GSEs' Purchases	39.8%	41.0%
African-American and Hispanic First-Time Homebuyers		
Fannie Mae Purchases	19.0%	20.2%
Freddie Mac Purchases	11.9%	10.4%
Both GSEs' Purchases	30.9%	30.6%
Minority First-Time Homebuyers		
Fannie Mae Purchases	20.1%	22.1%
Freddie Mac Purchases	13.0%	12.1%
Both GSEs' Purchases	33.1%	34.2%

Source: These data cover the entire U.S. market (i.e., both metropolitan and non-metropolitan areas.) See Bunce and Gardner (2004) for derivation of the conventional conforming market estimates and the source of the GSE data. Missing race and ethnicity data for first-time homebuyers are re-allocated based on the race and ethnicity percentage distribution of the non-missing data.

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Between 1999 and 2001, the GSEs' purchases accounted for 56.6 percent of all home loans originated in the conventional conforming market of both metropolitan areas and non-metropolitan areas. In other words, Fannie Mae and Freddie Mac funded almost three out of every five homebuyers entering the conventional conforming market between 1999 and 2001. Their purchases of first-time homebuyer loans, on the other hand, accounted for only 39.8 percent of all first-time homebuyer loans originated in that market. Thus, while the GSEs funded approximately two out of every five first-time homebuyers entering the conventional conforming market, their market share (39.8 percent) for first-time homebuyers was only 70 percent of their market share (56.6 percent) for all home buyers.

As shown in Table A.27, the GSEs have funded an even lower share of the minority first-time homebuyer market. Between 1999 and 2001, the GSEs purchases of African-American and Hispanic first-time homebuyer loans represented 30.9 percent of the conventional conforming market for these loans. Thus, while the GSEs have accounted for 56.6 percent of all home loans in the conventional conforming market, they have accounted for only 30.9 percent of loans originated in that market for African-American and Hispanic first-time homebuyers.

The market share data in Table A.27 show some slight differences between the Freddie Mac and Fannie Mae in serving minority first-time homebuyers. During the 1999-to-2001 period, Freddie Mac's share (11.9 percent) of the African-American and Hispanic first-time homebuyer market was only one-half of its share (24.0 percent) of the home loan market. On the other hand, Fannie Mae's share (19.0 percent) of the African-American and Hispanic first-time homebuyer market was almost 60 percent of its share (32.5 percent) of the home loan market. Thus, while Fannie Mae performance in serving minority first-time homebuyers has been poor, it has been better than Freddie Mac's. This difference in performance between Fannie Mae and Freddie Mac was also seen in the portfolio percentages reported earlier in Table A.17. Loans for African-American and Hispanic first-time homebuyers accounted for 6.9 percent of Fannie Mae's purchases of home loans between 1999 and 2001, a figure higher than Freddie Mac percentage of 5.3 percent. Loans for African-American and Hispanic first-time homebuyers accounted for 10.2 percent of all home loans originated in the conventional conforming market.

d. Downpayments on Loans Purchased by the GSEs

The level of downpayment can be an important obstacle to young families seeking their first homes. Examining the downpayment characteristics of the mortgages purchased by the GSEs might help explain why they have played a rather limited role in the first-time homebuyer market.

Table A.28 reports the loan-to-value (LTV) distribution of home purchase mortgages acquired by the GSEs between 1997 and 2002. In Table A.29, LTV data are provided for the GSEs' purchases of home loans that qualify for the three housing goals'special affordable, low-mod, and underserved areas. Three points stand out.

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Table A.28

Loan-to-Value Distribution for GSE Home Purchase Loans, 1997-2002

Fannie Mae

	Number of Mortgages						Percent of Total					
LTV Ratio	1997	1998	1999	2000	2001	2002	1997	1998	1999	2000	2001	2002
0-80%	534,685	681,789	629,425	711,178	799,610	886,024	56.6%	52.3%	53.3%	59.0%	53.1%	53.0%
80-90%	173,786	239,579	189,471	189,021	209,715	215,442	18.4%	18.4%	16.0%	15.7%	13.9%	12.9%
90-95%	188,041	289,999	253,117	219,891	275,973	275,782	19.9%	22.2%	21.4%	18.3%	18.3%	16.5%
95% and Over	31,539	53,491	48,337	51,855	107,287	128,295	3.3%	4.1%	4.1%	4.3%	7.1%	7.7%
Missing	17,130	39,941	60,810	32,847	111,867	167,692	1.8%	3.1%	5.1%	2.7%	7.4%	10.0%
Total Loans	945,181	1,304,799	1,181,160	1,204,792	1,504,452	1,673,235	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Exhibit: Over 90%	219,580	343,490	301,454	271,746	383,260	404,077	23.2%	26.3%	25.5%	22.6%	25.5%	24.1%

Freddie Mac

	Number of Mortgages						Percent of Total					
LTV Ratio	1997	1998	1999	2000	2001	2002	1997	1998	1999	2000	2001	2002
0-80%	339,526	456,975	474,156	525,455	617,456	640,394	56.3%	53.8%	55.9%	56.9%	59.8%	59.1%
80-90%	110,745	154,230	137,117	136,968	140,365	152,777	18.4%	18.2%	16.2%	14.8%	13.6%	14.1%
90-95%	146,293	204,804	184,971	181,996	213,864	185,064	24.2%	24.1%	21.8%	19.7%	20.7%	17.1%
95% and Over	6,456	22,203	43,601	54,543	44,232	51,890	1.1%	2.6%	5.1%	5.9%	4.3%	4.8%
Missing	364	11,107	8,767	24,134	16,768	53,790	0.1%	1.3%	1.0%	2.6%	1.6%	5.0%
Total Loans	603,384	849,319	848,612	923,096	1,032,685	1,083,915	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Exhibit: Over 90%	152,749	227,007	228,572	236,539	258,096	236,954	25.3%	26.7%	26.9%	25.6%	25.0%	21.9%

Note: Includes home purchase mortgages financing owner-occupied one-unit properties.

Table A.29

Loan-to-Value Characteristics of GSEs' Home Purchase Mortgages Meeting the Housing Goals, 1999-2002

Fannie Mae

LTV Ratio	Special Affordable				Low-Mod				Underserved Areas			
	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002
0-80%	54.1%	55.2%	49.3%	48.1%	53.5%	56.3%	50.6%	51.3%	47.8%	53.1%	48.0%	46.8%
80-90%	13.8%	13.2%	12.5%	13.8%	16.4%	15.7%	14.2%	14.3%	17.9%	17.4%	15.2%	16.7%
90-95%	19.1%	18.0%	17.7%	18.5%	22.9%	20.4%	20.4%	19.7%	27.3%	22.2%	22.8%	22.5%
95% and Over	7.2%	8.4%	15.7%	14.7%	7.1%	7.4%	12.7%	12.7%	6.9%	7.2%	12.4%	12.4%
Missing	5.9%	5.1%	4.9%	4.9%	0.2%	0.2%	2.1%	2.1%	0.1%	0.1%	1.6%	1.6%
Total Loans	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Exhibit: Over 90%	26.2%	26.5%	33.4%	33.2%	29.9%	27.8%	33.1%	32.3%	34.2%	29.4%	35.2%	34.9%

Freddie Mac

LTV Ratio	Special Affordable				Low-Mod				Underserved Areas			
	1999	2000	2001	2002	1999	2000	2001	2002	1999	2000	2001	2002
0-80%	59.0%	52.4%	53.1%	55.9%	55.0%	52.4%	54.5%	56.1%	50.1%	47.4%	48.7%	53.3%
80-90%	13.9%	12.3%	12.4%	15.5%	15.6%	14.1%	13.6%	15.0%	17.6%	15.7%	15.1%	17.6%
90-95%	19.4%	17.5%	19.0%	18.5%	23.2%	20.1%	21.2%	20.0%	26.6%	24.6%	26.1%	20.8%
95% and Over	7.2%	12.6%	12.3%	4.7%	6.2%	10.1%	8.6%	4.1%	5.6%	9.4%	8.1%	3.6%
Missing	0.5%	5.2%	3.2%	5.4%	0.1%	3.4%	2.1%	4.7%	0.1%	2.9%	2.1%	4.8%
Total Loans	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Exhibit: Over 90%	26.6%	30.1%	31.2%	23.2%	29.3%	30.1%	29.9%	24.2%	32.2%	34.0%	34.2%	24.3%

Note: Includes home purchase mortgages financing owner-occupied one-unit properties.

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First, the GSEs (and particularly Fannie Mae) have recently increased their purchases of home loans with low downpayments. After remaining about 4 percent of Fannie Mae's purchases between 1997 and 2000, over-95-percent-LTV loans (or less-than-five-percent downpayment loans) jumped to 7.1 percent during 2001 and 7.7 percent in 2002. It is interesting that this jump in less-than-five-percent downpayment loans occurred in the same years that Fannie Mae improved its purchases of loans for low-income homebuyers, as discussed in earlier sections. As a share of Freddie Mac's purchases, over-95-percent-LTV loans increased from 1.1 percent in 1997 to 5.9 percent in 2000, before falling to 4.3 percent in 2001 and 4.8 percent in 2002. If the low-downpayment definition is expanded to ten percent (*i.e.*, over-90-percent-LTV loans), Freddie Mac had about the same percentage (25 percent) of low-downpayment loans during 2001 as Fannie Mae. In fact, under the more expansive definition, Freddie Mac had the same share of over-90-percent-LTV loans in 2001 as it did in 1997 (about 25 percent), while Fannie Mae exhibited only a modest increase in the share of its purchases with low downpayments (from 23.2 percent in 1997 to 25.4 percent in 2001). The share of over-90-percent-LTV loans in Freddie Mac's purchases fell sharply from 25.0 percent in 2001 to 21.9 percent in 2002, while the share in Fannie Mae's purchases fell more modestly from 25.4 percent in 2001 to 24.2 percent in 2002.

Second, loans that qualify for the housing goals have lower downpayments than non-qualifying loans. In 2001 and 2002, over-95-percent-LTV loans accounted for about 15 percent of Fannie Mae's purchases of special affordable loans, 13 percent of low-mod loans, and 12 percent of underserved area loans, compared with about 7.5 percent of Fannie Mae's purchases of all home loans. (*See* Table A.29.) These low-downpayment shares for 2001 and 2002 were almost double those for 2000 when over-95-percent-LTV loans accounted for 8.4 percent of Fannie Mae's purchases of special affordable loans and about 7 percent of its purchases of low-mod and underserved area loans. Fannie Mae's low-downpayment shares during 2001 were higher than Freddie Mac's shares of 12.3 percent for special affordable loans and about 8 percent for low-mod and underserved area loans. Between 2001 and 2002, Freddie Mac's over-95-percent-LTV shares fell sharply to 4–5 percent for the three housing goal categories, while Fannie Mae's shares remained in the 12–15 percent range. Under the more expansive, over-90-percent-LTV definition, almost one-third of Fannie Mae's goals-qualifying purchases during 2001 would be considered low downpayment, as would a slightly smaller percentage of Freddie Mac's purchases. However, during 2002, Freddie Mac's over-90-percent-LTV shares for the goals-qualifying loans fell to 23–24 percent.

Third, a noticeable pattern among goals-qualifying loans purchased by the GSEs is the predominance of loans with high downpayments. For example, 55.9 percent of special affordable home loans purchased by Freddie Mac during 2002 had a downpayment of at least 20 percent, a percentage not much lower than the high-downpayment share (59.1 percent) of all Freddie Mac's home loan purchases. Similarly, 46.8 percent of the home loans purchased by Fannie Mae in underserved areas during 2002 had a 20 percent or higher downpayment, compared with 53.0 percent of all home loans purchased by Fannie Mae.

Thus, the data in Tables A.28 and A.29 show a preponderance of high downpayment loans, even among lower-income borrowers who qualify for the housing goals. The past focus of the GSEs on high-downpayment loans provides some insight into a study by staff at the Federal Reserve Board who found that the GSEs have offered little credit support to the lower end of the mortgage market.[274] The fact that approximately half of the goals-qualifying loans purchased by the GSEs have a downpayment of over 20 percent is also consistent with findings reported earlier concerning the GSEs' minimal service to first-time homebuyers, who experience the most problems raising cash for a downpayment. On the other hand, the recent experience of Fannie Mae suggests that purchasing low-downpayment loans may be one technique for reaching out and funding low-income and minority families who are seeking to buy their first home.

13. Other Studies of the GSEs Performance Relative to the Market

This section summarizes briefly the main findings from other studies of the GSEs' affordable housing performance. These include studies by the HUD and the GSEs as well as studies by academics and research organizations.

Freeman and Galster Study.[275] A recent study by Lance Freeman and George Galster uses econometric analysis to test whether the Government-Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac purchases of home mortgages in neighborhoods traditionally underserved by financial institutions stimulate housing market activity in those neighborhoods. Specifically, this study analyzes data of single-family home sales volumes and prices of mortgages originated from 1993–1999 in Cleveland, OH.

The study concludes that aggressive secondary market purchasing behavior by non-GSE entities stimulated sales volumes and prices of homes in low-income and predominantly minority-occupied neighborhoods of Cleveland. The study results also showed a positive relationship between home transaction activity and the actions of the secondary mortgage market, and concludes that the secondary mortgage market (and the non-GSE sector in particular) purchases of mortgages had a positive effect on the number of sales transactions one year later. However, the study also concludes that although non-GSE purchases of non-home purchase mortgages appeared to boost prices one and two years later, no consistent impacts of purchasing rates on sales prices could be observed. In addition, there was no robust evidence that GSE purchasing rates were positively associated with single-family home transactions volumes or sales prices during any periods.

Urban Institute Rural Markets Study.[276] A study by Jeanette Bradley, Noah Sawyer, and Kenneth Temkin uses both quantitative and qualitative data to explore the issue of GSE service to rural areas. The study first summarizes the existing research on rural lending and GSE service to rural areas. It then reviews the current underwriting guidelines of Fannie Mae, Freddie Mac, the USDA Rural Housing Service, and Farmer Mac, focusing on issues relevant to rural underwriting. The GSE public-use database is used to analyze GSE non-metropolitan loan purchasing patterns from 1993–2000. Finally, the study presents the results of a series of discussions conducted with key national industry and lender experts and local experts in three rural sites in south-central Indiana, southwestern New Mexico and southern New Hampshire chosen for the diversity of their region, population, economic structures, and housing markets.

The authors of the study conclude that while Fannie Mae and Freddie Mac have increased their lending to rural areas since 1993, their non-metropolitan loan purchases still lag behind their role

[274] Canner, et al., *op. cit.*

[275] *The Impact of Secondary Mortgage Market and GSE Purchases on Underserved Neighborhood Housing Markets: Final Report to HUD.* July 2002.

[276] *GSE Service to Rural Areas*, 2002.

in metropolitan loan purchases, particularly in regard to the percentage of affordable loans. From the discussions with experts, the authors of the study make the following policy recommendations: underserved populations and rural areas should be specifically targeted at the census-tract level; HUD should set manufactured housing goals; HUD should consider implementing a survey of small rural lenders or setting up an advisory group of small rural lenders in order to determine their suggestions for creating stronger relationships between the GSEs and rural lenders with the goal of increasing GSE non-metropolitan purchase rates.

Urban Institute GSE Impacts Study.[277] A report by Thomas Thibodeau, Brent Ambrose, and Kenneth Temkin analyzes the extent to which the GSEs' responses to The Federal Housing Enterprises Financial Safety and Soundness Act's (FHEFSSA) affordable housing goals have had their intended effect of making low- and moderate-income families better off. Specifically the report examines several methodologies determining that the conceptual model created by Van Order in 1996[278] provided the most complete description of how the primary and secondary markets interact. This model was then applied in a narrow scope to capital market outcomes which included GSE market shares and effective borrowing costs, and housing market outcomes that include low- and moderate-income homeownership rates. Finally, metropolitan American Housing Survey (AHS) data for eight cities were used to conduct empirical analyses of the two categories of outcomes. These cities included areas surveyed in 1992, the year before HUD adopted the affordable housing goals, to provide the baseline for the analysis. Four metropolitan areas were surveyed in 1992 and again in 1996: Cleveland, Indianapolis, Memphis and Oklahoma City. Four cities were surveyed in 1992 and again in 1998: Birmingham, Norfolk, Providence and Salt Lake City.

The study's empirical analysis suggests that the GSE affordable goals have helped to make homeownership more attainable for target families. The assessment of the effects of the affordable goals on capital markets showed that the GSE share of the conventional conforming market has increased, especially for lower income borrowers and neighborhoods. The study also concludes that the affordable housing goals have an impact on the purchase decisions of Fannie Mae and Freddie Mac. The study also finds that interest rates are lower in markets in which Fannie Mae and Freddie Mac purchase a higher proportion of conventional loans. Finally, the study's analysis shows that overall lending volume in a metropolitan area increases when the GSEs purchase seasoned loans.

Specifically, that homeownership rates increased at a faster rate for low-income families when compared to all families, and that in a subset of MSAs, minority homeownership rates also grew faster when compared to overall homeownership changes in those MSAs.

Finally, the affordable housing goal effects were examined for 80 MSAs in relation to the homeownership rate changes between 1991 and 1997. The study found that the GSEs, by purchasing loans originated to low-income families, helped to reduce the disparity between homeownership rates for lower and higher income families, suggesting that the liquidity created when the GSEs purchase loans originated to low-income families is recycled into more lending targeted to lower income homebuyers.

The authors of the study qualify their results by stating that they are based on available data that does not provide the level of detail necessary to conduct a fully controlled national assessment.

Williams and Bond Study.[279] Richard Williams and Carolyn Bond examine GSE leadership of the mortgage finance industry in making credit available for low- and moderate-income families. Specifically, it asks if the GSEs are doing relatively more of their business with underserved markets than other financial institutions, and whether the GSEs' leadership helps to narrow the gap in home mortgage lending that exists between served and underserved markets. The study uses HMDA data for metropolitan areas and the Public Use Data Base at HUD for compilations of GSE data sets for the entire nation (GSE PUDB File B) to conduct descriptive and multivariate analyses of nationwide lending between 1993 and 2000. Additionally, separate analyses are conducted that include and exclude loans from subprime and manufactured housing lenders.

The study concludes that the GSEs are not leading: They do not purchase relatively more underserved market loans than the primary market makes nor do they purchase as many of these loans as their secondary market competitors. Additionally, the study concludes that the disparities between the GSEs and the primary market are even greater once the growing role of subprime and manufactured housing is considered. The authors admit that there have been signs of progress, particularly in 1999 and 2000 when primary market lending to underserved markets increased and GSE purchases of underserved market loans increased even faster. Regardless, the study concludes that there continues to be significant racial, economic, and geographic disparities in the way that the benefits of GSE activities are distributed and that the benefits of GSE activities still go disproportionately to members of served rather than underserved markets.

14. The GSEs' Support of the Mortgage Market for Single-Family Rental Properties

The 1996 Property Owners and Managers Survey reported that 49 percent of rental units are found in the "mom and pop shops" of the rental market"single-family" rental properties, containing 1–4 units. These small properties are largely individually-owned and managed, and in many cases the owner-managers live in one of the units in the property. They include many properties in older cities, in need of financing for rehabilitation. Single-family rental units play an especially important role in lower-income housing, over half of such units are affordable to very low-income families.

There is not, however, a strong secondary market for single-family rental mortgages. While single-family rental properties comprise a large segment of the rental stock for lower-income families, they make up a small portion of the GSEs' business. In 2001, the GSEs purchased $84 billion in mortgages for such properties, but this represented 6 percent of the total dollar volume of the enterprises' 2002 business and 10 percent of total single-family units financed by each GSE. It follows that since single-family rentals make up such a small part of the GSEs business, they have not penetrated the single-family rental market to the same degree that they have penetrated the owner-occupant market. Table A.30 in Section G below shows that between 1999 and 2002, the GSEs financed 57 percent of

[277] *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families,* 2001.

[278] Van Order, Robert. 1996. "Discrimination and the Secondary Mortgage Market." In John Goering and Ronald Wienk, eds. *Mortgage Discrimination, Race, and Federal Policy.* The Urban Institute Press, Washington, DC: 335–363.

[279] *Are the GSEs Leading, and if So Do They Have Any Followers? An Analysis of the GSEs' Impact on Home Purchase Lending to Underserved Markets During the 1990s.* University of Notre Dame Working Paper and Technical Series Number 2003–2. 2002

owner-occupied dwelling units in the conventional conforming market, but only 27 percent of single-family rental units.

There are a number of factors that have limited the development of the secondary market for single-family rental property mortgages thus explaining the lack of penetration by the GSEs. Little is collectively known about these properties as a result of the wide spatial dispersion of properties and owners, as well as a wide diversity of characteristics across properties and individuality of owners. This makes it difficult for lenders to properly evaluate the probability of default and severity of loss for these properties.

Single-family rental properties could be important for the GSEs housing goals, especially for meeting the needs of lower-income families. In 2002 around 70 percent of single-family rental units qualified for the Low- and Moderate-Income Goals, compared with 40 percent of one-family owner-occupied properties. This heavy focus on lower-income families meant that single-family rental properties accounted for 15 percent of the units qualifying for the Low- and Moderate-Income Goal, even though they accounted for10 percent of the total units (single-family and multifamily) financed by the GSEs.

Given the large size of this market, the high percentage of these units which qualify for the GSEs' housing goals, and the weakness of the secondary market for mortgages on these properties, an enhanced presence by Fannie Mae and Freddie Mac in the single-family rental mortgage market would seem warranted.[280] Single-family rental housing is an important part of the housing stock because it is an important source of housing for lower-income households.

F. Factor 4: Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Conforming Market

The Department estimates that dwelling units serving low- and moderate-income families will account for 51–57 percent of total units financed in the overall conventional conforming mortgage market during 2005–2008, the period for which the Low- and Moderate-Income Housing Goal is proposed. The market estimates exclude B&C loans and allow for much more adverse economic and market affordability conditions than have existed recently. Between 1999 and 2002 the low-mod market averaged about 57 percent. The detailed analyses underlying these estimates are presented in Appendix D.

G. Factor 5: GSEs' Ability To Lead the Industry

FHEFSSA requires the Secretary, in determining the Low- and Moderate-Income Housing Goal, to consider the GSEs' ability to "lead the industry in making mortgage credit available for low- and moderate-income families." Congress indicated that this goal should "steer the enterprises toward the development of an increased capacity and commitment to serve this segment of the housing market" and that it "fully expect[ed] [that] the enterprises will need to stretch their efforts to achieve [these goals]."[281]

The Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of their affordable lending performance. This research, which is summarized in Section E, concludes that the GSEs have generally lagged behind primary lenders in funding first-time homebuyers, lower-income borrowers and underserved communities. As required by FHEFSSA, the Department has produced estimates of the portion of the total (single-family and multifamily) mortgage market that qualifies for each of the three housing goals (see Appendix D). Congress intended that the Department use these market estimates as one factor in setting the percentage target for each of the housing goals. The Department's estimate for the size of the Low- and Moderate-Income market is 51–57 percent, which is higher than the GSEs' performance on that goal.

This section provides another perspective on the GSEs' performance by examining the share of the total conventional conforming mortgage market and the share of the goal-qualifying markets (low-mod, special affordable, and underserved areas) accounted for by the GSEs' purchases. This analysis, which is conducted by product type (single-family owner, single-family rental, and multifamily), shows the relative importance of the GSEs in each of the goal-qualifying markets.

1. GSEs' Role in Major Sectors of the Mortgage Market

Tables A.30 and A.31 compare GSE mortgage purchases with HUD's estimates of the numbers of units financed in the conventional conforming market. Table A.30 presents aggregate data for 1999–2002 while Table A.31 presents more summary market share data for individual years 2000 and 2002.[282] HUD estimates that there were 48,270,415 owner and rental units financed by new conventional conforming mortgages between 1999 and 2002. Fannie Mae's and Freddie Mac's mortgage purchases financed 23,580,594 of these dwelling units, or 49 percent of all dwelling units financed. As shown in Table A.30, the GSEs have played a smaller role in the goals-qualifying markets than they have played in the overall market. Between 1999 and 2002, new mortgages were originated for 27,158,020 dwelling units that qualified for the Low- and Moderate-Income Goal; the GSEs low-mod purchases financed 11,408,692 dwelling units, or 42 percent of the low-mod market. Similarly, the GSEs' purchases accounted for 41 percent of the underserved areas market, but only 35 percent of the special affordable market. Obviously, the GSEs have not been leading the industry in financing units that qualify for the three housing goals. They need to improve their performance and it appears that there is ample room in the non-GSE portions of the goals-qualifying markets for them to do so. For instance, the GSEs were not involved in almost two-thirds of the special affordable market during the 1999-to-2002 period.

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[280] A detailed discussion of the GSEs' activities in this area is contained in Theresa R. Diventi, The GSEs' Purchases of *Single-Family Rental Property Mortgages*, Housing Finance Working Paper No. HF–004, Office of Policy Development and Research, Department of Housing and Urban Development, (March 1998).

[281] Senate Report 102–282, May 15, 1992, p. 35.

[282] Tables A.30 and A.31 examine GSE purchases on a "going forward basis by origination year." Specifically, it considers GSE purchases of: (a) 1999 mortgage originations during 1999 and 2000; (b) 2000 originations during 2000 and 2002; and (c) 2002 originations during 2002 (and 2002 will be added when those data become available in March 2003). In other words, this analysis looks at the GSEs' purchases of a particular origination year cohort over a two-year period. This approach contrasts with the approach that examines GSE purchases on a "backward looking basis by purchase year", for example, GSE purchases during 1999 of both new 1999 originations and originations during previous years (the latter called "prior-year" or seasoned loans). Either approach is a valid method for examining GSE purchases; in fact, when analyzing aggregated data such as the combined 1999–2002 data in Table A.30, the two approaches yield somewhat similar results. HUD's methodology for deriving the market estimates is explained in Appendix D. B&C loans have been excluded from the market estimates in Tables A.30 and A.31.

Table A.30

Number of Newly-Mortgaged Units by Type in the 1999-2002 Conventional Conforming Market Compared To Fannie Mae and Freddie Mac Purchases

	Single-Family Owner		Single-Family Rental		Multifamily		Total Rental		Total Market	
Total Units										
Market	34,600,351	71.7%	6,652,020	13.8%	7,018,044	14.5%	13,670,064	28.3%	48,270,415	100.0%
Fannie Mae	11,218,908	81.9%	1,161,490	8.5%	1,316,132	9.6%	2,477,622	18.1%	13,696,530	100.0%
Freddie Mac	8,442,070	85.4%	629,221	6.4%	812,772	8.2%	1,441,993	14.6%	9,884,063	100.0%
GSE Total	19,660,978	83.4%	1,790,711	7.6%	2,128,904	9.0%	3,919,615	16.6%	23,580,594	100.0%
GSE % of Market	56.8%		26.9%		30.3%		28.7%		48.9%	
Low-Mod Units										
Market	14,854,964	54.7%	5,986,817	22.0%	6,316,239	23.3%	12,303,056	45.3%	27,158,020	100.0%
Fannie Mae	4,533,822	66.8%	1,036,199	15.3%	1,216,084	17.9%	2,252,283	33.2%	6,786,105	100.0%
Freddie Mac	3,314,500	71.7%	554,914	12.0%	753,171	16.3%	1,308,086	28.3%	4,622,586	100.0%
GSE Total	7,848,322	68.8%	1,591,113	13.9%	1,969,256	17.3%	3,560,369	31.2%	11,408,692	100.0%
GSE % of Market	52.8%		26.6%		31.2%		28.9%		42.0%	
Underserved Area Units										
Market	9,193,023	58.0%	2,984,588	18.8%	3,672,576	23.2%	6,657,164	42.0%	15,850,187	100.0%
Fannie Mae	2,775,679	70.9%	600,645	15.3%	541,268	13.8%	1,141,913	29.1%	3,917,592	100.0%
Freddie Mac	2,035,600	76.8%	306,968	11.6%	308,938	11.7%	615,906	23.2%	2,651,506	100.0%
GSE Total	4,811,279	73.2%	907,612	13.8%	850,206	12.9%	1,757,819	26.8%	6,569,098	100.0%
GSE % of Market	52.3%		30.4%		23.2%		26.4%		41.4%	
Special Affordable Units										
Market	5,303,912	40.1%	3,858,171	29.2%	4,070,466	30.8%	7,928,637	59.9%	13,232,549	100.0%
Fannie Mae	1,487,409	53.5%	580,794	20.9%	711,825	25.6%	1,292,619	46.5%	2,780,028	100.0%
Freddie Mac	1,099,028	60.5%	316,283	17.4%	399,862	22.0%	716,145	39.5%	1,815,172	100.0%
GSE Total	2,586,437	56.3%	897,077	19.5%	1,111,687	24.2%	2,008,764	43.7%	4,595,201	100.0%
GSE % of Market	48.8%		23.3%		27.3%		25.3%		34.7%	

Source: The market data are the estimated number of newly mortgaged units between 1999-2002. The single-family owner market data exclude B&C loans; including B&C loans in the owner market would have reduced the GSE share of the owner market from 56.8 percent to 52.5 percent. See Appendix D for an explanation of the market methodology. The GSE data include units from mortgages originated between 1999 and 2002 and purchased by one of the GSEs during the same period. GSE data with missing affordability or geocode are reallocated based the distribution of existing data.

Table A.31

GSE Share of Newly-Mortgaged Units
Conventional Conforming Market
2000, 2001 and 2002

	Single-Family Owner	Single-Family Rental	Multifamily	Total Rental	Total Market
2000 Financed Units					
Total	48	23	32	28	41
Low-Mod	44	22	33	28	36
Underserved Area	44	26	24	25	35
Special Affordable	40	20	29	25	31
2001 Financed Units					
Total	57	27	32	30	49
Low-Mod	54	28	33	30	43
Underserved Area	53	31	25	28	42
Special Affordable	50	25	28	26	36
2002 Financed Units					
Total	62	32	32	32	54
Low-Mod	58	31	32	32	47
Underserved Area	57	37	23	30	47
Special Affordable	56	27	29	28	40

Source: See notes to Table A.27. The first figure ("50") is interpreted as follows: Fannie Mae's and Freddie Mac's acquisitions (during 2000, 2001 and 2002) of single-family-owner home purchase mortgages originated in 2000 accounted for 50 percent of all such mortgages originated that year in the conventional conforming market.

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While the GSEs are free to meet the Department's goals in any manner that they deem appropriate, it is useful to consider their performance relative to the industry by property type. The GSEs accounted for 57 percent of the single-family owner market but only 30 percent of the multifamily market and 27 percent of the single-family rental market (or a combined 29 percent share of the rental market).

Single-family Owner Market. As stated in the 2000 Rule, the single-family-owner market is the bread-and-butter of the GSEs' business, and based on the financial and other factors discussed below, the GSEs clearly have the ability to lead the primary market in providing credit for low- and moderate-income owners of single-family properties. However, the GSEs have historically lagged behind the market in funding single-family-owner loans that qualify for the housing goals and, as discussed in Section E, they have played a rather small role in funding minority first-time homebuyers. The market share data reported in Table A.30 for the single-family-owner market tell the same story. The GSEs' purchases of single-family-owner loans represented 57 percent of all single-family-owner loans originated between 1999 and 2002, compared with 53 percent of the low-mod loans that were originated, 52 percent of underserved area loans, and 49 percent of the special affordable loans.

The data in Table A.31 indicate the GSEs' growing market share during the heavy refinance years of 2001 and 2002. For example, the GSEs accounted for 62 percent of the overall single-family-owner market that year, and 56–58 percent of the markets covered by the three housing goal categories. While this improvement is an encouraging trend, there are ample opportunities for the GSEs to continue their improvement. Almost one-half of the goals-qualifying loans originated during 2002 remained available to the GSEs to purchase; there are clearly affordable loans being originated that the GSEs can purchase. Furthermore, the GSEs' purchases under the housing goals are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance. In fact, based on Fannie Mae's recent experience, the purchase of seasoned loans appears to be one effective strategy for purchasing goals-qualifying loans.

Single-family Rental Market. Single-family rental housing is a major source of low-income housing. As discussed in Appendix D, data on the size of the primary market for mortgages on these properties is limited, but available information indicate that the GSEs are much less active in this market than in the single-family owner market. HUD estimates that GSE purchases between 1999 and 2002 totaled only 27 percent of all newly-mortgaged single-family rental units that were affordable to low- and moderate-income families.

As explained in the 2000 Rule, many of these properties are "mom-and-pop" operations, which may not follow financing procedures consistent with the GSEs' guidelines. Much of the financing needed in this area is for rehabilitation loans on 2–4 unit properties in older areas, a market in which the GSEs' have not played a major role. However, this sector could certainly benefit from an enhanced role by the GSEs, and the data in Table A.30 indicate that there is room for such an enhanced role, as approximately three-fourths of this market remains for the GSEs to enter.

Multifamily Market. Fannie Mae is the largest single source of multifamily finance in the United States, and Freddie Mac has made a solid reentry into this market over the last nine years. However, there are a number of measures by which the GSEs lag the multifamily market. For example, the share of GSE resources committed to the multifamily purchases falls short of the multifamily proportion prevailing in the overall mortgage market. HUD estimates that newly-mortgaged units in multifamily properties represented almost 14 percent of all (single-family and multifamily) dwelling units financed between 1999 and 2002.[283] As shown in Table A.30, multifamily acquisitions represented 9 percent of dwelling units financed by the GSEs between 1999 and 2002.

The GSEs' role in the multifamily market is significantly smaller than in single-family. As shown in Table A.30, GSE purchases have accounted for 30 percent of newly financed multifamily units between 1999 and 2002—a market share much lower than their 57 percent share of the single-family-owner market. Stated in terms of portfolio shares, single-family-owner loans accounted for 83 percent of all dwelling units financed by the GSEs during this period, versus 73 percent of all units financed in the conventional conforming market.

While it is recognized that the GSEs have been increasing their multifamily purchases, a further enlargement of their role in the multifamily market seems feasible and appropriate, particularly in the affordable (lower rent) end of the market. As noted in Section D.3, market participants believe that the GSEs have been conservative in their approaches to affordable multifamily lending and underwriting.[284] Certainly the GSEs face a number of challenges in better meeting the needs of the affordable multifamily market. For example, thrifts and other depository institutions may sometimes retain their best loans in portfolio, and the resulting information asymmetries may act as an impediment to expanded secondary market transaction volume.[285] However, the GSEs have demonstrated that they have the depth of expertise and the financial resources to devise innovative solutions to problems in the multifamily market. The GSEs can build on their recent records of increased multifamily lending and innovative products to make further in-roads into the affordable market. As explained in Section D.3, the GSEs have the expertise and market presence to push simultaneously for market standardization and for programmatic flexibility to meet the special needs and circumstances of the lower-income portion of the multifamily market.

Conclusions. While HUD recognizes that some segments of the market may be more challenging for the GSEs than others, the data reported in Tables A.30 and A.31 show that the GSEs have ample opportunities to purchase goals-qualifying mortgages. Furthermore, if a GSE makes a business decision to not pursue certain types of goals-qualifying loans in one segment of the market, they are free to pursue goals-qualifying owner and rental property mortgages in other segments of the market. As market leaders, the GSEs should be looking for innovative ways to pursue this business. Furthermore, there is evidence that the GSEs can earn reasonable returns on their goals business. The Regulatory Analysis that accompanies this proposed rule provides evidence that

[283] Based on Table A.30, multifamily properties represented 14.5 percent of total units financed between 1999 and 2002 (obtained by dividing 7,018,044 multifamily units by 48,270,415 "Total Market" units). Increasing the single-family-owner number in Table A.30 by 2,817,258 to account for excluded B&C mortgages increases the "Total Market" number to 51,087,673 which produces a multifamily share of 13.7 percent. See Appendix D for discussion of the B&C market.

[284] Abt Associates, *op. cit.* (August 2002).

[285] The problem of secondary market "adverse selection" is described in James R. Follain and Edward J. Szymanoski. "A Framework for Evaluating Government's Evolving Role in Multifamily Mortgage Markets," *Cityscape: A Journal of Policy Development and Research* 1(2), 1995.

the GSEs can earn financial returns on their purchases of goals-qualifying loans that are only slightly below their return on equity from their normal business.

2. Qualitative Dimensions of the GSEs' Ability To Lead the Industry

This section discusses several qualitative factors that are indicators of the GSEs' ability to lead the industry in affordable lending. It discusses the GSEs' role in the mortgage market; their ability, through their underwriting standards, new programs, and innovative products, to influence the types of loans made by private lenders; their development and utilization of state-of-the-art technology; the competence, expertise and training of their staffs; and their financial resources.

a. Role in the Mortgage Market

The GSEs have played a dominant role in the single-family mortgage market. As reported in Section C.3, mortgage purchases by the GSEs reached extraordinary levels in 2001 and 2003. Purchases by Fannie Mae stood at $568 billion in 2001 and $848 billion in 2002. Freddie Mac's single-family mortgage purchases were $393 billion in 2001 and $475 billion in 2002. The Office of Federal Housing Enterprise Oversight (OFHEO) estimates that the GSEs' purchased 40 percent of newly-originated conventional mortgages in 2001. Total GSE purchases, including loans originated in prior years, amounted to 46 percent of conventional originations in 2001.

The dominant position of the GSEs in the mortgage market is reinforced by their relationships with other market institutions. Commercial banks, mutual savings banks, and savings and loans are their competitors as well as their customers—they compete to the extent they hold mortgages in portfolio, but at the same time they sell mortgages to the GSEs. They also buy mortgage-backed securities, as well as the debt securities used to finance the GSEs' portfolios. Mortgage bankers sell virtually all of their prime conventional conforming loans to the GSEs. Private mortgage insurers are closely linked to the GSEs, because mortgages purchased by the enterprises that have loan-to-value ratios in excess of 80 percent are normally required to be covered by private mortgage insurance, in accordance with the GSEs' charter acts.

b. Underwriting Standards for the Primary Mortgage Market

The GSEs' underwriting guidelines are followed by virtually all originators of prime mortgages, including lenders who do not sell many of their mortgages to Fannie Mae or Freddie Mac. The guidelines are also commonly followed in underwriting "jumbo" mortgages, which exceed the maximum principal amount which can be purchased by the GSEs (the conforming loan limit)—such mortgages eventually might be sold to the GSEs, as the principal balance is amortized or when the conforming loan limit is otherwise increased. Changes that the GSEs have made to their underwriting standards in order to address the unique needs of low-income families were discussed in Section C.4 of this Appendix. The GSEs' market influence is one reason these new, more flexible underwriting standards have spread throughout the market. Because the GSEs' guidelines set the credit standards against which the mortgage applications of lower-income families are judged, the enterprises have a profound influence on the rate at which mortgage funds flow to low- and moderate-income borrowers and underserved neighborhoods.

As discussed below, the GSEs' new automated underwriting systems are widely used to originate mortgages in today's market. As discussed in Sections C.7 and C.8, the GSEs have started adapting their underwriting systems for subprime loans and other loans that have not met their traditional underwriting standards.

c. State-of-the-Art Technology

Both GSEs are in the forefront of new developments in mortgage industry technology. Automated underwriting and online mortgage processing are a couple of the new technologies that have impacted the mortgage market, expanding homeownership opportunities. This section provides an overview of these new technologies and the extent of their use.

Each enterprise released an automated underwriting system in 1995—Freddie Mac's "Loan Prospector" (LP) and Fannie Mae's "Desktop Underwriter" (DU). During 2001 and 2002, roughly 60 percent of all newly-originated mortgages that Freddie Mac purchased were processed through LP. Lenders and brokers used LP to evaluate 7.3 million loan applications in 2001 (almost double the amount in 2000) and 8.2 million loans in 2002.[286] As of the end of 2002, LP had processed 25 million loans since its inception. Fannie Mae also reports that roughly 60 percent of the loans it purchased during 2001 and 2002 were processed through DU. DU evaluated more than 10 million loans in 2002, compared with 8 million in 2001. As of the end of 2002, DU had processed over 26 million loans since its inception. The GSEs' systems have also been adapted for FHA and jumbo loans. Automated underwriting systems are being further adapted to facilitate risk-based pricing, which enables mortgage lenders to offer each borrow an individual rate based on his or her risk. As discussed earlier, concerns about the use of automated underwriting and risk-based pricing include the disparate impact on minorities and low-income borrowers and the "black box" nature of the score algorithm.

The GSEs are using their state-of-the-art technology in certain ways to help expand homeownership opportunities. For example, Fannie Mae has developed *Fannie Mae Property GeoCoder* a computerized mapping service offered to lenders, nonprofit organizations, and state and local governments to help them determine whether a property is located in an area that qualifies for Fannie Mae's community lending products designed to increase homeownership and revitalization in traditionally underserved areas. In addition, *eFannieMae.com* is Fannie Mae's business-to-business web site where lenders can access product information and important technology tools, view upcoming events, and receive news about training opportunities. This site receives on average 80,000 visitors per week.[287] Freddie Mac has introduced in recent years internet-based debt auctions, debt repurchase operations, and debt exchanges. These mechanisms benefit investors by providing more uniform pricing, greater transparency and faster price discovery—all of which makes Freddie Mac debt more attractive to investors and reduces the cost of funding mortgages.[288] In addition, Freddie Mac has provided automated tools for lenders to identify and work with borrowers most likely to encounter problems making their mortgage payments. *EarlyIndicator* has become the industry standard for default management technology. It can reduce the consequences of mortgage delinquency for borrowers, servicers and investors.[289]

The GSEs are also expanding homeownership opportunities through the use of the Internet in processing

[286] This section is based heavily on "DU and LP Usage Continues to Rise," in *Inside Mortgage Technology* published by Inside Mortgage Finance, January 27, 2003, page 1–2.

[287] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, pp. 10–11.

[288] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 14.

[289] Freddie Mac, *2002 Annual Housing Activities Report*, 2003, p. 52.

mortgage originations. New online mortgage originations reached $267.6 billion in the first half of 2002, compared with $97 billion for the first six months of 2001. The 2002 six-month volume comprised 26.5 percent of the estimated $1.01 trillion in total mortgage originations for the same time period.[290] Freddie Mac made Loan Prospector on the Internet service available to lenders for their retail operations. Freddie Mac also adopted the mortgage industry's XML (extensible markup language) data standard, which is integral to streamlining and simplifying Internet-based transactions. In addition, Congress enacted legislation that allows the use of electronic signature in contracts in 2001, making a completely electronic mortgage transaction possible. With the use of electronic signatures, electronic mortgages are expected to improve the mortgage process, further reducing origination and servicing costs. In October 2000, Freddie Mac purchased its first electronic mortgage under the new law.

Fannie Mae also offers a variety of other online tools and applications that have the potential to make the mortgage loan process more cost effective and efficient for lenders. For example, "HomeBuyer Funds Finder," a one-stop online resource designed for lenders and other housing professionals, enables users to access a database of local housing subsidy programs available for low- and moderate-income borrowers. In 2002, the HomeBuyer Funds Finder web site received over 24,500 hits.[291] "Home Counselor Online" provides homeownership counselors with the necessary tools to help consumers financially prepare to purchase a home. As of February 2002, over 1,200 counselors representing 542 organizations were using *Home Counselor Online*.[292] A more complete list of Fannie Mae's online tool and applications can be found in its Annual Housing Activities Report. In 2002, Fannie Mae's total eBusiness volume was $1.1 trillion, up from $800 billion in 2000.[293]

d. Staff Resources

Both Fannie Mae and Freddie Mac are well-known throughout the mortgage industry for the expertise of their staffs in carrying out their current programs, conducting basic and applied research regarding mortgage markets, developing innovative new programs, and undertaking sophisticated analyses that may lead to new programs in the future. The role that the GSEs have played in spreading the use of technology throughout the mortgage market reflects the enormous expertise of their staff. The leaders of these corporations frequently testify before Congressional committees on a wide range of housing issues, and both GSEs have developed extensive working relationships with a broad spectrum of mortgage market participants, including various nonprofit groups, academics, and government housing authorities.

e. Financial Strength

Fannie Mae. The benefits that accrue to the GSEs because of their GSE status, as well as their solid management, have made them two of the nation's most profitable businesses. Fannie Mae's net income was $3.9 billion in 1999, $4.4 billion in 2000, $5.9 billion in 2001, and $4.6 billion in 2002.[294] Fannie Mae's return on equity averaged 24.0 percent over the 1995–99 period—far above the rates achieved by most financial corporations. Fannie Mae's return on equity reached 26.1 percent in 2002, an increase of 3 percent over the previous year.[295] In 2002, Fannie Mae's core business earnings grew by 19 percent, credit losses fell to their lowest level since 1983 and taxable equivalent revenues grew by 17 percent.[296]

Fannie Mae's core business earnings have increased from 39 cents a share in 1987 to $6.31 in 2002, and dividends per common share have increased from $.96 in 1998 to $1.32 in 2002, an 10 percent increase over 2001. Although operating earnings per diluted common share decreased from 2001 to 2002 by 21% to $4.53, Fannie Mae has still produced double-digit increases for the past 16 years in core business earnings per share, placing them among the best of the S&P 500 companies.[297]

Freddie Mac. Freddie Mac has shown similar trends. Freddie Mac's net income was $3.7 billion in 2000 and rose to $10.1 billion in 2002, an increase of 320 percent from the previous year.[298] Freddie Mac's return on equity averaged 23.4 percent over the 1995–99 period—also well above the rates achieved by most financial corporations. Freddie Mac's return on common equity exceeded 20 percent in 2001 for the twentieth consecutive year, reaching a high of 39.2 percent in 2001. Freddie Mac's total revenues grew to $7.4 billion in 2001, up from $4.5 billion in 2000.[299]

Investors in Freddie Mac's common stock have seen their annual dividends per share increase from $0.68 in 2000 to $0.88 in 2002.[300] Earnings per diluted common share increased from $4.23 in 2001 to $14.18 in 2002.[301]

Other Indicators. Additional indicators of the strength of the GSEs are provided by various rankings of American corporations. *Business Week* has reported that among Standard & Poor's 500 companies in 1999, Fannie Mae and Freddie Mac respectively ranked 49th and 88th in market value, and 24th and 43rd in total profits.[302] Fannie Mae ranked 30th in market value and 13th in total profits in 2001, while Freddie Mac ranked 23rd in annual growth revenues from 1991–2001.[303]

f. Conclusion About Leading the Industry

In light of these considerations, the Secretary has determined that the GSEs have the ability to lead the industry in making mortgage credit available for low- and moderate-income families.

H. Factor 6: The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this final rule, which includes consideration of (a) the financial returns that the GSEs earn on low- and moderate-income loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and reviewed by the Office of Federal Housing Enterprise Oversight, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

[290] *Inside Mortgage Finance*, "Online Volume Comprises One-Fourth of Total Originations in First Half '02," September 20, 2002, p. 8.

[291] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 12.

[292] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 11.

[293] Fannie Mae, *2002 Annual Housing Activities Report*, 2003, p. 10.

[294] The 22% decrease in Fannie Mae's 2002 net income resulted primarily from a $4.508 billion increase in purchased options expense, which occurred due to an increase in the notional amount of purchased options outstanding and the declining interest rate environment. Recorded purchased options expense for 2001 was only $37 million by comparison. *Fannie Mae 2002 Annual Report*, 2003, p. 23.

[295] Fannie Mae, *2002 Annual Report to Shareholders*, "Financial Highlights."

[296] Fannie Mae, *2002 Annual Report to Shareholders*, Financial Highlights and Letter to Shareholders.

[297] Fannie Mae, *2002 Annual Report to Shareholders*, Financial Highlights and Letter to Shareholders.

[298] Freddie Mac, Consolidated Statements of Income, Restated November 21, 2003.

[299] Freddie Mac, *2001 Annual Report to Shareholders*, pp. 21–22.

[300] Freddie Mac, Consolidated Statements of Income, Restated November 21, 2003.

[301] Freddie Mac, Consolidated Statements of Income, Restated November 21, 2003.

[302] *Business Week*, March 27, 2000, p. 197.

[303] The "2002 Fortune 500 Top Performing Companies and Industries." *<http://www.fortune.com/fortune/fortune500/topperformers/0,14940,00.html>*.

I. Determination of the Low- and Moderate-Income Housing Goals

The annual goal for each GSE's purchases of mortgages financing housing for low- and moderate-income families is proposed to be established at 52 percent of eligible units financed in each of calendar years 2005, 53 percent in 2006, 55 percent in 2007, and 57 percent in 2008. This goal will remain in effect thereafter, unless changed by the Secretary prior to that time. In addition, a low- and moderate-income subgoal of 45 percent in 2005, 46 percent in 2006, and 47 percent in both 2007 and is proposed for the GSEs' acquisitions of single-family-owner home purchase loans in metropolitan areas. This subgoal is designed to encourage the GSEs to lead the primary market in offering homeownership opportunities to low- and moderate-income families. The Secretary's consideration of the six statutory factors that led to the choice of these goals is summarized in this section.

1. Housing Needs and Demographic Conditions

Affordability Problems. Data from the 2000 Census and the American Housing Surveys demonstrate that there are substantial housing needs among low- and moderate-income families. Many of these households are burdened by high homeownership costs or rent payments and will likely continue to face serious housing problems, given the dim prospects for earnings growth in entry-level occupations. There is evidence of deep and persistent housing problems for Americans with the lowest incomes. Recent HUD analysis reveals that in 1999, 4.9 million households had "worst case" housing needs, defined as housing costs greater than 50 percent of household income or severely inadequate housing among unassisted very-low-income renter households. Among the 34 million renters in all income categories, 6.3 million (19 percent) had a severe rent burden and over one million renters (3 percent) lived in housing that was severely inadequate.

Demographic Trends. Changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information and other barriers that many immigrants and minorities face. It is projected that there will be 1.2 million new households each year over the next decade. The aging of the baby-boom generation and the entry of the baby-bust generation into prime home buying age will have a dampening effect on housing demand. However, the continued influx of immigrants will increase the demand for rental housing, while those who immigrated during the 1980s and 1990s will be in the market for owner-occupied housing. Immigrants and other minorities—who accounted for nearly 40 percent of the growth in the nation's homeownership rate over the past five years—will be responsible for almost two-thirds of the growth in the number of new households over the next ten years. Non-traditional households have become more important, as overall household formation rates have slowed. With later marriages, divorce, and non-traditional living arrangements, the fastest growing household groups have been single-parent and single-person households. As these demographic factors play out, the overall effect on housing demand will likely be sustained growth and an increasingly diverse household population from which to draw new renters and homeowners. According to the National Association of Homebuilders, annual housing demand will average 1.82 million units over the next decade.

Growth in Single-Family Affordable Lending. Many younger, minority and lower-income families did not become homeowners during the 1980s due to the slow growth of earnings, high real interest rates, and continued house price increases. Over the past ten years, economic expansion, accompanied by low interest rates and increased outreach on the part of the mortgage industry, has improved affordability conditions for these families. As this appendix explains, there has been a "revolution in affordable lending" that has extended homeownership opportunities to historically underserved households. The mortgage industry has offered more customized mortgage products, more flexible underwriting, and expanded outreach to low-income and minority borrowers. Fannie Mae and Freddie Mac have been a big part of this "revolution in affordable lending." HMDA data suggest that the industry and GSE initiatives are increasing the flow of credit to underserved borrowers. Between 1993 and 2002, conventional loans to low-income and minority families increased at much faster rates than loans to upper-income and non-minority families. Thus, the 1990s and the early part of the current decade have seen the development of a strong affordable lending market.

Disparities in Housing and Mortgage Markets. Despite this strong growth in affordable lending, serious disparities in the nation's housing and mortgage markets remain. The homeownership rate for African-American and Hispanic households is about 25 percentage points below that of white households. In addition to low income, barriers to homeownership that disproportionately affect minorities and immigrants include: lack of capital for down payment and closing costs; poor credit history; lack of access to mainstream lenders; little understanding of the homebuying process; and, continued discrimination in housing markets and mortgage lending. With respect to the latter, a recent HUD-sponsored study of discrimination in the rental and owner markets found that while differential treatment between minority and white home seekers had declined over the past ten years, it continued at an unacceptable level in the year 2000. In addition, disparities in mortgage lending continued across the nation in 2002, when the loan denial rate for African-American applicants was almost three times that for white applicants, even after controlling for income of the applicant. HUD studies also show that African Americans and Hispanics are subject to discriminatory treatment during the pre-qualification process of applying for a mortgage.

Single-Family Mortgage Market. Heavy refinancing due to low interest rates increased single-family mortgage originations to record levels during 2001–2003. Demographic forces, industry outreach, and low interest rates also kept lending for home purchase at record levels as well. As noted above, the potential homeowner population over the next decade will be highly diverse, as growing demand from immigrants and minorities are expected to sustain the home purchase market, as our population ages. Single-family housing starts are expected to continue in the 1.65–1.70 million range over the next few years. Refinancing of existing mortgages, which accounted for about 65 percent of originations during 2000–2003 is expected to return to more normal levels. As this Appendix explains, the GSEs will continue to play a dominant role in the single-family market and will both impact and be affected by major market developments such as the growth in subprime lending and the increasing use automated underwriting.

Multifamily Mortgage Market. The market for financing of multifamily apartments has grown to record volumes. The favorable long-term prospects for apartments, combined with record low interest rates, have kept investor demand for apartments strong and supported property prices. As explained below, Fannie Mae and Freddie Mac have been among those boosting volumes and introducing new programs to serve the multifamily market. The long run outlook for the multifamily rental market is sustained, moderate growth, based on favorable demographics. The minority population, especially Hispanics, provides a growing source of demand for affordable rental housing. "Lifestyle renters" (older, middle-income households) are also a fast growing segment of the rental population. However, provision of affordable housing will continue to challenge suppliers of multifamily rental housing and policy makers at all levels of governments. Low incomes combined with high housing costs define a difficult situation for millions of renter households. Housing cost reductions are constrained by high land prices and construction costs in many markets. Government action—through land use regulation, building codes, and occupancy standards—are major contributors to those high costs. In addition to fewer regulatory barriers and costs, multifamily housing would benefit from more favorable public attitudes. Higher density housing is a potentially powerful tool for preserving open space, reducing sprawl, and promoting transportation alternatives to the automobile. The recently heightened attention to these issues may increase the acceptance of multifamily rental construction to both potential customers and their prospective neighbors.

2. Past Performance of the GSEs

This section reviews the low- and moderate-income performance of Fannie Mae and Freddie Mac. It first reviews the GSEs' performance on the Low- and Moderate-Income Goal, then reviews findings from Section E.2 regarding the GSEs' purchases of home loans for historically underserved families and their communities. Finally, it reviews findings from Section G concerning the GSEs' presence in owner and rental markets.

a. Housing Goals Performance

In the October 2000 rule, the low- and moderate-income goal was set at 50 percent for 2001–03. Effective on January 1, 2001, several changes in counting requirements came into effect for the low- and moderate-income goal, as follows: (a) "B.00000000onus points" (double credit) for purchases of mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; (b) a "temporary adjustment factor" (1.35 unit credit) for Freddie Mac's purchases of mortgages on large (more than 50 units) multifamily properties; (c) changes in the treatment of missing data; and (d) a procedure for the use of imputed or proxy rents for determining goal credit for multifamily mortgages. Fannie Mae's performance was 51.5 percent in 2001 and 51.8 percent in 2002, and Freddie Mac's performance was 53.2 percent in 2001 and 51.4 percent in 2002; thus both GSEs surpassed this higher goal.

Counting requirements (a) and (b) expired at the end of 2003, while (c) and (d) will remain in effect after that. If this counting approach—without the bonus points and the "temporary adjustment factor" had been in effect in 2000 and 2001, and the GSEs had purchased the same mortgages that they actually did purchase in both years, then Fannie Mae's performance would have been 51.3 percent in 2000, 49.2 percent in 2001, and 49.0 percent in 2002. Freddie Mac's performance would have been 50.6 percent in 2000, 47.7 percent in 2001, and 46.5 percent in 2001. Thus, both Fannie Mae and Freddie Mac would have surpassed the low- and moderate-income goal of 50 percent in 2000 and fallen short in 2001 and 2002. (See Figure A.1.)

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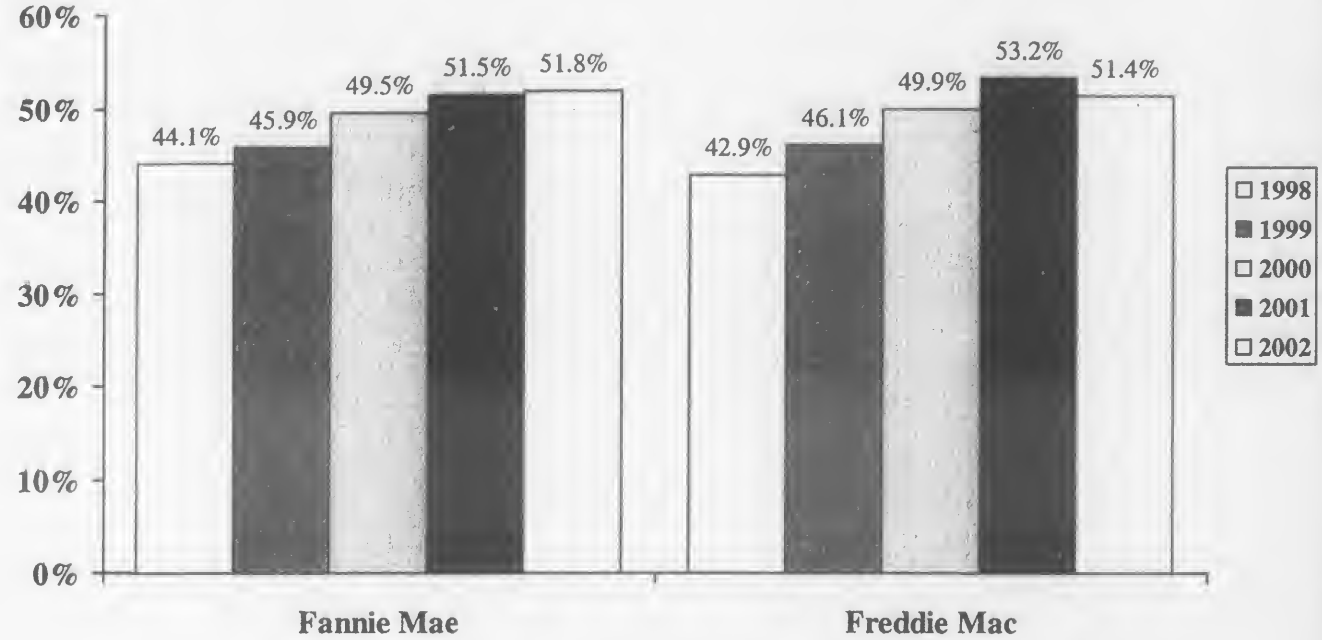
Figure A.1

Low- and Moderate-Income Mortgage Purchases



Low- and Moderate-Income Goal was 42% of units financed for 1998-2000 and 50% for 2001 and 2002.

Source: HUD analysis of GSEs' loan-level data. Due to changes in goal counting procedures in 2001, performance in 2001-02 is not strictly comparable with performance in 1998-2000, as discussed in text.

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b. Single-Family Affordable Lending Market

The GSEs have played a major role in the single-family mortgage market over the past ten years. Their purchases of single-family-owner mortgages accounted for 57 percent of all mortgages originated in the single-family conventional conforming market between 1999 and 2002. Their underwriting and purchase guidelines are market standards, used in all segments of the mortgage market. The GSEs have worked to improve their affordable lending record—they have introduced new low-downpayment products targeted at lower-income families; they have customized their underwriting standards to recognize the unique needs of immigrant and minority families; and, they have entered into numerous partnerships with lenders and non-profit groups to reach out to underserved populations. The enterprises' role in the mortgage market is also reflected in their use of cutting edge technology, such as the development of Loan Prospector and Desktop Underwriter, the automated underwriting systems developed by Freddie Mac and Fannie Mae, respectively. Both GSEs are also entering new and challenging fields of mortgage finance, such as purchasing subprime mortgages.

Despite these efforts and the overall gains in goal performance, the Department remains concerned about the GSEs' support of home lending for the lower-income end of the market and for first-time homebuyers. The lower-income shares of the GSEs' purchases are too low, particularly for underserved groups such as minority first-time homebuyers.

This appendix included a comprehensive analysis of the GSEs' performance in funding home purchase mortgages for families and communities that historically have not been well served by the mortgage market. The following findings are offered with respect to the GSEs' acquisitions of home *purchase loans* that qualify for the three housing goals (special affordable and underserved areas as well as low- and moderate-income) and their acquisitions of first-time homebuyer loans:

• While Fannie Mae and Freddie Mac have both improved their support for the single-family affordable lending market over the past ten years, they have generally lagged the overall conventional conforming market in providing affordable loans to lower-income borrowers and underserved areas. This finding is based on HUD's analysis of GSE and HMDA data and on numerous studies by academics and research organizations.

• The GSEs have shown different patterns of mortgage purchases. Except for two years (1999 and 2000), Fannie Mae has performed better than Freddie Mac since 1993 on all three goals-qualifying categories—low-mod, special affordable, and underserved areas. As a result, the percentage of Freddie Mac's purchases benefiting historically underserved families and their neighborhoods has been less than the corresponding shares of total market originations, while Fannie Mae's purchases have been somewhat closer to the patterns of originations in the primary market.

• The above patterns can be seen by the following percentage shares of home purchase loans that qualified for the three housing goals between 1996 and 2002:

	Special affordable (percent)	Low-mod (percent)	Underserved areas (percent)
Freddie Mac	12.8	39.8	21.7
Fannie Mae	13.5	41.2	23.5
Market (w/o B&C)	16.0	43.6	25.4

• During 2001 and 2002, Fannie Mae improved its performance enough to reduce its gap in the special affordable and underserved areas markets and to match the low-mod market. During 2001 and 2002, Freddie Mac lagged the conventional conforming market on all three goals-qualifying categories; see Figure A.2 for the low- and moderate-income shares for Fannie Mae, Freddie Mac and the market.

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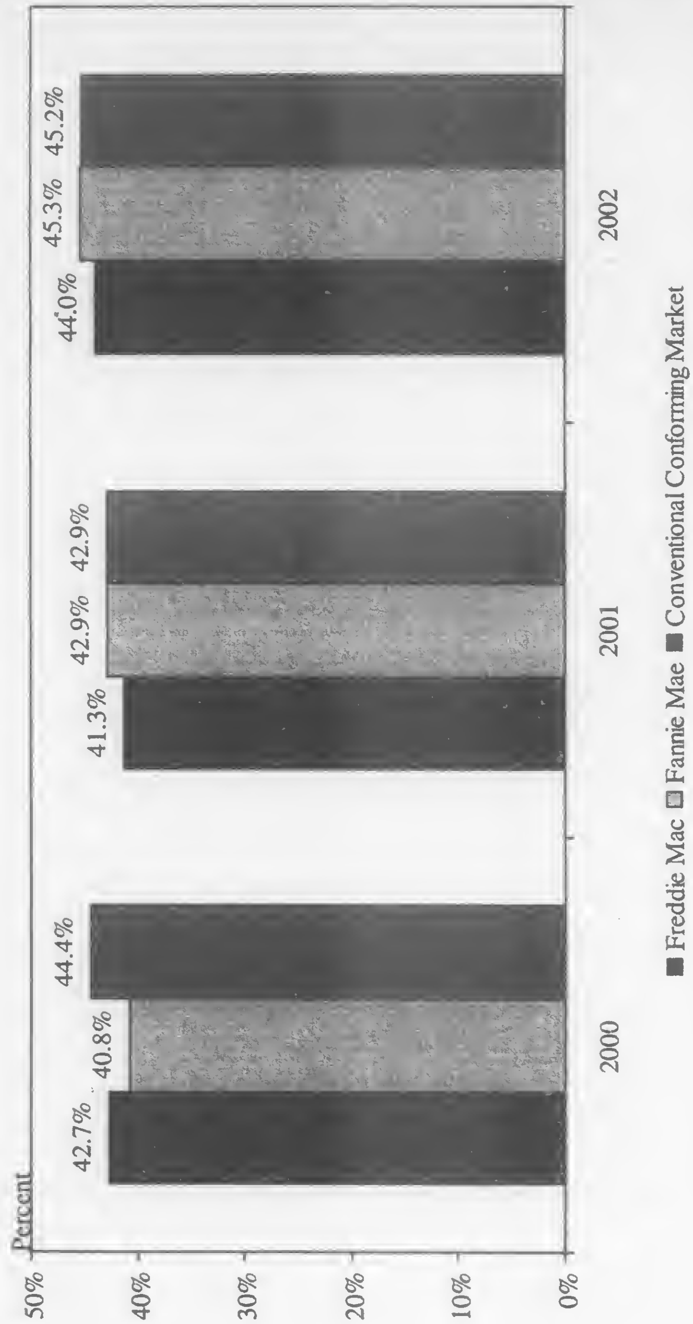
Figure A.2

The Share of GSE and Conventional Conforming Mortgages for Low-and Moderate-Income Borrowers, 2000-2002



Source: Conforming market (without B&C loans) data are from 2000 and 2001 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.15 for further explanation.

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• Both Fannie Mae and Freddie lag the conventional conforming market in funding first-time homebuyers, and by a rather wide margin. Between 1999 and 2001, first-time homebuyers accounted for 27 percent of each GSE's purchases of home loans, compared with 38 percent for home loans originated in the conventional conforming market.

• The GSEs also account for a very small share of the market for important groups such as minority first-time homebuyers. Considering the total mortgage market (both government and conventional loans), it is estimated that the GSEs purchased only 14 percent of loans originated between 1999 and 2001 for African-American and Hispanic first-time homebuyers, or one-third of their share (42 percent) of all home purchase loans originated during that period. Considering the conventional conforming market and the same time period, it is estimated that the GSEs purchased only 31 percent of loans originated for African-American and Hispanic first-time homebuyers, or approximately one-half of their share (57 percent) of all home purchase loans in that market.

To summarize, the Department's analysis suggests that the GSEs have not been leading the single-family-owner market in purchasing loans that qualify for the housing goals, although Fannie Mae improved its low-mod and underserved area performance during 2001 and 2002 to approach the market in funding special affordable and underserved areas loans and to match the market in funding low- and moderate-income loans. Still, there is room for both Fannie Mae and Freddie Mac to further improve their performance in purchasing affordable loans at the lower-income end of the market, particularly in the minority first-time homebuyer market. Evidence suggests that there is a significant population of potential homebuyers who might respond well to aggressive outreach by the GSEs—immigrants and minorities, in particular, are expected to be a major source of future homebuyers. Furthermore, studies indicate the existence of a large untapped pool of potential homeowners among the rental population. Indeed, the GSEs' recent experience with new outreach and affordable housing initiatives is important confirmation of this potential. To move the GSEs into a leadership position, the Department is establishing three subgoals for home purchase loans that qualify for the three housing goals. The low- and moderate-income subgoal is discussed in Section I.3 below.

c. Overall Market Shares

This appendix also included an analysis of the GSEs' role in the *overall* (owner and rental) conventional conforming mortgage market. While GSE mortgage purchases represented 49 percent of total dwelling units financed between 1999 and 2002, they represented smaller shares of the three goals-qualifying markets: 42 percent of housing units financed for low- and moderate-income families; 41 percent of newly-mortgaged units in underserved areas; and 35 percent of units financed for the very-low-income and other families that qualify as special affordable. (See Figure A.3.) In other words, the GSEs accounted for approximately 40 percent or less of the single-family and multifamily units financed in the goals-qualifying markets. This market share analysis suggests that there is room for the GSEs to increase their purchases in these goals-qualifying markets.

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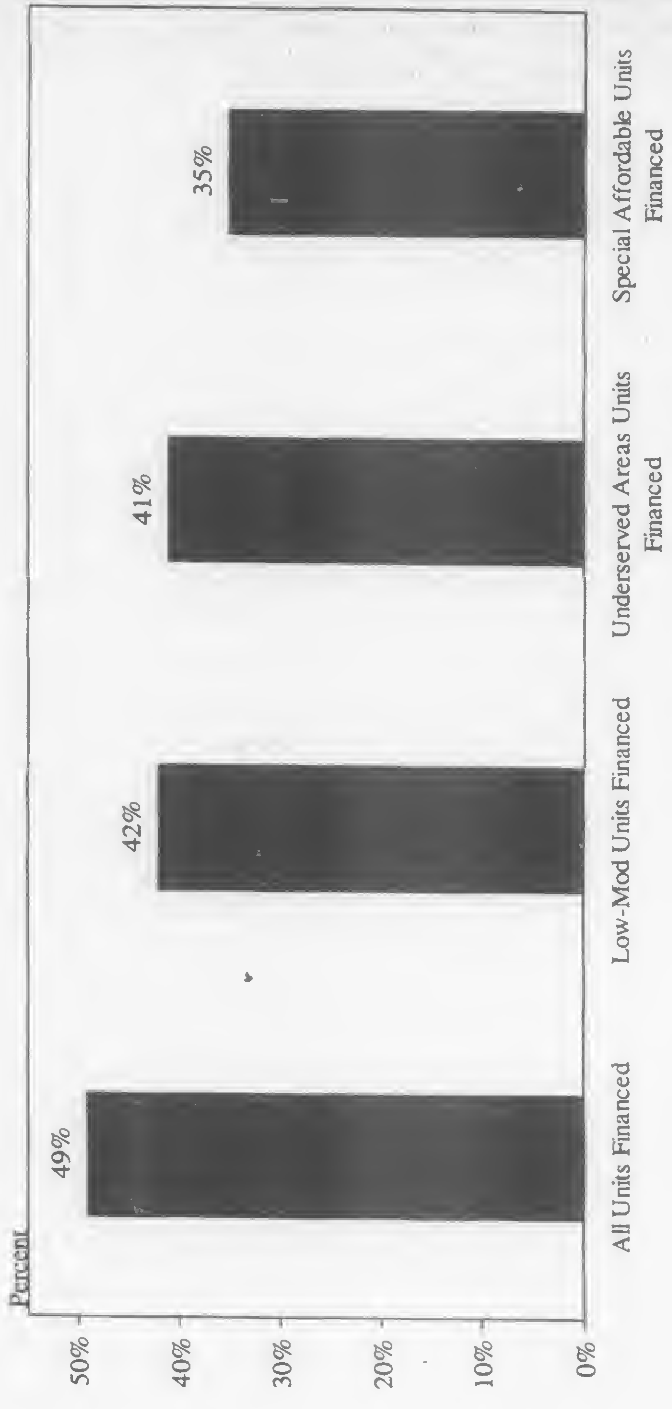
Figure A.3
GSEs' Share of the Conventional Conforming Market by Housing Goal Category, 1999-2002



Source: The conventional conforming market, as estimated by HUD, includes single-family owner, single-family rental, and multifamily units financed during 1999-2002. See notes for Table A.30.

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The market analysis also examined the GSEs' presence in the three major property sectors of the mortgage market: Single-family owner (a 57 percent share for the GSEs between 1999 and 2002), single-family rental (a 27 percent share), and multifamily (a 30 percent share). The GSEs have historically played a minimal role in the market financing single-family rental properties, which is an important source of low-income rental housing. Fannie Mae and Freddie Mac have increased their purchases of these mortgages, but their purchases totaled only 27 percent of the single-family rental units that received financing between 1999 and 2002. A further increased presence by Fannie Mae and Freddie Mac would bring lower interest rates and liquidity to this market, as well as improve their housing goals performance.

d. The GSEs' Purchases of Multifamily Mortgages

Fannie Mae and, especially, Freddie Mac have rapidly expanded their presence in the multifamily mortgage market in the period since the passage of FHEFSSA. The Senate report on this legislation in 1992 referred to the GSEs' activities in the multifamily arena as "troubling," citing Freddie Mac's September 1990 suspension of its purchases of new multifamily mortgages and criticism of Fannie Mae for "creaming" the market.[304]

Freddie Mac has successfully rebuilt its multifamily acquisition program, as shown by the increase in its purchases of multifamily mortgages: From $27 million in 1992 to $3 billion in 1997 and then to approximately $7 billion during the next three years (1998 to 2000), before rising further to $11.9 billion in 2001 and $13.3 billion in 2002. Multifamily properties accounted for over 9 percent of all dwelling units (both owner and rental) financed by Freddie Mac during 2000 and 2001, and for 7 percent during the heavy refinancing year of 2002. Concerns regarding Freddie Mac's multifamily capabilities no longer constrain their performance with regard to low- and moderate-income families.

Fannie Mae never withdrew from the multifamily market, but it has also stepped up its activities in this area substantially, with multifamily purchases rising from $3.0 billion in 1992 to $9.4 billion in 1999, $18.7 billion in 2001, and $18.3 billion in 2002. Multifamily units as a share of all dwelling units (both owner and rental) financed by Fannie Mae varied in the 10–13 percent range between 1999 and 2001, before falling to 7.3 percent during heavy refinancing year of 2002.

The increased purchases of multifamily mortgages by Fannie Mae and Freddie Mac have major implications for the Low- and Moderate-Income Housing Goal, since a very high percentage of multifamily units have rents which are affordable to low- and moderate-income families. However, the potential of the GSEs to lead the multifamily mortgage industry has not been fully developed. As reported earlier in Table A.30, the GSEs' purchases between 1999 and 2002 accounted for only 30 percent of the multifamily units that received financing during this period. Certainly there are ample opportunities and room for expansion of the GSEs' share of the multifamily mortgage market. The GSEs' size and market position between loan originators and mortgage investors makes them the logical institutions to identify and promote needed innovations and to establish standards that will improve market efficiency. As their role in the multifamily market continues to grow, the GSEs will have the knowledge and market presence to push simultaneously for standardization and for programmatic flexibility to meet special needs and circumstances, with the ultimate goal of increasing the availability and reducing the cost of financing for affordable and other multifamily rental properties.

3. Ability To Lead the Single-Family-Owner Market: A Low- and Moderate-Income Subgoal

As discussed in Section E, the Department is proposing to establish a subgoal of 45 percent for each GSE's purchases of home purchase loans for low- and moderate-income families in the single-family-owner market of metropolitan areas for 2005, with the subgoal rising to 46 percent in 2006 and 47 percent in 2007 and 2008. The purpose of this subgoal is to encourage the GSEs to improve their acquisitions of *home purchase* loans for lower-income families and first-time homebuyers who are expected to enter the homeownership market over the next few years. If the GSEs meet this goal, they will be leading the primary market by approximately one percentage point in 2005 and by three percentage points in 2007 and 2008, based on the income characteristics of home purchase loans reported in HMDA. Between 1999 and 2002 (2000 and 2002), HMDA data show that low- and moderate-income families accounted for an average of 44.3 (44.2) percent of single-family-owner loans originated in the conventional conforming market of metropolitan areas. Loans in the B&C portion of the subprime market are not included in these averages. To reach the 45-percent (47 percent) subgoal for 2005 (for 2007–08), both GSEs would have to improve their historical performance'Fannie Mae by 0.8 percentage points (2.8 percentage points) over its average performance of 44.2 percent in 2001 and 2002, and Freddie by 2.4 percentage points (4.4 percentage points) over its average performance of 42.6 percent during the same period.

As explained in Section E.9.f, HUD will be re-benchmarking its median incomes for metropolitan areas and non-metropolitan counties based on 2000 Census median incomes, and will be incorporating the effects of the new OMB metropolitan area definitions. HUD projected the effects of these two changes on the low- and moderate-income shares of the single-family-owner market for the years 1999–2002. These estimates will be referred to as "projected data" while the 1990-based data reported above will be referred to as "historical data." The average low-mod share of the home purchase market (without B&C loans) was 43.1 percent based on projected data, as compared with 44.3 percent based on historical data. Thus, based on projected data, the 45-percent (47-percent) subgoal is approximately two (four) percentage points above the 1999–2002 market average. Fannie Mae's average low-mod performance between 1999 and 2002 based on the projected data was 41.4 percent, compared with 42.5 percent based on historical data. To reach the 45-percent subgoal for 2005 based on projected data, Fannie Mae would have to improve its performance by 2.3 percentage points over its projected average performance of 42.7 percent in 2001 and 2002, or by 1.4 percentage points over its projected 2002 low-mod performance of 43.6 percent. Freddie Mac's average low-mod performance between 1999 and 2002 based on the projected data was 40.9 percent, compared with 42.3 percent based on historical data. To reach the 45-percent subgoal for 2005 based on projected data, Freddie Mac would have to improve its performance by 4.0 percentage points over its projected average performance of 41.0 percent in 2001 and 2002, or by 2.9 percentage points over its projected 2002 low-mod performance of 42.1 percent.

The approach taken is for the GSEs to obtain their leadership position by staged increases in the low-mod subgoal; this will enable the GSEs to take new initiatives in a correspondingly staged manner to

[304] Senate Report 1023–282, May 15, 1992, p. 36.

achieve the new subgoal each year. Thus, the increases in the low-mod subgoal are sequenced so that the GSEs can gain experience as they improve and move toward the new higher subgoal targets.

As explained in Section E.9, the subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas. The Department is also setting subgoals for the other two goals-qualifying categories, as follows: 17 percent for special affordable loans and 33 percent for loans in underserved areas.

The Department considered the following factors when setting the subgoal for low- and moderate-income loans.

(a) *The GSEs have the ability to lead the market.* The GSEs have the ability to lead the primary market for single-family-owner loans, which is the "bread-and-butter" of their business. They both have substantial experience in this market, which means there are no issues as whether or not the GSEs have yet penetrated the market, as there are with the single-family rental and multifamily markets. Both GSEs have not only been operating in the owner market for years, they have been the dominant players in that market, funding 57 percent of the single-family-owner mortgages financed between 1999 and 2002. As discussed in Section G, their underwriting guidelines are industry standards and their automated mortgage systems are widely used throughout the mortgage industry. Through their new downpayment and subprime products, and their various partnership initiatives, the GSEs have shown that they have the capacity to reach out to lower-income families seeking to buy a home. Both Fannie Mae and Freddie Mac have the staff expertise and financial resources to make the extra effort to lead the primary market in funding single-family-owner mortgages for low- and moderate-income mortgages, as well for special affordable and undeserved area mortgages.

(b) *The GSEs have lagged the market.* Even though the GSEs have the ability to lead the market, they have lagged the market under the housing goals. The Department and independent researchers have published numerous studies examining whether or not the GSEs have been leading the single-family market in terms of funding loans that qualify for the three housing goals. While the GSEs, and particularly Fannie Mae, have significantly improved their performance over the past two years, they have lagged the primary market in funding goals-qualifying loans during the period that they have operated under the current definitions of HUD's housing goals. Between 1996 and 2002 (1999 and 2002), low- and moderate-income mortgages accounted for 39.8 (42.3) percent of Freddie Mac's purchases, 41.2 (42.5) percent of Fannie Mae's purchases, and 43.6 (44.3) percent of primary market originations (without B&C loans). The type of improvement needed to meet this new low-mod subgoal was demonstrated by Fannie Mae during 2001 and 2002, as Fannie Mae increased its low-mod purchases from 40.8 percent of its single-family-owner business in 2000 to 45.3 percent in 2002 (or from 40.1 percent in 2000 to 43.6 percent in 2002 based on projected data).

(c) *Disparities in Homeownership and Credit Access Remain.* There remain troublesome disparities in our housing and mortgage markets, even after the "revolution in affordable lending" and the growth in homeownership that has taken place since the mid-1990s. The homeownership rate for African-American and Hispanic households remains 25 percentage points below that of white households. Minority families face many barriers in the mortgage market, such as lack of capital for down payment and lack of access to mainstream lenders (see above). Immigrants and minorities are projected to account for almost two-thirds of the growth in the number of new households over the next ten years. As emphasized throughout this Appendix, changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences and overcome information and other barriers that many immigrants and minorities face. The GSEs have to increase their efforts in helping these families because so far they have played a surprisingly small role in serving minority first-time homebuyers. It is estimated that the GSEs accounted for 46.5 percent of all (both government and conventional) home loans originated between 1999 and 2001; however, they accounted for only 14.3 percent of home loans originated for African-American and Hispanic first-time homebuyers. Within the conventional conforming market, it is estimated that the GSEs purchased only 20 percent of loans originated for African-American and Hispanic first-time homebuyers, even though they accounted for 57 percent of all home purchase loans in that market. A subgoal for home purchase loans should increase the GSEs' efforts in important sub-markets such as the one for minority first-time homebuyers.

(d) *There are ample opportunities for the GSEs to improve their performance.* Low- and moderate-income loans are available for the GSEs to purchase, which means they can improve their performance and lead the primary market in purchasing loans for borrowers with less-than-median income. Three indicators of this have already been discussed. First, Sections B and C of this appendix and Appendix D explain that the affordable lending market has shown an underlying strength over the past few years that is unlikely to vanish (without a significant increase in interest rates or a decline in the economy). The low-mod share of the home purchase market has averaged 43.6 percent since 1996 and annually has ranged from 42.2 percent to 45.2 percent. Second, the market share data reported in Table A.30 of Section G demonstrate that there are newly-originated loans available each year for the GSEs to purchase. The GSEs' purchases of single-family owner loans represented 57 percent of all single-family-owner loans originated between 1999 and 2002, compared with 53 percent of the low-mod loans that were originated during this period. Thus, almost one-half of the low-mod conforming market is not touched by the GSEs. As noted above, the situation is even more extreme for special sub-markets such the minority first-time homebuyer market where the GSEs have only a minimal presence. Finally, the GSEs' purchases under the subgoal are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance. In fact, based on Fannie Mae's recent experience, the purchase of seasoned loans appears to be one useful strategy for purchasing goals-qualifying loans.

To summarize, although single-family-owner mortgages comprise the "bread-and-butter" of the GSEs' business, evidence presented above demonstrates that the shares of their loans for low- and moderate-income families lag the corresponding shares for the primary market. For the reasons given above, the Secretary believes that the GSEs can do more to raise the low- and moderate-income shares of their mortgages on these properties. This can be accomplished by building on various programs that the enterprises have already started, including (1) their partnership and outreach efforts, (2) their incorporation of greater flexibility into their underwriting guidelines, (3) their purchases of CRA loans, and (4) their targeting of important markets where they have had only a limited presence in the past, such as the market for minority first-time homebuyers. A wide variety of quantitative and qualitative indicators indicate that the GSEs' have the resources and financial strength to improve their affordable lending performance enough to lead the market for low- and moderate-income families.

4. Size of the Mortgage Market for Low- and Moderate-Income Families

As detailed in Appendix D, the low- and moderate-income mortgage market accounts for 51 to 57 percent of dwelling units financed by conventional conforming mortgages. In estimating the size of the market, HUD excluded the effects of the B&C market. HUD also used alternative assumptions about future economic and market affordability conditions that were less favorable than those that existed over the last five years. HUD is well aware of the volatility of mortgage markets and the possible impacts of changes in economic conditions on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Department has the authority to revise the goals.

5. The Low- and Moderate-Income Housing Goal for 2005–2008.

The proposed Low- and Moderate-Income Housing Goal is 52 percent of eligible units for 2005, 53 percent for 2006, 55 percent for 2007, and 57 percent for 2008. It is recognized that neither GSE met these proposed goals in 2001 and 2002. However, the market for the Low- and Moderate-Income Goal is estimated to be 51–57 percent. Under the new counting rules (*i.e.*, 2000-Census income re-benchmarking and the new OMB metropolitan area definitions), Fannie Mae's low- and moderate-income performance is estimated to have been 46.3 percent in 1999, 51.2 percent in 2000, 48.7 percent in 2001, and 47.9 percent in 2002—for 2005, Fannie Mae would have to increase its performance by 3.5 percentage points over its average (unweighted) performance of 48.5 percent over these last four years, or by 0.8 percentage point over its previous peak performance (51.2 percent in 2000). By 2008, Fannie Mae's performance would have to increase by 8.5 percentage points over average 1999–2002 performance, and by 5.8 percentage points over its previous peak performance in 2000. Freddie Mac's performance is estimated to have been 46.0 percent in 1999, 50.2 percent in 2000, 47.0 percent in 2001, and 45.0 percent in 2002—for 2005, Freddie Mac would have to increase its performance by 4.9 percentage points over its average (unweighted) performance of 47.1 percent over these last four years, or by 1.8 percentage points over its previous peak performance (50.2 percent in 2000). By 2008, Freddie Mac's performance would have to increase by 9.9 percentage points over average 1999–2002 performance, and by 6.8 percentage points over its previous peak performance. However, the low- and moderate-income market is estimated to be 51–57 percent. Thus, the GSEs should be able to improve their performance enough to meet these proposed goals of 52–57 percent.

The objective of HUD's proposed Low- and Moderate-Income Goal is to bring the GSEs' performance to the upper end of HUD's market range estimate for this goal (51–57 percent), consistent with the statutory criterion that HUD should consider the GSEs' ability to lead the market for each Goal. To enable the GSEs to achieve this leadership, the Department is proposing modest increases in the Low- and Moderate-Income Goal for 2005 which will increase further, year-by-year through 2008, to achieve the ultimate objective for the GSEs to lead the market under a range of foreseeable economic circumstances by 2008. Such a program of staged increases is consistent with the statutory requirement that HUD consider the past performance of the GSEs in setting the Goals. Staged annual increases in the Low- and Moderate-Income Goal will provide the enterprises with opportunity to adjust their business models and prudently try out business strategies, so as to meet the required 2008 level without compromising other business objectives and requirements.

Figure A.3 summarizes many of the points made in this section regarding opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Low- and Moderate-Income Goal. The GSEs' purchases provided financing for 23,580,594 (or 49 percent) of the 48,270,415 single-family and multifamily units that were financed in the conventional conforming market between 1999 and 2002. However, in the low- and moderate-income part of the market, the 11,408,692 units that were financed by GSE purchases represented only 42 percent of the 27,158,020 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to increase their purchases of loans that qualify for the Low- and Moderate-Income Goal. Examples of specific market segments that would particularly benefit from a more active secondary market have been provided throughout this appendix.

6. Conclusions

Having considered the projected mortgage market serving low- and moderate-income families, economic, housing and demographic conditions for 2005–08, and the GSEs' recent performance in purchasing mortgages for low- and moderate-income families, the Secretary has determined that the proposed goals of 52 percent of eligible units financed in 2005, 53 percent in 2006, 55 percent in 2007, and 57 percent in 2008 are feasible. The Secretary is also proposing a subgoal of 45 percent for the GSEs' purchases of single-family-owner home purchase mortgages in metropolitan areas in 2005, increasing to 46 percent in 2006 and 47 percent in 2007 and 2008. The Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the proposed goals and the proposed subgoals are necessary and appropriate.

Appendix B—Departmental Considerations To Establish the Central Cities, Rural Areas, and Other Underserved Areas Goal

A. Introduction

1. Establishment of Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish an annual goal for the purchase of mortgages on housing located in central cities, rural areas, and other underserved areas (the "Underserved Areas Housing Goal").

In establishing this annual housing goal, Section 1334 of FHEFSSA requires the Secretary to consider:

1. Urban and rural housing needs and the housing needs of underserved areas;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the Underserved Areas Housing Goal in previous years;
4. The size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and
6. The need to maintain the sound financial condition of the enterprises.

Organization of Appendix. The remainder of Section A first defines the Underserved

Areas Housing Goal for both metropolitan areas and nonmetropolitan areas. Sections B and C address the first two factors listed above, focusing on findings from the literature on access to mortgage credit in metropolitan areas (Section B) and in nonmetropolitan areas (Section C). Separate discussions are provided for metropolitan and nonmetropolitan (rural) areas because of differences in the underlying markets and the data available to measure them. Section D discusses the past performance of the GSEs on the Underserved Areas Housing Goal (the third factor) and Sections E–G report the Secretary's findings for the remaining factors. Section H presents the Department's proposals relating to the definition of underserved areas in nonmetropolitan areas. Section I summarizes the Secretary's rationale for establishing a subgoal for single-family-owner home purchase mortgages and for setting the level for the Underserved Areas Housing Goal.

2. HUD's Underserved Areas Housing Goal

HUD's definition of the geographic areas targeted by this goal is basically the same as that used during 1996–2003. It is divided into a metropolitan component and a nonmetropolitan component. However, as explained below, switching to 2000 Census geography increases the number of census tracts defined as underserved, and this necessitates an adjustment of the goal level.

Metropolitan Areas. This rule provides that within metropolitan areas, mortgage purchases will count toward the goal when those mortgages finance properties that are located in census tracts where (1) median income of families in the tract does not exceed 90 percent of area (MSA) median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the tract does not exceed 120 percent of area median income.

In this Rule, the underserved census tracts are defined in terms of the 2000 Census rather than the 1990 Census. As shown in Table B.1a, switching to 2000 Census data and re-specified MSA boundaries as of June 2003, increases the proportions of underserved census tracts, population, owner-occupied housing units, and population below the poverty line in metropolitan areas. The definition now covers 26,959 (51.3 percent) of the 52,585 census tracts in metropolitan areas, which include 48.7 percent of the population and 38.0 percent of the owner-occupied housing units in metropolitan areas.[1] The 1990-based definition covered 21,587 (47.5 percent) of the 45,406 census tracts in metropolitan areas, which included 44.3 percent of the population and 33.7 percent of the owner-occupied units in metropolitan areas.

The census tracts included in HUD's definition of underserved areas exhibit low rates of mortgage access and distressed socioeconomic conditions. Between 1999 and 2002, the unweighted average mortgage denial rate in these tracts was 17.5 percent, almost double the average denial rate (9.3 percent) in excluded tracts. The underserved tracts include 75.3 percent of the number of persons below the poverty line in metropolitan areas.

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[1] This analysis excludes Puerto Rico. In addition, tracts are excluded if median income is suppressed in the underlying census data. There are 379 such tracts. When reporting analysis of mortgage loan denial, origination, and application rates later in this appendix, tracts are excluded if there are no purchase or refinance applications. Tracts are also excluded if: (1) group quarters constitute more than 50 percent of housing units or (2) there are less than 15 home purchase applications in the tract and the tract denial rates equal 0 or 100 percent. Excluded tracts account for a small percentage of mortgage loan applications (1.4 percent). These tracts are not excluded from HUD's underserved areas if they meet the income and minority thresholds. Rather, the tracts are excluded to remove the effects of outliers from the analysis.

Table B.1a

Changes in Socioeconomic Characteristics of Underserved Areas Between 1990 and 2000 in Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Census Tracts			
2000 Census (2003 MSAs)	25,626	26,959	52,585
	48.7%	51.3%	100.0%
2000 Census (Pre-2003 MSAs)	24,724	26,317	51,041
	48.4%	51.6%	100.0%
1990 Census	23,819	21,587	45,406
	52.5%	47.5%	100.0%
Population			
2000 Census (2003 MSAs)	119,230,406	113,104,203	232,334,609
	51.3%	48.7%	100.0%
2000 Census (Pre-2003 MSAs)	114,775,427	110,986,684	225,762,111
	50.8%	49.2%	100.0%
1990 Census	110,037,735	87,578,825	197,616,560
	55.7%	44.3%	100.0%
Number of Owner-Occupied Units			
2000 Census (2003 MSAs)	34,665,052	21,284,266	55,949,318
	62.0%	38.0%	100.0%
2000 Census (Pre-2003 MSAs)	33,297,305	20,863,316	54,160,621
	61.5%	38.5%	100.0%
1990 Census	28,218,618	14,353,089	42,571,707
	66.3%	33.7%	100.0%
Population Below Poverty Level Income			
2000 Census (2003 MSAs)	6,650,152	20,288,216	26,938,368
	24.7%	75.3%	100.0%
2000 Census (Pre-2003 MSAs)	6,331,654	19,755,228	26,086,882
	24.3%	75.7%	100.0%
1990 Census	6,296,693	17,053,610	23,350,303
	27.0%	73.0%	100.0%

Source: 1990 and 2000 Censuses. "2003 MSAs" are based on the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003. "Pre-2003 MSAs" and "1990 Census" are based on metropolitan area boundaries prior to their re-specification in 2003.

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HUD's establishment of this definition is based on a substantial number of studies of mortgage lending and mortgage credit flows conducted by academic researchers, community groups, the GSEs, HUD and other government agencies. As explained in the 2000 Rule, one finding stands out from the existing research literature on mortgage access for different types of neighborhoods: *High-minority and low-income neighborhoods continue to have higher mortgage denial rates and lower mortgage origination rates than other neighborhoods.* A neighborhood's minority composition and its level of income are highly correlated with access to mortgage credit.

Nonmetropolitan Areas. In nonmetropolitan areas, mortgage purchases count toward the Underserved Areas Housing Goal for properties which are located in counties where (1) median income of families in the county does not exceed 95 percent of the greater of (a) state nonmetropolitan median income or (b) nationwide nonmetropolitan median income, or (2) minorities comprise 30 percent or more of the residents and median income of families in the county does not exceed 120 percent of the greater of (a) state nonmetropolitan median income or (b) nationwide nonmetropolitan median income.

In 1995, two important factors influenced HUD's definition of nonmetropolitan underserved areas—lack of available data for measuring mortgage availability in rural areas and lenders' difficulty in operating mortgage programs at the census tract level in rural areas. Because of these factors, the 1995 Rule (as well as the 2000 Rule) used a more inclusive, county-based approach to designating underserved portions of rural areas. As discussed in a later section, HUD is now proposing to replace the county-based definition with a tract-based definition.

As shown in Table B.1b, switching from 1990 to 2000 Census data and incorporating the June, 2003 specification of metropolitan areas causes a slight decrease in underserved proportions of counties, population, owner-occupied housing units, and poverty population in non-metropolitan areas. In terms of the 2000 Census geography and June 2003 metropolitan area specification, the definition covers 1,260 (61.4 percent) of the 2,052 counties in nonmetropolitan areas, which include 51.0 percent of the population, 50.7 percent of the owner-occupied housing units, and 64.3 percent of the population below the poverty level in non-metropolitan areas. The 1990-based definition covered 1,514 (65.5 percent) of the 2,311 counties in non-metropolitan areas, which included 54.6 percent of the population, 53.4 percent of the owner-occupied units, and 67.9 percent of the poor in non-metropolitan areas.[2]

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[2] Kalawao County, Hawaii, which has a very small population, is excluded from the analysis for 1990 but included for 2000.

Table B.1b

Changes in Socioeconomic Characteristics of Underserved Areas Between 1990 and 2000 in Nonmetropolitan Areas

	Served Counties	Underserved Counties	Total
Counties			
2000 Census (2003 MSAs)	792	1,260	2,052
	38.6%	61.4%	100.0%
2000 Census (Pre-2003 MSAs)	824	1,488	2,312 *
	35.6%	64.4%	100.0%
1990 Census	797	1,514	2,311 *
	34.5%	65.5%	100.0%
Population			
2000 Census (2003 MSAs)	23,941,532	24,899,110	48,840,642
	49.0%	51.0%	100.0%
2000 Census (Pre-2003 MSAs)	25,447,120	29,991,636	55,438,756
	45.9%	54.1%	100.0%
1990 Census	22,838,739	27,467,972	50,306,711
	45.4%	54.6%	100.0%
Number of Owner-Occupied Units			
2000 Census (2003 MSAs)	6,831,437	7,035,123	13,866,560
	49.3%	50.7%	100.0%
2000 Census (Pre-2003 MSAs)	7,194,459	8,459,968	15,654,427
	46.0%	54.0%	100.0%
1990 Census	5,362,989	6,136,455	11,499,444
	46.6%	53.4%	100.0%
Population Below Poverty Level Income			
2000 Census (2003 MSAs)	2,479,803	4,475,024	6,954,827
	35.7%	64.3%	100.0%
2000 Census (Pre-2003 MSAs)	2,598,851	5,207,404	7,806,255
	33.3%	66.7%	100.0%
1990 Census	2,666,613	5,646,582	8,313,195
	32.1%	67.9%	100.0%

Source: 1990 and 2000 Censuses. "2003 MSAs" are based on the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003. "Pre-2003 MSAs" and "1990 Census" are based on metropolitan area boundaries prior to their re-specification in 2003.

*Includes 15 partial counties in New England that are split between metropolitan and non-metropolitan areas.

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Data comparable to that in Table B.1b is presented in Table B.1c based on census tracts, rather than counties, in nonmetropolitan areas. As indicated, the tract-based definition includes 6,782 (54.9 percent) of the 12,359 nonmetropolitan census tracts in the country. These tracts contain 52.5 percent of the nonmetropolitan population (comparable to the 51.0 percent using a county-based definition) and 50.4 percent of owner-occupied housing units (close to the corresponding figure of 50.7 percent under the county-based approach). But the tract-based approach better targets families most in need, as shown, for example, by the fact that it includes 68.9 percent of the population in poverty, exceeding the corresponding figure of 64.3 percent under the county-based definition of nonmetropolitan underserved areas.

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Table B.1c

Socioeconomic Characteristics of Tract-Based Underserved Areas in Non-Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Tracts			
2000 Census (2003 MSAs)	5,577	6,782	12,359
	45.1%	54.9%	100.0%
Population			
2000 Census (2003 MSAs)	23,181,465	25,659,177	48,840,642
	47.5%	52.5%	100.0%
Number of Owner-Occupied Units			
2000 Census (2003 MSAs)	6,874,464	6,992,096	13,866,560
	49.6%	50.4%	100.0%
Number of Poor			
2000 Census (2003 MSAs)	2,160,186	4,794,641	6,954,827
	31.1%	68.9%	100.0%

Source: 2000 Census and the Office of Management and Budget's specification of metropolitan area boundaries as of June, 2003.

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GSE Performance. Table B.1d shows the increases in the GSEs' overall goals performance under the more expansive geography of the 2000 Census. During 2000, Fannie Mae's performance would have been an estimated 37.5 percent if underserved areas were defined in terms of 2000 Census geography, compared with 31.0 percent under 1990 Census geography. Corresponding 2001 figures (adjusted to be comparable with the 2000 figures) are 35.7 percent and 30.4 percent. The figures for Freddie Mac are 34.1 percent and 29.2 percent for 2000 performance, and 32.5 percent and 28.2 percent for 2001 performance. (The 2001 housing goals percentages in the table are adjusted to exclude the effects of the bonus points and Freddie Mac's Temporary Adjustment Factor, which became applicable in 2001 for scoring of loans toward the housing goals.)

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Table B.1d

Underserved Areas Housing Goal Performance Under 1990 and 2000 Definitions

2000 Mortgage Acquisitions

	Fannie Mae			Freddie Mac		
	1990 Definition	2000 Definition	Change	1990 Definition	2000 Definition	Change
Eligible Units	2,195,320	2,203,666	8,346	1,600,684	1,604,588	3,904
Qualifying Units	680,765	827,185	146,420	466,857	546,488	79,631
Goal Percentage	31.0%	37.5%	6.5%	29.2%	34.1%	4.9%

2001 Mortgage Acquisitions

	Fannie Mae			Freddie Mac		
	1990 Definition	2000 Definition	Change	1990 Definition	2000 Definition	Change
Eligible Units	4,671,585	4,673,222	1,637	3,282,354	3,283,372	1,018
Qualifying Units	1,420,363	1,668,985	248,622	926,399	1,068,328	141,929
Goal Percentage	30.4%	35.7%	5.3%	28.2%	32.5%	4.3%

2002 Mortgage Acquisitions

	Fannie Mae			Freddie Mac		
	1990 Definition	2000 Definition	Change	1990 Definition	2000 Definition	Change
Eligible Units	6,023,704	6,024,497	793	4,320,018	4,320,523	505
Qualifying Units	1,816,281	2,108,766	292,485	1,227,046	1,416,293	189,247
Goal Percentage	30.2%	35.0%	4.9%	28.4%	32.8%	4.4%

"1990 Definition" means determination of underserved areas based on 1990 census data and pre-2003 MSA definitions.
"2000 Definition" means determination of underserved areas based on 2000 census data, June 2003 MSA definitions, and census tracts as basis of determination in non-metropolitan areas.

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Goal and Subgoal Levels. The Department proposes to establish the Underserved Areas Housing Goal as 38 percent of eligible units financed for 2005, 39 percent for 2006 and 2007, and 40 percent for 2008.

HUD is proposing to establish a subgoal of 33 percent for the share of each GSE's total single-family-owner mortgage purchases that finance single-family-owner properties located in underserved census tracts of metropolitan areas for 2005, with this subgoal rising to 34 percent for 2006 and 35 percent for 2007 and 2008. In this case, subgoal performance for a particular calendar year would be calculated for each GSE by dividing (a) the number of mortgages purchased by the GSE that finance single-family-owner properties located in underserved areas (*i.e.*, census tracts) of metropolitan areas by (b) the number of mortgages purchased by the GSE that finance single-family-owner properties located in metropolitan areas. As explained in Section H, the purpose of this subgoal is to encourage the GSEs to lead the primary market in funding mortgages in underserved census tracts.

B. Consideration of Factors 1 and 2 in Metropolitan Areas: The Housing Needs of Underserved Urban Areas and Housing, Economic, and Demographic Conditions in Underserved Urban Areas

This section discusses differential access to mortgage funding in urban areas and summarizes available evidence on identifying those neighborhoods that have historically experienced problems gaining access to credit. Section B.1 provides an overview of the problem of unequal access to mortgage funding, focusing on discrimination and other housing problems faced by minority families and the communities where they live. Section B.2 examines mortgage access at the neighborhood level and discusses in some detail the rationale for the Underserved Areas Housing Goal in metropolitan areas. The most thorough studies available provide strong evidence that low-income and high-minority census tracts are underserved by the mortgage market. Section B.3 presents recent statistics on the credit characteristics and socioeconomic characteristics of underserved areas under HUD's definition. Readers are referred to the expansive literature on this issue, which is reviewed some detail in Appendix B of HUD's 2000 Rule. This section focuses on some of the main studies and their findings.

Three main points are made in this section:

- Both borrowers and neighborhoods can be identified as currently being underserved by the nation's housing and mortgage markets. Appendix A provided evidence of racial disparities in the sale and rental of housing and in the provision of mortgage credit. Partly as a result of this, the homeownership rate for minorities is substantially below that for whites.
- The existence of substantial neighborhood disparities in mortgage credit is well documented for metropolitan areas. Research has demonstrated that census tracts with lower incomes and higher shares of minority population consistently have poorer access to mortgage credit, with higher mortgage denial rates and lower origination rates for mortgages. Thus, the income and minority composition of an area is a good measure of whether that area is being underserved by the mortgage market.
- Research supports a targeted neighborhood-based definition of underservice. Studies conclude that characteristics of mortgage loan applicants and the neighborhood where the property is located are the major determinants of mortgage denial rates and origination rates. Once these characteristics are accounted for, other influences, such as location in a central city, play only a minor role in explaining disparities in mortgage lending.[3]

1. Discrimination in the Mortgage and Housing Markets—An Overview

The nation's housing and mortgage markets are highly efficient systems, where most homebuyers can put down relatively small amounts of cash and obtain long-term funding at relatively small spreads above the lender's borrowing costs. Unfortunately, this highly efficient financing system does not work everywhere or for everyone. Studies have shown that access to credit often depends on improper evaluation of characteristics of the mortgage applicant and the neighborhood in which the applicant wishes to buy. In addition, though racial discrimination has become less blatant in the home purchase market, studies have shown that it is still widespread in more subtle forms. Partly as a result of these factors, the homeownership rate for minorities is substantially below that of whites. Appendix A provided an overview of the homeownership gaps and lending disparities faced by minorities. This section briefly reviews evidence on lending discrimination as well as a recent HUD-sponsored study of discrimination in the housing market.

Mortgage Denial Rates. A quick look at mortgage denial rates reported by Home Mortgage Disclosure Act (HMDA) data reveals that in 2002 minority denial rates were higher than those for white loan applicants. For lower-income borrowers, the denial rate for African Americans applying for conventional loans was 2.1 times the denial rate for white borrowers, while for higher-income borrowers, the denial rate for African Americans was 2.7 times the rate for white borrowers.[4]

Differentials in denial rates, such as those reported above, are frequently used to demonstrate the problems that minorities face obtaining access to mortgage credit. However, an important question is the degree to which variations in denial rates reflect lender bias against certain kinds of borrowers *relative to* the degree to which they reflect the credit quality of potential borrowers (as indicated by applicants' available assets, credit rating, employment history, etc.). Without fully accounting for the creditworthiness of the borrower, racial differences in denial rates cannot be attributed to lender bias. Some studies of credit disparities have attempted to control for credit risk factors that might influence a lender's decision to approve a loan.

Boston Fed Study. The best example of accounting for credit risk is the study of mortgage denial rates by researchers at the Federal Reserve Bank of Boston.[5] This landmark study found that racial differentials in mortgage denial rates cannot be fully explained by differences in credit risk. To control for credit risk, the Boston Fed researchers included 38 borrower and loan variables indicated by lenders to be critical to loan decisions. For example, the Boston Fed study included a measure of the borrower's credit history, which is a variable not included in other studies. The Boston Fed study found that minorities' higher denial rates could not be explained fully by income and credit risk factors. The denial rate for African Americans and Hispanics was 17 percent, compared with 11 percent for Whites with similar characteristics. That is, African Americans and Hispanics were about 60 percent more likely to be denied credit than Whites, even after controlling for credit risk characteristics such as credit history, employment stability, liquid assets, self-employment, age, and family status and composition. Although almost all highly-qualified applicants were approved, differential treatment was observed among borrowers with more marginal qualifications. That is, highly-qualified borrowers of all races seemed to be treated equally, but in cases where there was some flaw in the application, white applicants seemed to be given the benefit of the doubt more frequently than minority applicants. A subsequent refinement of the data used by the Federal Reserve Bank of Boston confirmed the findings of that study.[6]

The Boston Fed study, as well as reassessments of that study by other researchers, concluded that the effect of borrower race on mortgage rejections persists even after controlling for legitimate determinants of lenders' credit decisions.[7]

[3] In this appendix, the term "central city" is used to mean "OMB-designated central city."

[4] The actual denial rates were as follows: 23.6 percent for low-income (80% AMI or less) African Americans, 15.5 percent for upper-income (120% AMI or more) African Americans, 11.4 percent for low-income Whites, and 5.6 percent for upper-income Whites. The overall denial rate in the conventional conforming home purchase market was 9.7 percent in 2002. The data exclude applications to lenders that specialize in manufactured home lending.

[5] Alicia H. Munnell, Lynn E. Browne, James McEneaney, and Geoffrey M.B. Tootell, "Mortgage Lending in Boston: Interpreting HMDA Data," *American Economic Review*, March 1996.

[6] William C. Hunter, "The Cultural Affinity Hypothesis and Mortgage Lending Decisions," WP–95–8, Federal Reserve Bank of Chicago, 1995. Hunter confirmed that race was a factor in denial rates of marginal applicants. While denial rates were comparable for borrowers of all races with "good" credit ratings, among those with "bad" credit ratings or high debt ratios, minorities were significantly more likely to be denied than similarly-situated whites. The study concluded that the racial differences in denial rates were consistent with a cultural gap between white loan officers and minority applicants, and conversely, a cultural affinity with white applicants.

[7] For a reassessment of the Boston Fed study, see Stephen Ross and John Yinger, *The Color of Credit*, MIT Press 2002, and other studies cited there.

Thus, these studies imply that variations in mortgage denial rates, such as those reported above, are not determined entirely by borrower risk, but reflect discrimination in the housing finance system. However, the independent race effect identified in these studies is still difficult to interpret. In addition to lender bias, access to credit can be limited by loan characteristics that reduce profitability[8] and by underwriting standards that have disparate effects on minority and lower-income borrowers and their neighborhoods.[9]

Paired-Testing Studies. As discussed in Appendix A, paired testing studies of the pre-qualification process have supported the findings of the Boston Fed study. Based on a review of paired tests conducted by the National Fair Housing Alliance, The Urban Institute concluded that differential treatment discrimination at the pre-application level occurred at significant levels in at least some cities. Minorities were less likely to receive information about loan products, received less time and information from loan officers, and were quoted higher interest rates in most of the cities where tests were conducted.[10] Another Urban Institute study used the paired testing methodology to examine the pre-application process in Los Angeles and Chicago. African Americans and Hispanics faced a significant risk of unequal treatment when they visited mainstream mortgage lending institutions to make pre-application inquiries.[11]

Sales and Rental Markets. In 2002, HUD released its third Housing iscrimination Study (HDS) in the sale and rental of housing. The study, entitled *Discrimination in Metropolitan Housing Markets: National Results from Phase I of the Housing Discrimination Study (HDS),* was conducted by the Urban Institute.[12] The results of this HDS were based on 4,600 paired tests of minority and non-minority home seekers conducted during 2000 in 23 metropolitan areas nationwide. The report showed large decreases between 1989 and 2000 in the level of discrimination experienced by Hispanics and African Americans seeking to buy a home. There has also been a modest decrease in discrimination toward African Americans seeking to rent a unit. This downward trend, however, has not been seen for Hispanic renters, who now are more likely to experience discrimination in their housing search than are African American renters. But while generally down since 1989, the report found that housing discrimination still exists at unacceptable levels. The greatest share of discrimination for Hispanic and African American home seekers can still be attributed to being told units are unavailable when they are available to non-Hispanic whites and being shown and told about fewer units than a comparable non-minority. Although discrimination is down on most areas for African American and Hispanic homebuyers, there remain worrisome upward trends of discrimination in the areas of geographic steering for African Americans and, relative to non-Hispanic whites, the amount of help agents provide to Hispanics with obtaining financing. On the rental side, Hispanics are more likely in 2000 than in 1989 to be quoted a higher rent than their white counterpart for the same unit.

Another HUD-sponsored study asked respondents to a nationwide survey if they "thought" they had ever been discriminated against when trying to buy or rent a house or an apartment.[13] While the responses were subjective, they are consistent with the findings of the HDS. African Americans and Hispanics were considerably more likely than whites to say they have suffered discrimination—24 percent of African Americans and 22 percent of Hispanics perceived discrimination, compared to only 13 percent of whites.

Segregation in Urban Areas. Discrimination, while not the only cause, contributes to the pervasive level of segregation that persists between African Americans and Whites in our urban areas. The Census Bureau recently released one of the most exhaustive studies of residential segregation ever undertaken, entitled *Racial and Ethnic Residential Segregation in the United States: 1980–2000.*[14] The Census Bureau found that the United States was still very much racially divided. While African Americans have made modest strides, they remain the most highly segregated racial group. The authors said that residential segregation likely results from a variety of factors, including choices people make about where they want to live, restrictions on their choices, or lack of information. The fact that many mainstream lenders do not operate in segregated areas makes it even more difficult for minorities to obtain access to reasonable-priced mortgage credit.[15] Section C.8 of Appendix A cited several studies showing that these inner city neighborhoods are often served mainly by subprime lenders. In addition, there is evidence that denial rates are higher in minority neighborhoods regardless of the race of the applicant. The next section explores the issue of credit availability in neighborhoods in more detail.

2. Evidence About Access to Credit in Urban Neighborhoods—An Overview

HUD's Underserved Areas Housing Goal focuses on low-income and high-minority neighborhoods that are characterized by high loan application denial rates and low loan origination rates. As explained in Section B.3 below, the mortgage denial rate during 2001 in census tracts defined as underserved by HUD was twice the denial rate in excluded (or "served") tracts. In addition to such simple denial rate comparisons, there is a substantial economics literature justifying the targeted neighborhood definition that HUD has used to define underserved areas. Appendix B of the 1995 and 2000 GSE Rules reviewed that literature in some detail; thus, this section simply provides an overview of the main studies supporting the need to improve credit access to low-income and high-minority neighborhoods. Readers not interested in this overview may want to proceed to Section B.3, which examines the credit and socioeconomic characterizes of the census tracts included in HUD's underserved area definition.

As explained in HUD's 2000 Rule, the viability of neighborhoods—whether urban, rural, or suburban—depends on the access of their residents to mortgage capital to purchase and improve their homes. While neighborhood problems are caused by a wide range of factors, including substantial inequalities in the distribution of the nation's income and wealth, there is increasing agreement that imperfections in the nation's housing and mortgage markets are hastening the decline of distressed neighborhoods. Disparate denial of credit based on geographic criteria can lead to disinvestment and neighborhood decline. Discrimination and other factors, such as inflexible and restrictive underwriting guidelines, limit access to mortgage credit and leave potential borrowers in certain areas underserved.

Data on mortgage credit flows are far from perfect, and issues regarding the identification of areas with inadequate access to credit are both complex and controversial. For this reason, it is essential to define 'underserved areas' as accurately as possible based on existing data and evidence. There are three sets of studies that provide the rationale for the Department's definition of underserved areas: (1) Studies examining racial discrimination against individual mortgage applicants; (2) studies that test whether mortgage redlining exists at the neighborhood level; and (3) studies that support HUD's targeted approach to measuring areas that are underserved by the mortgage market. In combination, these studies provide strong support for the definition of underserved areas chosen by HUD. The main studies of discrimination against individuals have already been summarized in Section B.1 above. Thus, this

[8] Since upfront loan fees are frequently determined as a percentage of the loan amount, lenders are discouraged from making smaller loans in older neighborhoods, because such loans generate lower revenue and are less profitable to lenders.

[9] Traditional underwriting practices may have excluded some lower income families that are, in fact, creditworthy. Such families tend to pay cash, leaving them without a credit history. In addition, the usual front-end and back-end ratios applied to applicants' housing expenditures and other on-going costs may be too stringent for lower income households, who typically pay larger shares of their income for housing (including rent and utilities) than higher income households.

[10] Margery A. Turner and Felicity Skidmore, eds., *Mortgage Lending Discrimination: A Review of Existing Evidence,* The Urban Institute: Washington, DC, June 1999.

[11] Margery Austin Turner, *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions,* The Urban Institute Press, April 2002.

[12] Margery Austin Turner, Stephen L. Ross, George Galster, and John Yinger, *Discrimination in Metropolitan Housing Markets,* The Urban Institute Press, November 2002.

[13] *How Much Do We Know? Public Awareness of the Nation's Fair Housing Laws,* prepared for HUD by Martin D. Abravanel and Mary K. Cunningham of the Urban Institute, April 2002.

[14] U.S. Bureau of the Census, August 2002. The co-authors of the study were John Iceland and Daniel H. Weinberg. For a summary of the study, see "Residential Segregation Still Prevalent," *National Mortgage News,* January 6, 2003, page 1.

[15] See Randall M. Scheessele, *Black and White Disparities in Subprime Mortgage Refinance Lending,* Housing Finance Working Paper No. HF–114, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, April 2002.

section focuses on the neighborhood-based studies in (2) and (3). As noted above, this brief overview of these studies draws from Appendix B of the 1995 GSE Rule; readers are referred there for a more detailed treatment of earlier studies of the issues discussed below.

a. Controlling for Neighborhood Risk and Tests of the Redlining Hypothesis

In its deliberations leading up to FHEFSSA, Congress was concerned about geographic redlining—the refusal of lenders to make loans in certain neighborhoods regardless of the creditworthiness of individual applicants. During the 1980s and early 1990s, a number of studies using HMDA data (such as that reported in Tables B.2 and B.3, below) attempted to test for the existence of mortgage redlining. Consistent with the redlining hypothesis, these studies found lower volumes of loans going to low-income and high-minority neighborhoods.[16] However, such analyses were criticized because they did not distinguish between demand, risk, and supply effects[17]—that is, they did not determine whether loan volume was low because families in high-minority and low-income areas were unable to afford homeownership and therefore were not applying for mortgage loans, or because borrowers in these areas were more likely to default on their mortgage obligations, or because lenders refused to make loans to creditworthy borrowers in these areas.[18 19]

More Comprehensive Tests of the Redlining Hypothesis. Recent statistical studies have sought to test the redlining hypothesis by more completely controlling for differences in neighborhood risk and demand. In these studies, the explanatory power of neighborhood race is reduced to the extent that the effects of neighborhood risk and demand are accounted for; thus, they do not support claims of racially induced mortgage redlining. Many of these studies find that the race of the individual borrower is more important than the racial composition of the neighborhood. However, these studies cannot reach definitive conclusions about redlining because segregation in inner cities makes it difficult to distinguish the impacts of geographic redlining from the effects of individual discrimination. The following are two good examples of these studies.

Holmes and Horvitz examined variations in conventional mortgage originations across census tracts in Houston.[20] Their model explaining census-tract variations in mortgage originations included the following types of explanatory variables: (a) The economic viability of the loan, (b) characteristics of properties in and residents of the tract (*e.g.*, house value, income, age distribution and education level), (c) measures of demand (*e.g.*, recent movers into the tract and change in owner-occupied units between 1980 and 1990), (d) measures of credit risk (defaults on government-insured loans and change in tract house values between 1980 and 1990), and (e) the racial composition of the tract, as a test for the existence of racial redlining. Most of the neighborhood risk and demand variables were significant determinants of the flow of conventional loans in Houston. The coefficients of the racial composition variables were insignificant, which led Holmes and Horvitz to conclude that allegations of redlining in the Houston market could not be supported.

Schill and Wachter include several individual borrower and neighborhood characteristics to explain mortgage acceptance rates in Philadelphia and Boston.[21] They found that the applicant race variables—whether the applicant was African American or Hispanic—showed significant negative effects on the probability that a loan would be accepted. Schill and Wachter stated that this finding does not provide evidence of individual race discrimination because applicant race is most likely serving as a proxy for credit risk variables omitted from their model (*e.g.*, credit history, wealth and liquid assets). Schill and Wachter find that when their neighborhood risk proxies are included in the model along with the individual loan variables, the percentage of the census tract that was African American became insignificant. Thus, similarly to Holmes and Horvitz, Schill and Wachter stated that "once the set of independent variables is expanded to include measures that act as proxies for neighborhood risk, the results do not reveal a pattern of redlining."[22]

Other Redlining Studies. To highlight the methodological problems of single-equation studies of mortgage redlining, Fred Phillips-Patrick and Clifford Rossi developed a simultaneous equation model of the demand and supply of mortgages, which they estimated for the Washington, DC metropolitan area.[23] Phillips-Patrick and Rossi found that the supply of mortgages is negatively associated with the racial composition of the neighborhood, which led them to conclude that the results of single-equation models (such as the one estimated by Holmes and Horvitz) are not reliable indicators of redlining or its absence. However, Phillips-Patrick and Rossi noted that even their simultaneous equations model does not provide definitive evidence of redlining because important underwriting variables (such as credit history), which are omitted from their model, may be correlated with neighborhood race.

A few studies of neighborhood redlining have attempted to control for the credit history of the borrower, which is the main omitted variable in the redlining studies reviewed so far. Samuel Myers, Jr. and Tsze Chan, who studied mortgage rejections in the state of New Jersey in 1990, developed a proxy for bad credit based on the reasons that lenders give in their HMDA reports for denying a loan.[24] They found that 70 percent of the gap in rejection rates could not be explained by differences in Black and white borrower characteristics, loan characteristics, neighborhoods or bad credit. Myers and Chan concluded that the unexplained Black-white gap in rejection rates is a result of discrimination. With respect to the racial composition of the census tract, they found that Blacks are more likely to be denied loans in racially integrated or predominantly-white neighborhoods than in predominantly-Black neighborhoods. They concluded that middle-class Blacks seeking to move out of the inner city would face problems of discrimination in the suburbs.[25]

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[16] These studies, which were conducted at the census tract level, typically involved regressing the number of mortgage originations (relative to the number of properties in the census tract) on characteristics of the census tract including its minority composition. A negative coefficient estimate for the minority composition variable was often interpreted as suggesting redlining. For a discussion of these models, see Eugene Perle, Kathryn Lynch, and Jeffrey Horner, "Model Specification and Local Mortgage Market Behavior," *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 225–243.

[17] For critiques of the early HMDA studies, see Andrew Holmes and Paul Horvitz, "Mortgage Redlining: Race, Risk, and Demand," *The Journal of Finance*, Volume 49, No. 1, March 1994, pp. 81–99; and Michael H. Schill and Susan M. Wachter, "A Tale of Two Cities: Racial and Ethnic Geographic Disparities in Home Mortgage Lending in Boston and Philadelphia," *Journal of Housing Research*, Volume 4, Issue 2, 1993, pp. 245–276.

[18] Like early HMDA studies, an analysis of deed transfer data in Boston found lower rates of mortgage activity in minority neighborhoods. The discrepancies held even after controlling for income, house values and other economic and non-racial factors that might explain differences in demand and housing market activity. The study concluded that "the housing market and the credit market together are functioning in a way that has hurt African American neighborhoods in the city of Boston." Katherine L. Bradbury, Karl E. Case, and Constance R. Dunham, "Geographic Patterns of Mortgage Lending in Boston, 1982–1987," *New England Economic Review*, September/October 1989, pp. 3–30.

[19] Using an analytical approach similar to that of Bradbury, Case, and Dunham, Anne Shlay found evidence of fewer mortgage loans originated in black census tracts in Chicago and Baltimore. See Anne Shlay, "Not in That Neighborhood: The Effects of Population and Housing on the Distribution of Mortgage Finance within the Chicago SMSA," *Social Science Research*, Volume 17, No. 2, 1988, pp. 137–163; and "Financing Community: Methods for Assessing Residential Credit Disparities, Market Barriers, and Institutional Reinvestment Performance in the Metropolis," *Journal of Urban Affairs*, Volume 11, No. 3, 1989, pp. 201–223.

[20] Holmes and Horitz, *op. cit.*

[21] Schill and Wachter, *op. cit.*

[22] Schill and Wachter, page 271. Munnell, *et al.* reached similar conclusions in their study of Boston. They found that the race of the individual mattered, but that once individual characteristics were controlled, racial composition of the neighborhood was insignificant.

[23] Fred J. Phillips-Patrick and Clifford V. Rossi, "Statistical Evidence of Mortgage Redlining?" A Cautionary Tale", *The Journal of Real Estate Research*, Volume 11, Number 1, 1996, pp. 13–23.

[24] Samuel L. Myers, Jr. and Tsze Chan, "Racial Discrimination in Housing Markets: Accounting for Credit Risk,", *Social Science Quarterly*, Volume 76, Number 3, September 1995, pp. 543–561.

[25] For another study that uses HMDA data on reasons for denial to construct a proxy for bad credit, see Steven R. Holloway, "Exploring the Neighborhood Contingency of Race Discrimination in Mortgage Lending in Columbus, Ohio", *Annals of the Association of American Geographers*, Volume 88, Number 2, 1998, pp. 252–276. Holloway finds that mortgage denial rates are higher for black applicants (particularly those who are making large loan requests) in all-white neighborhoods than in minority neighborhoods, while the reverse is true for white applicants making small loan requests.

Geoffrey Tootell has authored two papers on neighborhood redlining based on the mortgage rejection data from the Boston Fed study.[26] Tootell's studies are important because they include a direct measure of borrower credit history, as well as the other underwriting, borrower, and neighborhood characteristics that are included in the Boston Fed data base; thus, his work does not have the problem of omitted variables to the same extent as previous redlining studies.[27] Tootell found that lenders in the Boston area did not appear to be redlining neighborhoods based on the racial composition of the census tract or the average income in the tract. Consistent with the Boston Fed and Schill and Wachter studies, Tootell found that it is the race of the applicant that mostly affects the mortgage lending decision; the location of the applicant's property appears to be far less relevant. However, he did find that the decision to require private mortgage insurance (PMI) depends on the racial composition of the neighborhood. Tootell suggested that, rather than redline themselves, mortgage lenders may rely on private mortgage insurers to screen applications from minority neighborhoods. Tootell also noted that this indirect form of redlining would increase the price paid by applicants from minority areas that are approved by private mortgage insurers.

In a 1999 paper, Stephen Ross and Geoffrey Tootell used the Boston Fed data base to take a closer at both lender redlining and the role of private mortgage insurance (PMI) in neighborhood lending.[28] They had two main findings. First, mortgage applications for properties in low-income neighborhoods were more likely to be denied if the applicant did not apply for PMI. Ross and Tootell concluded that their study provides the first direct evidence based on complete underwriting data that some mortgage applications may have been denied based on neighborhood characteristics that legally should not be considered in the underwriting process. Second, mortgage applicants were often forced to apply for PMI when the housing units were in low-income neighborhoods. Ross and Tootell concluded that lenders appeared to be responding to CRA by favoring low-income tracts once PMI has been received, and this effect counteracts the high denial rates for applications without PMI in low-income tracts.

Studies of Information Externalities. Another group of studies related to redlining and the credit problems facing low-income and minority neighborhoods focus on the "thin" mortgage markets in these neighborhoods and the implications of lenders not having enough information about the collateral and other characteristics of these neighborhoods. The low numbers of house sales and mortgages originated in low-income and high-minority neighborhoods result in individual lenders perceiving these neighborhoods to be more risky. It is argued that lenders do not have enough historical information to project the expected default performance of loans in low-income and high-minority neighborhoods, which increases their uncertainty about investing in these areas.

This recent group of studies that focus on economies of scale in the collection of information about neighborhood characteristics has implications for the identification of underserved areas and understanding the problems of mortgage access in low-income and minority neighborhoods. William Lang and Leonard Nakamura argue that individual home sale transactions generate information which reduce lenders' uncertainty about property values, resulting in greater availability of mortgage financing.[29] Conversely, appraisals in neighborhoods where transactions occur infrequently will tend to be more imprecise, resulting in greater uncertainty to lenders regarding collateral quality, and more reluctance by them in approving mortgage loans in neighborhoods with thin markets. As a consequence, "prejudicial practices of the past may lead to continued differentials in lending behavior."

If low-income or minority tracts have experienced relatively few recent transactions, the resulting lack of information available to lenders will result in higher denial rates and more difficulty in obtaining mortgage financing, independently of the level of credit risk in these neighborhoods. A number of empirical studies have found evidence consistent with the notion that mortgage credit is more difficult to obtain in areas with relatively few recent sales transactions. Some of these studies have also found that low transactions volume may contribute to disparities in the availability of mortgage credit by neighborhood income and minority composition. Paul Calem found that, in low-minority tracts, higher mortgage loan approval rates were associated with recent sales transactions volume, consistent with the Lang and Nakamura hypothesis.[30] While this effect was not found in high-minority tracts, he concludes that "informational returns to scale" contribute to disparities in the availability of mortgage credit between low-minority and high-minority areas. Empirical research by David Ling and Susan Wachter found that recent tract-level sales transaction volume does significantly contribute to mortgage loan acceptance rates in Dade County, Florida, also consistent with the Lang and Nakamura hypothesis.[31]

Robert Avery, Patricia Beeson, and Mark Sniderman found significant evidence of economies associated with the scale of operation of individual lenders in a neighborhood.[32] They concluded that "The inability to exploit these economies of scale is found to explain a substantial portion of the higher denial rates observed in low-income and minority neighborhoods, where the markets are generally thin." Low-income and minority neighborhoods often suffer from low transactions volume, and low transactions volume represents a barrier to the availability of mortgage credit by making mortgage lenders more reluctant to approve and originate mortgage loans in these areas.

b. Geographic Dimensions of Underserved Areas—Targeted versus Broad Approaches

HUD's definition of metropolitan underserved areas is a targeted neighborhood definition, rather than a broad definition that would encompass entire cities. It also focuses on those neighborhoods experiencing the most severe credit problems, rather than neighborhoods experiencing only moderate difficulty obtaining credit. During the regulatory process leading to the 1995 rule, some argued that underserved areas under this goal should be defined to include all parts of all central cities, as defined by OMB. HUD concluded that such broad definitions were not a good proxy for mortgage credit problems—to use them would allow the GSEs to focus on wealthier parts of cities, rather than on neighborhoods experiencing credit problems. Appendix B of the 1995 and 2000 Rules reviewed findings from academic researchers that support defining underserved areas in terms of the minority and/or income characteristics of census tracts, rather than in terms of a broad definition such as all parts of all central cities. This section briefly reviews two of the studies. The targeted nature of HUD's definition is also examined in Section B.3 below, which describes the credit and socioeconomic characteristics of underserved census tracts.

Shear, Berkovec, Dougherty, and Nothaft conducted an analysis of mortgage flows and application acceptance rates in 32 metropolitan areas that supports a targeted definition of underserved areas.[33] They

[26] See Geoffrey M. B. Tootell, "Redlining in Boston: Do Mortgage lenders Discriminate Against Neighborhoods?", *Questerly Journal of Economics*, 111, November, 1996, pp. 1049d–1079; and "Discrimination, Redlining, and Private Mortgage Insurance", unpublished manuscript, October 1995.

[27] Tootell notes that both omitted variables and the strong correlation between borrower race and neighborhood racial composition in segregated cities have made it difficult for previous studies to distinguish the impacts of geographic redlining from the effects of individual borrower discrimination. He can unravel these effects because he includes a direct measure of credit history and because over half of minority applicants in the Boston Fed data base applied for mortgages, in predominately white areas.

[28] Stephen L. Ross and Geoffrey M. B. Tootell, "Redlining, the Community Reinvestment Act, and Private Mortgage Insurance", unpublished manuscript, March 1999.

[29] William W. Lang and Leonard I. Nakamura, "A Model of Redlining," *Journal of Urban Economics*, Volume 33, 1993, pp. 223–234.

[30] Paul S. Calem, "Mortgage Credit Availability in Low- and Moderate-Income Minority Neighborhoods: Are Information Externalities Critical?" *Journal of Real Estate Finance and Economics*, Volume 13, 1996, pp. 71–89.

[31] David C. Ling and Susan M. Wachter, "Information Externalities and Home Mortgage Underwriting," *Journal of Urban Economics*, Volume 44, 1998, pp. 317–332.

[32] Robert B. Avery, Patricia E. Beeson, and Mark S. Sniderman, "Neighborhood Information and Home Mortgage Lending," *Journal of Urban Economics*, Volume 45, 1999, pp. 287–310.

[33] William Shear, James Berkovec, Ann Dougherty, and Frank Nothaft, "Unmet Housing Needs: The Role of Mortgage Markets," *Journal of Housing Economics*, Volume 4 , 1996, pp. 291–306. These researchers regressed the number of mortgage originations per 100 properties in the census tract on several independent variables that were

Continued

found: (a) Low-income census tracts and tracts with high concentrations of African American and Hispanic families had lower rates of mortgage applications, originations, and acceptance rates; and (b) once census tract influences were accounted for, central city location had only a minimal effect on credit flows. These authors recognized that it is difficult to interpret their estimated minority effects—the effects may indicate lender discrimination, supply and demand effects not included in their model but correlated with minority status, or some combination of these factors. Still, they conclude that income and minority status are better indicators of areas with special needs than central city location.

Avery, Beeson, and Sniderman of the Federal Reserve Bank of Cleveland specifically addressed the issue of underserved areas in the context of the GSE legislation.[34] Their study examined variations in application rates and denial rates for all individuals and census tracts included in the 1990 and 1991 HMDA data base. These authors found that the individual applicant's race exerts a strong influence on mortgage application and denial rates. African American applicants, in particular, had unexplainably high denial rates. Once individual applicant and other neighborhood characteristics were controlled for, overall denial rates for purchase and refinance loans were only slightly higher in minority census tracts than non-minority census tracts. For white applicants, on the other hand, denial rates were significantly higher in minority tracts. That is, minorities had higher denial rates wherever they attempted to borrow, but whites faced higher denials when they attempt to borrow in minority neighborhoods. In addition, Avery *et al.* found that home improvement loans had significantly higher denial rates in minority neighborhoods. Given the very strong effect of the individual applicant's race on denial rates, the authors noted that since minorities tend to live in segregated communities, a policy of targeting minority neighborhoods may be warranted. They also found that the median income of the census tract had strong effects on both application and denial rates for purchase and refinance loans, even after other variables were accounted for. Avery, Beeson and Sniderman concluded that a tract-level definition is a more effective way to define underserved areas than using the list of OMB-designated central cities as a proxy.

c. Conclusions From the Economics Literature About Urban Underserved Areas

The implications of studies by HUD and others for defining underserved areas can be summarized briefly. First, the existence of large geographic disparities in mortgage credit is well documented. Low-income and high-minority neighborhoods receive substantially less credit than other neighborhoods and fit the definition of being underserved by the nation's credit markets.

Second, researchers are testing models that more fully account for the various risk, demand, and supply factors that determine the flow of credit to urban neighborhoods. The studies by Holmes and Horvitz, Schill and Wachter, and Tootell are examples of this research. Their attempts to test the redlining hypothesis show the analytical insights that can be gained by more rigorous modeling of this issue. However, the fact that urban areas are highly segregated means that the various loan, applicant, and neighborhood characteristics currently being used to explain credit flows are often highly correlated with each other, which makes it difficult to reach definitive conclusions about the relative importance of any single variable such as neighborhood racial composition. Thus, their results are inconclusive, and the need continues for further research on the underlying determinants of geographic disparities in mortgage lending.[35]

Finally, much research strongly supports a targeted definition of underserved areas. Studies by Shear, *et al.* and Avery, Beeson, and Sniderman conclude that characteristics of both the applicant and the neighborhood where the property is located are the major determinants of mortgage denials and origination rates—once these characteristics are controlled for, other influences such as central city location play only a minor role in explaining disparities in mortgage lending.

HUD recognizes that the mortgage origination and denial rates forming the basis for the research mentioned in the preceding paragraph, as well as for HUD's definition of underserved areas, are the result of the interaction of individual risk, demand and supply factors that analysts have yet to fully disentangle and interpret. The need continues for further research addressing this problem.

3. Characteristics of HUD's Underserved Areas

a. Credit Characteristics

HMDA data provide information on the disposition of mortgage loan applications (originated, approved but not accepted by the borrower, denied, withdrawn, or not completed) in metropolitan areas. HMDA data include the census tract location of the property being financed and the race and income of the loan applicant(s). Therefore, this is a rich data base for analyzing mortgage activity in urban neighborhoods. HUD's analysis using HMDA data for 2002 shows that high-minority and low-income census tracts have both relatively high loan application denial rates and relatively low loan origination rates.

Table B.2 presents mortgage denial and origination rates by the minority composition and median income of census tracts in metropolitan areas. Two patterns are clear:

• Census tracts with higher percentages of minority residents have higher mortgage denial rates and lower mortgage origination rates than all-white or substantially-white tracts. For example, in 2002 the denial rate for census tracts that are over 90 percent minority (20.2 percent) was 2.4 times that for census tracts with less than 10 percent minority (8.4 percent).

• Census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. For example, in 2002 mortgage denial rates declined from 22.7 percent to 6.6 percent as tract income increased from less than 40 percent of area median income to more than 150 percent of area median income.

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intended to account for some of the demand and supply (*i.e.*, credit risk) influences at the census tract level. See also Susan Wharton Gates, "Defining the Underserved," *Secondary Mortgage Markets*, 1994 Mortgage Market Review Issue, 1995, pp. 34–48.

[34] See Avery, *et al.*

[35] Methodological and econometric challenges that researchers will have to deal with are discussed in Mitchell Rachlis and Anthony Yezer, "Serious Flaws in Statistical Tests for Discrimination in Mortgage Markets," *Journal of Housing Research*, Volume 4, 1993, pp. 315–336.

Table B.2

Origination and Denial Rates for Conventional Mortgages

Minority Percentage	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1999	2000	2001	2002	Denial Rates (Home Purchases) 1999	2000	2001	2002
Less than 10%	10.4	7.6	15.5	18.7	10.0 %	11.1 %	9.3 %	8.4 %
10-20	10.7	8.0	16.0	19.7	10.6	11.2	9.3	8.5
20-30	10.9	8.4	16.4	20.4	11.8	12.5	10.3	9.6
30-40	10.4	8.3	15.8	19.8	13.7	14.2	11.8	10.6
40-50	9.9	8.0	14.8	18.7	15.1	16.1	13.4	12.1
50-60	9.9	8.1	14.6	18.5	16.7	17.5	15.0	13.2
60-70	9.6	8.0	14.2	18.0	17.9	19.1	16.5	14.5
70-80	9.2	7.7	13.1	16.9	19.5	21.1	18.2	16.0
80-90	8.7	7.1	11.7	15.2	20.7	22.3	19.6	16.9
90-100	7.0	6.0	8.1	9.8	24.8	26.9	24.2	20.2
All Tracts	10.2	7.8	15.0	18.5	12.7	13.8	11.6	10.5

Tract Income Relative to MSA Median	Originations Per 100 Owner-Occupied Units (Purchases and Refinances) 1999	2000	2001	2002	Denial Rates (Home Purchases) 1999	2000	2001	2002
Less than 20%	12.0	11.3	16.6	21.0	30.1 %	28.5 %	21.2 %	19.3 %
20-30	8.7	7.8	8.9	9.6	27.8	29.6	26.7	21.6
30-40	8.6	7.7	9.0	10.5	26.9	29.8	27.1	22.7
40-50	8.5	7.5	9.6	11.2	25.9	28.0	26.4	21.6
50-60	8.5	7.4	10.3	12.2	23.2	25.2	23.0	19.1
60-70	8.5	7.1	10.8	12.8	21.1	22.0	19.9	17.0
70-80	8.8	7.2	11.9	14.1	18.4	19.4	17.0	14.9
80-90	9.2	7.3	12.8	15.4	16.1	17.2	14.9	13.0
90-100	9.6	7.4	13.9	16.7	14.1	15.0	12.9	11.5
100-110	10.2	7.7	15.2	18.6	12.1	13.1	11.1	10.0
110-120	10.9	8.1	16.9	21.0	10.4	11.2	9.2	8.6
120-150	11.6	8.6	18.2	22.9	9.0	9.6	7.8	7.4
150+	11.1	7.9	17.2	22.3	7.8	8.3	6.8	6.6
All Tracts	10.2	7.8	15.0	18.5	12.7	13.7	11.6	10.5

Source: HUD analysis of 1999, 2000, 2001 and 2002 HMDA and 2000 Census Data, metropolitan area boundaries prior to their re-specification by the Office of Management and Budget in June, 2003. Denial rate data exclude loans of lenders that primarily originate manufactured housing loans. Origination data exclude loans of subprime lenders.

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Table B.3 illustrates the interaction between tract minority composition and tract income by aggregating the data in Table B.2 into nine minority and income combinations. The low-minority (less than 30 percent minority), high-income (over 120 percent of area median) group had a denial rate of 6.5 percent and an origination rate of 22.7 loans per 100 owner occupants in 2002. The high-minority (over 50 percent), low-income (under 90 percent of area median) group had a denial rate of 18.3 percent and an origination rate of only 13.1 loans per 100 owner occupants. The other groupings fall between these two extremes.

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Table B.3

Mortgage Denial and Origination Rates By Minority and Income Characteristics of the Census Tract

Denial Rates (Purchase Mortgages Only)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	13.2%	13.9%	18.3%	15.6%
90-120%	9.3%	10.5%	14.0%	10.1%
120+	6.5%	8.9%	10.9%	7.1%
Total	8.7%	11.2%	16.3%	10.5%

Origination Rates per 100 Owner Occupants (Purchase and Refinance Mortgages)				
	Minority Composition			
Tract Income	< 30%	30-50%	50-100%	Total
Less Than 90%	14.2	15.6	13.1	13.9
90-120%	18.6	20.0	17.0	18.6
120+	22.7	24.6	19.8	22.7
Total	19.3	19.3	14.7	18.5

Source: HUD analysis of 2002 HMDA and 2000 Census Data, metropolitan area boundaries prior to their re-specification by the Office of Management and Budget in June, 2003. Data on denial rates exclude loans of subprime lenders and lenders that primarily originate manufactured housing loans.

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The advantages of HUD's underserved area definition can be seen by examining the minority-income combinations highlighted in Table B.3. The sharp differences in denial rates and origination rates between the underserved and remaining served categories illustrate that HUD's definition delineates areas that have significantly less success in receiving mortgage credit. In 2002 underserved areas had over one and a half times the average denial rate of served areas (14.0 percent versus 8.9 percent) and three-fourths the average origination rate per 100 owner occupants (16.0 versus 21.4). HUD's definition does not include high-income (over 120 percent of area median) census tracts even if they meet the minority threshold. The average denial rate (9.9 percent) for high-income tracts with a minority share of population over 30 percent is much less than the denial rate (14.0 percent) in underserved areas as defined by HUD.

Figure B.1 compares underserved and served areas within central cities and suburbs. *First*, Figure B.1 shows that HUD's definition targets central city neighborhoods that are experiencing problems obtaining mortgage credit. The 15.8 percent denial rate in these neighborhoods in 2002 was almost twice the 8.0 percent denial rate in the remaining areas of central cities. A broad, inclusive definition of "central city" that includes all areas of all central cities would include these "remaining" portions of cities. Figure B.1 shows that these areas, which account for approximately 36 percent of the population in central cities, appear to be well served by the mortgage market. As a whole, they are not experiencing problems obtaining mortgage credit.

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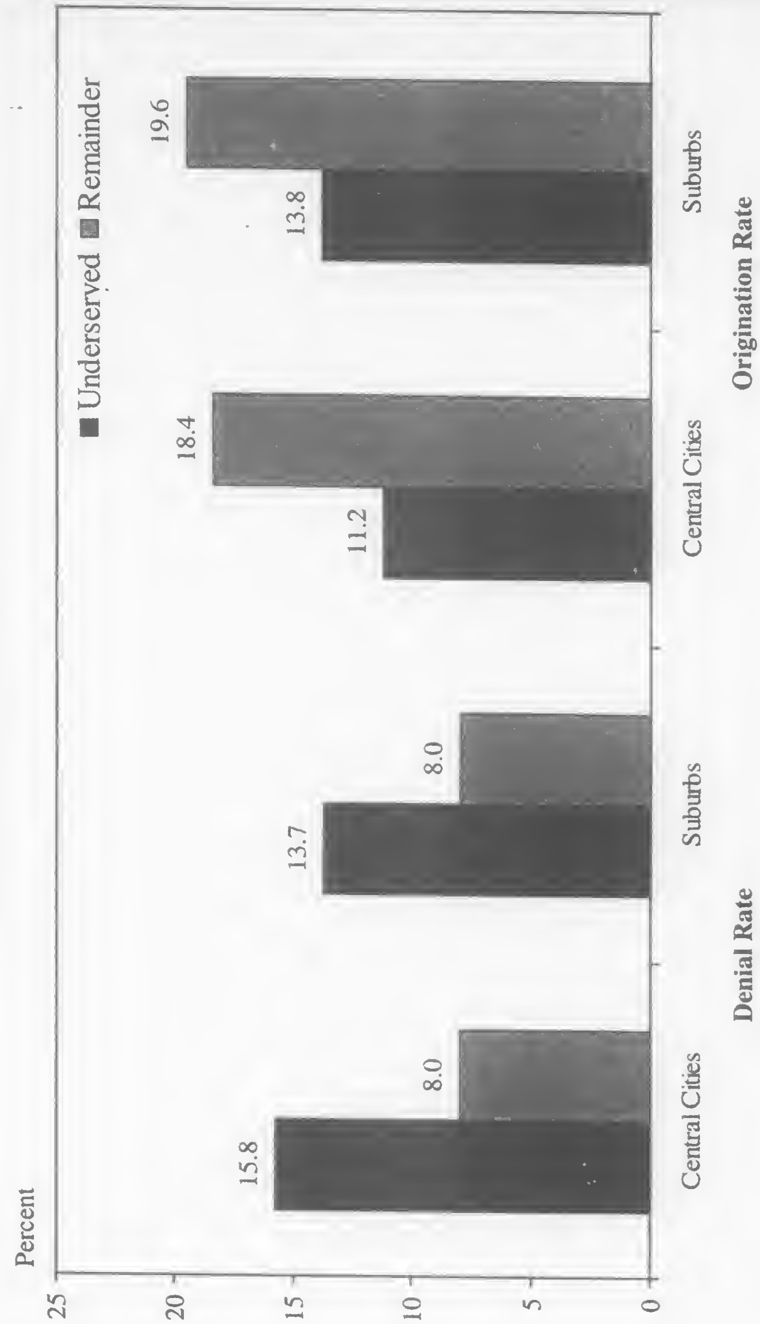
Figure B.1
2002 Denial And Origination Rates
Underserved Areas and Remainder
By Central Cities and Suburbs



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Second, Figure B.1 shows that HUD's definition also targets underserved census tracts in the suburbs as well as in central cities. The average denial rate in underserved suburban areas (13.7 percent) is 1.7 times that in the remaining served areas of the suburbs (8.0 percent), and is almost as large as the average denial rate (15.8 percent) in underserved central city tracts. Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. These suburban tracts, which account for 34 percent of the suburban population, are included in HUD's definition of other underserved areas.

b. Socioeconomic Characteristics

The targeted nature of HUD's definition can be seen from the data presented in Table B.4, which show that families living in tracts within metropolitan areas that are underserved based on HUD's definition experience much more economic and social distress than families living in served areas. For example, the poverty rate in underserved census tracts is 18.5 percent, or over three times the poverty rate (5.7 percent) in served census tracts. The unemployment rate and the high-school dropout rate are also higher in underserved areas. In addition, there are nearly three times more female-headed households with children in underserved areas (30.0 percent) than in served areas (13.2 percent). Three-fourths of units in served areas are owner-occupied, while only one-half of units in underserved areas are owner-occupied.

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Table B.4

Socioeconomic Characteristics of Served and Underserved Tracts in Metropolitan Areas

	Served Tracts	Underserved Tracts	Total
Census Tracts	25,626	26,959	52,585
Households	45,637,698	41,147,058	86,784,756
Population	119,230,406	113,104,203	232,334,609
Unemployment Rate	3.7%	8.0%	5.6%
Poverty Rate*	5.7%	18.5%	11.9%
School Dropout Rate**	10.9%	27.8%	18.8%
Percent Female Households With Children***	13.2%	30.0%	21.2%
Percent African-American	3.9%	22.2%	12.8%
Percent Minority	14.7%	53.5%	33.6%
Homeownership Rate	76.0%	51.8%	64.5%
Percent Renter	24.0%	48.2%	35.5%

Source: 2000 Census.
* Poverty rate is based on population for which poverty rate was determined.
** Dropout rate is for population 25 years and older.
*** Percent female households with children is based on households with own children under the age of 18 years.

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C. Consideration of Factors 1 and 2 in Nonmetropolitan Areas: The Housing Needs of Underserved Rural Areas and the Housing, Economic, and Demographic Conditions in Underserved Rural Areas

Based on discussions with rural lenders in 1995, the definition of underserved rural areas was established at the county level, since such lenders usually do not make distinctions on a census tract basis. A nonmetropolitan county is classified as an underserved area if median income of families in the county does not exceed 95 percent of the greater of state nonmetropolitan or national nonmetropolitan median income, or minorities comprise 30 percent or more of the residents and the median income of families in the county does not exceed 120 percent of the greater of state nonmetropolitan or national nonmetropolitan median income. For nonmetropolitan areas the median income component of the underserved definition is broader than that used for metropolitan areas. While tract income is compared with area income for metropolitan areas, in rural counties income is compared with the greater of state nonmetropolitan income and national nonmetropolitan income. This is based on HUD's analysis of 1990 census data, which indicated that comparing county nonmetropolitan income only to state nonmetropolitan income would lead to the exclusion of many lower-income low-minority counties from the definition, especially in Appalachia. Based on 1990 census geography, underserved counties account for 57 percent (8,091 of 14,419) of the census tracts and 54 percent of the population in rural areas. By comparison, the definition of metropolitan underserved areas encompassed 47 percent of metropolitan census tracts and 44 percent of metropolitan residents.

The purchasing of loans from underserved areas by the GSEs is intended to induce greater homeownership among moderate, low, very low income, and poor families and minorities. For various reasons, including creditworthiness and lending discrimination, these groups experience greater difficulty in securing loans under fair and reasonable terms and in buying decent and affordable housing, and it is for them that the geographic goals were designed. The geographic goals, then, are meant to target places where these "underserved" populations live in order to stimulate local mortgage lending and, it is hoped, the availability of credit to those families who reside there who, otherwise, will have difficulty securing credit. This section addresses the basic question of whether and the extent to which HUD's definition of underservice in nonmetropolitan areas effectively targets areas that encompass large populations of socially and economically disadvantaged families.

Table B.5 shows data on demographic and socioeconomic conditions of underserved and served nonmetropolitan areas based on HUD's definition applied at the county level using Census 2000 data. (A later section considers the effects of applying the definition of the census tract level.) Several variables are used to describe area demographic and socioeconomic conditions.

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Table B.5

Socioeconomic and Housing Characteristics of Served and Underserved Counties in Nonmetropolitan Areas

	Served Counties	Underserved Counties	Total
Counties	792	1,260	2,052
Households	9,274,968	9,465,054	18,740,022
% Owner-Occupied:	73.7%	74.3%	74.0%
Excluding manufactured housing	73.2%	73.3%	73.2%
Population	23,941,532	24,899,110	48,840,642
% African American	3.3%	13.4%	8.4%
% Hispanic/Latino	3.4%	7.3%	5.4%
% Minority	9.3%	25.8%	17.7%
Unemployment rate	5.2%	7.3%	6.2%
Poverty rate	7.5%	14.5%	11.1%
School dropout rate	18.7%	28.1%	23.5%
Migration rate	8.0%	7.4%	7.7%
Median family income	$45,000	$35,421	$40,100
Median housing value	$88,099	$67,358	$78,756
Purchase affordability	178	183	177
Owner-occupied vacancy rate	2.3%	2.6%	2.4%
Median rent	$475	$375	$425
Rental affordability	197	197	197
Rental vacancy rate	8.8%	10.0%	9.4%
Lacking complete plumbing	1.7%	3.2%	2.5%
Lacking complete kitchen facilities	1.8%	3.2%	0.8%
More than one occupant per room	2.3%	4.3%	3.3%

Source: 2000 Census.

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On the national level, a few key results show that the 1995 definition of underservice captures a potentially disadvantaged segment of the population. In examining the minority composition, one can see that the percentage of African Americans, Hispanics/Latinos, and total minority population is higher in underserved nonmetropolitan areas as compared to served nonmetropolitan areas. Overall, the minority population of underserved areas is 25.8 percent as compared with 9.3 percent in served areas. Other supporting results include median family income, poverty rate, unemployment rate, school dropout rate, and in-migration rate. Specifically we find:

• Median income is approximately $10,000 less in underserved areas than in served areas. This represents an average gap of 25 percent.

• Poverty in underserved areas is twice the rate in served areas (14.5 vs. 7.5 percent).

• Unemployment is 7.3 percent in underserved areas and 5.2 percent in served areas.

• The school dropout rate is 28.1 percent in underserved areas and 18.7 percent in served areas.

• Migration into underserved areas is somewhat lower than in served areas: 7.4 vs. 8.0 percent.

Table B.5 also includes data on homeownership rates, housing affordability, housing quality, and overcrowding. On several of these dimensions, housing conditions and needs in underserved areas are not substantially worse than in served areas. Although housing quality and crowding appear to be marginally worse in underserved areas, homeownership in the two areas is about the same and owning a home actually appears to be more affordable in underserved areas than in served areas. Specific findings include the following:

• Homeownership is slightly higher in underserved than in served nonmetropolitan counties: 74.3 percent vs. 73.7 percent. Removing manufactured homes lowers ownership rates slightly, because ownership of such homes is relatively high, but this does not affect the basic result.

• Owner-occupied and rental vacancy rates are both somewhat higher in underserved areas.

• Median housing unit values are significantly lower in underserved areas: $67,358 vs. $88,099.

• The value of a housing affordability index for owner-occupied housing is slightly higher in underserved areas.[36] On average, median income is 1.83 times higher than income required to qualify to buy a home of median value in underserved areas. The comparable factor for served areas is 1.78.

• Rental affordability is approximately the same in underserved and served areas.

• While nearly all housing in served and underserved areas have complete plumbing and kitchens, the percentage of units with incomplete facilities in underserved is twice the percentage in served areas.

• Crowded units are a small share of all housing in nonmetropolitan areas, but the rate is higher for underserved areas: 4.3 vs. 2.3 percent.

Mikesell[37] found using the 1995 American Housing Survey that while the rate of homeownership in nonmetropolitan areas is higher than metropolitan areas, the quality of housing is lower as compared to metropolitan areas. Results based on the 2000 Census show that the homeownership rate for nonmetropolitan areas was 74 percent (73 percent without manufactured homes), and for metropolitan areas it was 64 percent, but both metropolitan and nonmetropolitan areas had approximately 97.5 percent of units with complete plumbing and 99 percent with complete kitchens.

D. Factor 3: Previous Performance and Effort of the GSEs in Connection With the Central Cities, Rural Areas and Other Underserved Areas Goal

Section D.1 reports the past performance of each GSE with regard to the Underserved Areas Housing Goal. Section D.2 then examines the role that the GSEs are playing in funding single-family mortgages in underserved urban neighborhoods based on HUD's analysis of GSE and HMDA data. That section also discusses an underserved area subgoal for home purchase loans. Section D.3 concludes this section with an analysis of the GSEs' purchases in rural (nonmetropolitan) areas.

The increased coverage of the Underserved Areas Housing goal due to switching to 2000 census geography is discussed throughout this section.

1. Past Performance of the GSEs

This section discusses each GSE's performance under the Underserved Areas Housing Goal over the 1996–2002 period.[38] As explained in Appendix A, the data presented are 'official HUD results' which, in some cases, differ from goal performance reported by the GSEs in the Annual Housing Activities Reports (AHARs) that they submit to the Department.

The main finding of this section is that both Fannie Mae and Freddie Mac surpassed the Department's Underserved Areas Housing Goals for each of the seven years during this period. Specifically:

• The goal was set at 21 percent for 1996; Fannie Mae's performance was 28.1 percent and Freddie Mac's performance was 25.0 percent.

• The goal was set at 24 percent for 1997–2000. Fannie Mae's performance was 28.8 percent in 1997, 27.0 percent in 1998, 26.8 percent in 1999, and 31.0 percent in 2000; and Freddie Mac's performance was 26.3 percent in 1997, 26.1 percent in 1998, 27.5 percent in 1999, and 29.2 percent in 2000.

• In the October 2000 rule, the underserved areas goal was set at 31 percent for 2001–03. As of January 1, 2001, several changes in counting requirements came into effect for the undeserved areas goal, as follows: "bonus points" (double credit) for purchases of goal-qualifying mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; a "temporary adjustment factor" (1.20 units credit, subsequently increased by Congress to 1.35 units credit) for Freddie Mac's purchases of goal-qualifying mortgages on large (more than 50-unit) multifamily properties; and eligibility for purchases of certain qualifying government-backed loans to receive goal credit. These changes are explained below. Fannie Mae's performance was 32.6 percent in 2001 and 32.8 percent in 2002, and Freddie Mac's performance was 31.7 percent in 2001 and 31.9 percent in 2002, thus both GSEs surpassed this higher goal in both years. This section discusses the October 2000 counting rule changes in detail below, and provides data on what goal performance would have been in 2001–02 without these changes.[39]

a. Performance on the Underserved Areas Housing Goal in 1996–2002

HUD's December 1995 rule specified that in 1996 at least 21 percent of the number of units financed by each of the GSEs that were eligible to count toward the Underserved Areas Goal should qualify as units in properties located in underserved areas, and at least 24 percent should qualify in 1997–2000. HUD's October 2000 rule made various changes in the goal counting rules, as discussed below, and increased the Underserved Areas Goal to 31 percent for 2001–03.

Table B.6 shows performance on the underserved areas goal over the 1996–2002 period, based on HUD's analysis. The table shows that Fannie Mae surpassed the goals by 7.1 percentage points and 4.8 percentage points in 1996 and 1997, respectively, while Freddie Mac surpassed the goals by narrower margins, 4.0 and 2.3 percentage points. In 1998 Fannie Mae's performance fell by 1.8 percentage points, while Freddie Mac's performance fell only slightly, by 0.2 percentage point. Freddie Mac showed a gain in performance to 27.5 percent in 1999, exceeding its previous high by 1.2 percentage points. Fannie Mae's performance in 1999 was 26.8 percent, which, for the first time, slightly lagged Freddie Mac's performance in that year.

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[36] The purchase affordability index assesses the extent to which a family with the median income of a given area would be able to afford a housing unit that carries the median purchase price of that area. For example, a purchase affordability index number less than 100 means that a family with the median income would not qualify for a mortgage on a unit with the median value; a purchase affordability index equal to 100 means that a family with the median income has exactly the level of income needed to qualify for a mortgage on a unit with the median value; and an index number greater than 100 means that a family with the median income has 20 percent more than the level of income needed to qualify for a mortgage on a unit with the median value. The rental affordability index is similarly constructed.

[37] J.J. Mikesell, "Housing Problems across Types of rural Households", *Rural Conditions and Trends,* Volume 9, Number 2, pp. 97–101, 1999.

[38] Performance for the 1993–95 period was discussed in the October 2000 rule.

[39] To separate out the effects of changes in counting rules that took effect in 2001, this section also compares performance in 2001 to estimated performance in 2000 if the 2001 counting rules had been in effect in that year.

Table B.6

GSEs' Performance on Underserved Areas Goal, 1996-2002

	1996	1997	1998	1999	2000	2001*	2002*
Level of Goal	21%	24%	24%	24%	24%	31%	31%
Fannie Mae:							
Units Eligible to Count Toward Goal	1,891,896	1,765,346	3,546,302	2,956,155	2,195,320	4,671,585	6,023,704
Underserved Areas Units	532,434	508,746	958,232	791,593	680,765	1,522,726	1,973,735
Percent in Underserved Areas	28.1%	28.8%	27.0%	26.8%	31.0%	32.6%	32.8%
Freddie Mac:							
Units Eligible to Count Toward Goal	1,325,900	1,180,515	2,658,556	2,245,086	1,600,684	3,282,354	4,320,018
Underserved Areas Units	331,494	310,572	693,747	618,384	466,857	1,042,111	1,375,978
Percent in Underserved Areas	25.0%	26.3%	26.1%	27.5%	29.2%	31.7%	31.9%

* Performance in 2001-2002 not directly comparable with performance in 1996-2000 due to changes in goal counting rules, as discussed in text, and shown in Table B.7.

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Both GSEs exhibited sharp gains in goal performance in 2000—Fannie Mae's performance increased by 4.2 percentage points, to a record level of 31.0 percent, while Freddie Mac's performance increased somewhat less, by 1.7 percentage points, which also led to a record level of 29.2 percent. Fannie Mae's performance was 32.6 percent in 2001 and 32.8 percent in 2002; Freddie Mac's performance was 31.7 percent in 2001 and 31.9 percent in 2002. However, as discussed below, using consistent accounting rules for 2000–02, under one method each GSE's performance in 2001–02 was below its performance in 2000.

The official figures for underserved areas goal performance presented above for 1996–2002 are the same as the corresponding figures presented by Freddie Mac in its Annual Housing Activity Reports to HUD for every year except 1999 and 2002, when there was a difference of 0.1 percentage point. The official figures are the same as those presented by Fannie Mae in most years, and differ by 0.1–0.2 percentage point in the other years, reflecting minor differences in the application of counting rules.

Fannie Mae's performance on the underserved areas goal surpassed Freddie Mac's in every year through 1998. This pattern was reversed in 1999, as Freddie Mac surpassed Fannie Mae in goal performance for the first time, though by only 0.7 percentage point. This improved relative performance of Freddie Mac was due to its increased purchases of multifamily loans, as it re-entered that market, and to increases in the goal-qualifying shares of its single-family mortgage purchases. However, Fannie Mae's performance once again exceeded Freddie Mac's performance in 2000, 31.0 percent to 29.2 percent. Fannie Mae's official performance also exceeded Freddie Mac's official performance in 2001–02, despite the fact that Freddie Mac benefited from a difference in the counting rules applicable to the two GSEs that was enacted by Congress; if the same counting rules were applied to both GSEs, Fannie Mae's performance would have exceeded Freddie Mac's performance by an even greater margin, and in fact Freddie Mac would have just attained the goal, at 31.0 percent, in 2002, and fallen short of the goal in 2001.

b. Changes in the Goal Counting Rules for 2001–03

Several changes in the counting rules underlying the calculation of underserved areas goal performance took effect beginning in 2001. These also applied to the low- and moderate-income goal and are discussed in Appendix A; only brief summaries of those changes are given here:[40]

Bonus points for multifamily and single-family rental properties. Each qualifying unit in a small multifamily property counted as two units in the numerator in calculating performance on all of the goals for 2001–03. And, above a threshold equal to 60 percent of the average number of qualifying rental units financed in owner-occupied properties over the preceding five years, each unit in a 2–4 unit owner-occupied property also counted as two units in the numerator in calculating goal performance.

Freddie Mac's Temporary Adjustment Factor. Freddie Mac received a "Temporary Adjustment Factor" of 1.35 units of credit for each qualifying unit financed in "large" multifamily properties (*i.e.*, those with 51 or more units) in the numerator in calculating its performance on the housing goals for 2001–03.[41] This factor did not apply to units in large multifamily properties in underserved areas whose mortgages were financed by Fannie Mae during this period.

Purchases of certain government-backed loans. Prior to 2001, purchases of government-backed loans were not taken into account in determining performance on the GSEs' low- and moderate-income and underserved area housing goals. As discussed in Appendix A, the 2000 rule established eligibility for FHA-insured home equity conversion mortgages (HECMs) for mortgagors in underserved areas, purchases of mortgages on properties on tribal lands insured under FHA's Section 248 program or HUD's Section 184 program, and purchases of mortgages under the Rural Housing Service's Single Family Housing Guaranteed Loan Program to count toward the underserved area goal.

c. Effects of Changes in the Counting Rules on Goal Performance

Because of the changes in the underserved areas goal counting rules that took effect in 2001, direct comparisons between official goal performance in 2000 and 2001–02 are somewhat of an "apples-to-oranges comparison." For this reason, the Department has calculated what performance would have been in 2000 under the 2001–03 rules; this may compared with official performance in 2001–02—an "apples-to-apples comparison." HUD has also calculated what performance would have been in 2001–02 under the 1996–2000 rules; this may be compared with official performance in 2000—an "oranges-to-oranges comparison." These comparisons are presented in Table B.7a.

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[40] Unlike the low- and moderate-income and special affordable goals, there is no exclusion of units from the denominator for units with missing information about the area in which a property is located. That is, such units are counted in the denominator, but not in the numerator, in determining undeserved area goal performance.

[41] See *Congressional Record,* December 15, 2000, pp. H12295–96.

Table B.7a

Effects of Counting Rule Changes on the GSEs' Performance on the Underserved Areas Goal

GSE	Year	Baseline A*	Technical Changes[1]	Baseline B*	Bonus Points: Small MF[2]	Bonus Points: SF Rental[3]	Technical Adjustment Factor (TAF)[4]	Baseline C*
Fannie Mae	1999	**26.8%**	0.0%	26.8% (31.6%)	0.2%	1.0%	NA	28.1%
	2000	**31.0%**	0.0%	31.0% (37.5%)	0.2%	1.1%	NA	32.3%
	2001	30.4%	0.0%	30.4% (35.7%)	0.5%	1.7%	NA	**32.6%**
	2002	30.2%	-0.1%	30.1% (35.0%)	0.8%	1.8%	NA	**32.8%**
Freddie Mac	1999	**27.5%**	0.0%	27.6% (31.6%)	0.1%	0.9%	1.0%	29.6%
	2000	**29.2%**	0.0%	29.2% (34.1%)	0.1%	0.8%	1.2%	31.4%
	2001	28.2%	0.1%	28.2% (32.5%)	1.3%	1.1%	1.1%	**31.7%**
	2002	28.4%	0.0%	28.4% (32.8%)	1.0%	1.6%	0.9%	**31.8%**

Details may not add to total due to rounding.

*Note: Baseline A represents performance under 1996-2000 scoring, thus figures for 1999-2000 in bold are official performance in those years. Baseline B adjusts Baseline A for technical changes in counting rules. Baseline B figures in parentheses are based on 2000 Census data on area median incomes and minority concentrations, the June 2003 specification of metropolitan areas, and tract-based non-metropolitan served and underserved areas. Baseline C represents performance under 2001-03 scoring, thus figures for 2001-02 in bold are official performance in those years. Except for Baseline B figures in parentheses, scoring of loans in this table is based on 1990 census data, pre-2003 MSAs, and county-based non-metropolitan served and underserved areas.

[1] *Technical changes* include credit for purchases of certain qualifying government-backed loans.

[2] *Small multifamily bonus points*: For 2001-03, every qualifying unit in a 5-50 unit multifamily property counts as two units in the numerator in calculating goal performance.

[3] *Single-family rental bonus points*: Above a threshold, every qualifying unit in a 2-4 unit property in which one unit is owner-occupied and the other units are rental counts as two units in the numerator in calculating goal performance for 2001-03.

[4] *Temporary adjustment factor (TAF)*: In December 2000 Congress enacted a provision whereby every qualifying unit in a large (> 50 unit) multifamily property counts as 1.35 units in calculating goal performance for Freddie Mac for 2001-03. This provision does not apply to goal performance for Fannie Mae.

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Specifically, Table B.7a shows performance under the underserved areas goal in three ways. Baseline A represents the counting rules in effect in 1996–2000. Baseline B incorporates the one minor technical change in counting rules pertaining to the underserved areas goal" eligibility of certain government-backed loans for goals credit. Baseline C incorporates in addition to that technical change the bonus points and, for Freddie Mac, the temporary adjustment factor. Baseline B corresponds to the counting approach proposed in this rule to take effect in 2005. Boldface figures under Baseline A for 1999–2000 and under Baseline C for 2001–02 indicate official goal percentages based on the counting rules in effect in those years'*e.g.*, for Freddie Mac, 27.5 percent in 1999, 29.2 percent in 2000, 31.7 percent in 2001, and 31.8 percent in 2002.

Performance on the Underserved Areas Goal under 1996–2000 Counting Rules Plus Technical Changes. If the "Baseline B" counting approach had been in effect in 2000–02 and the GSEs' had purchased the same mortgages that they actually did purchase in those years, Fannie Mae would have just matched the underserved areas goal in 2000 and fallen short in 2001–02, while Freddie Mac would have fallen short of the goal in all three years, 2000–02. Specifically, Fannie Mae's performance would have been 31.0 percent in 2000, 30.4 percent in 2001, and 30.1 percent in 2002. Freddie Mac's performance would have been 29.2 percent in 2000, 28.2 percent in 2001, and 28.4 percent in 2002.

Performance on the Underserved Areas Goal under 2001–2003 Counting Rules. If the 2001–03 counting rules had been in effect in 2000–02 and the GSEs had purchased the same mortgages that they actually did purchase in those years (*i.e.*, abstracting from any behavioral effects of "bonus points," for example), both GSEs would have surpassed the underserved areas goal in all three years, and both GSEs' performance figures would have increased from 2000 to 2002. Specifically, Fannie Mae's "Baseline C" performance would have been 32.3 percent in 2000, 32.6 percent in 2001, and 32.8 percent in 2002. Freddie Mac's performance would have been 31.4 percent in 2000, 31.7 percent in 2001, and 31.8 percent in 2002. Measured on this consistent basis, then, Fannie Mae's performance increased by 0.3 percentage point in 2001 and 0.2 percentage point in 2002, and Freddie Mac's performance increased by 0.4 percentage point in 2001 and 0.2 percentage point in 2002. These increases were the effect of increased activity in mortgages eligible to receive bonus points between 2000 and 2001–02.

Details of Effects of Changes in Counting Rules on Goal Performance in 2001. As discussed above, counting rule changes that took effect in 2001 had significant impacts on the performance of both GSEs on the underserved areas goal in that year—2.4 percentage points for Fannie Mae, and 3.5 percentage points for Freddie Mac. This section breaks down the effects of these changes on goal performance for both GSEs; results are shown in Table B.7a along with figures for other years.

Freddie Mac. The largest impact of the counting rule changes on Freddie Mac's goal performance was due to bonus points for purchases of mortgages on small multifamily properties; this added 1.3 percentage points to goal performance in 2001 and 1.0 percentage points in 2002, as shown in Table B.7. The application of the temporary adjustment factor for purchases of mortgages on large multifamily properties enacted by Congress added 0.9 percentage points to goal performance in 2002. Bonus points for purchase of mortgages on owner-occupied 2–4 unit rental properties also added 1.1 percentage points to performance. Credit for purchases of qualifying government-backed loans played a minor role in determining Freddie Mac's goal performance.

Fannie Mae. The temporary adjustment factor which applied to Freddie Mac's goal performance did not apply to Fannie Mae, thus counting rule changes had less impact on its performance than on Freddie Mac's performance in 2002. The largest impact of the counting rule changes on Fannie Mae's goal performance was due to the application of bonus points for purchases of mortgages on owner-occupied 2–4 unit rental properties, which added 1.8 percentage points to performance, and for purchases of mortgages on small multifamily properties, which added 0.8 percentage point to performance. Credit for purchases of qualifying government-backed loans played a minor role in determining Fannie Mae's goal performance.

d. Bonus Point Incentives for the GSEs' Purchases in Underserved Areas

The Department established "bonus points" for 2001–03 to encourage the GSEs to step up their activity in two segments of the mortgage market'the small (5–50 unit) multifamily mortgage market, and the market for mortgages on 2–4 unit properties where 1 unit is owner-occupied and 1–3 units are occupied by renters.

Bonus points for small multifamily properties. Each unit financed in a small multifamily property that qualified for any of the housing goals was counted as two units in the denominator (and one unit in the numerator) in calculating goal performance for that goal.

Fannie Mae financed 37,389 units in small multifamily properties in 2001 that were eligible for the underserved areas goal, an increase of more than 400 percent from the 7,196 units financed in 2000. As explained in Appendix A, small multifamily properties also accounted for a greater share of Fannie Mae's multifamily business in 2001—7.4 percent of total multifamily units financed, up from 2.5 percent in 2000. However, HUD's Housing Goals 2000 Final Rule cited a Residential Finance Survey finding that small multifamily properties account for 37 percent of total units in multifamily mortgaged properties, thus Fannie Mae is still less active in this market than in the market for large multifamily properties.[42]

Within the small multifamily market, there was some evidence that Fannie Mae targeted properties in underserved areas to a greater extent in 2001 than in 2000. That is, 56 percent of Fannie Mae's small multifamily units qualified for the underserved areas goal in 2000, but this rose to 64 percent in 2001.

Freddie Mac financed 50,211 units in small multifamily properties in 2001 that were eligible for the underserved areas goal, an increase of more than 1500 percent from the a small base of 2,985 units financed in 2000. Small multifamily properties also accounted for a significantly greater share of Freddie Mac's multifamily business in 2001—16.1 percent of total multifamily units financed, up from 1.8 percent in 2000.

Within the small multifamily market, there was some evidence that Freddie Mac targeted properties in underserved areas to a greater extent in 2001 than in 2000. That is, 61 percent of Freddie Mac's small multifamily units qualified for the underserved areas goal in 2000; this rose to 86 percent in 2001.

Bonus points for single-family rental properties. Above a threshold, each unit financed in a 2–4 unit property with at least one owner-occupied unit (referred to as "OO24s" below) that qualified for any of the housing goals was counted as two units in the denominator (and one unit in the numerator) in calculating goal performance for that goal in 2001–03. The threshold was equal to 60 percent of the average number of such qualifying units over the previous five years. For example, Fannie Mae financed an average of 47,100 underserved area units in these types of properties between 1996 and 2000, and 105,946 such units in 2001. Thus in 2001 Fannie Mae received 77,688 bonus points in this area in 2001—that is, 105,946 minus 60 percent of 47,100. So 183,629 units were entered in the numerator for these properties in calculating underserved area goal performance.

Single-family rental bonus points thus encouraged the GSEs to play a larger role in this market, and also to purchase mortgages on such properties in which large shares of the units qualify for the housing goals. As for small multifamily bonus points, some evidence on the effects of such bonus points on the GSEs' operations may be gleaned from the data provided to HUD by the GSEs for 2001.

Fannie Mae financed 177,872 units in OO24s in 2001 that were eligible for the underserved areas goal, an increase of 116 percent from the 82,464 units financed in 2000. However, Fannie Mae's total single-family business increased at approximately the same rate as its OO24 business in 2001, thus the share of its business accounted for by OO24s was the same in 2001 as in 2000—4 percent.

Within the OO24 market, there was no evidence that Fannie Mae targeted affordable properties to a greater extent in 2001 than in 2000. That is, approximately 60 percent of Fannie Mae's OO24 units qualified for the underserved area goal in both 2000 and 2001.

Freddie Mac financed 96,983 units in OO24s in 2001 that were eligible for the underserved areas goal, an increase of 91 percent from the 50,868 units financed in 2000. However, Freddie Mac's total single-family business increased at approximately the same rate as its OO24 business in 2001, thus the share of its business accounted for

[42] 65 FR 65141 & n. 145 (2000).

by OO24s was the same in 2001 as in 2000—3 percent.

As for Fannie Mae, within the OO24 market there was no evidence that Freddie Mac targeted affordable properties to a greater extent in 2001 than in 2000. That is, 60 percent of Fannie Mae's OO24 units qualified for the underserved areas goal in both 2000 and 2001.

e. Effects of 2000 Census on Scoring of Loans Toward the Underserved Areas Housing Goal

Background. Scoring of housing units under the Underserved Areas Housing Goal is based on decennial census data used to identify underserved areas, as follows: For properties in MSAs scoring is based on the median income of the census tract where the property is located, the median income of the MSA, and the percentage minority population in the census tract where the property is located. For properties located outside of MSAs scoring is based on the median income of the county, the median income of the non-metropolitan portion of the State in which the property is located or of the non-metropolitan portion of the United States, whichever has the larger median income, and the percentage minority population in the county where the property is located. Thus, scoring loans under the Underserved Areas Housing Goal requires decennial census data on median incomes for metropolitan census tracts, MSAs, non-metropolitan counties, the non-metropolitan portions of States, and the non-metropolitan portion of the United States. The determination has been based on 1990 census data through 2004, and beginning in 2005 will be based on 2000 census data.[43] [44] Under HUD's proposal, the basis for the determination outside of MSAs will change from counties to census tracts beginning in 2005.

2005 Procedure. Relative to the above procedure, Underserved Areas Housing Goals performance percentages for loans purchased by the GSEs in and after 2005 will be affected by three factors. First, 2000 census data on median incomes and minority populations replace 1990 census data. Second, the Office of Management and Budget in June, 2003, respecified MSA boundaries based on analysis of 2000 census data. Third, the Department's proposed re-specification of the Underserved Areas goal in terms of census tracts rather than counties in non-metropolitan areas will come into effect.[45] Thus, for properties located outside of MSAs the basis of determination for non-metropolitan areas will be changed for properties located outside of MSAs to: The median income of the census tract where the property is located; the median income of the non-metropolitan portion of the State in which the property is located or of the non-metropolitan portion of the United States, whichever is larger; and the percentage minority population in the census tract where the property is located.

Analysis. HUD used 2000 census data to generate underserved area designations for census tracts as defined for the 2000 census with 2003 MSA designations. Because Fannie Mae and Freddie Mac geocoded the mortgages they purchased prior to 2003 based on census tract boundaries as established for the 1990 census, GSE mortgages purchased prior to 2003 can be directly identified as being from a served or underserved area only where the property is located in a 1990-defined census tract whose area consists entirely of whole 2000-defined census tracts, or portions of such tracts, which are all designated either as served or as underserved. In the situation where the area of a 1990-defined census tract includes whole 2000-defined census tracts, or portions of such tracts, some of which are served and some underserved, HUD calculated an "underservice factor" defined as the underserved percentage of the 1990-defined tract's population, based on population data from the 2000 census.[46] These factors were used in estimating underservice percentages for aggregated GSE purchases in and before 2002 based on the 2000 census.

The resulting underserved areas file was used to re-score loans purchased by the GSEs between 1999 and 2002, and was used further in estimating the share of loans originated in metropolitan areas that would be eligible to score toward the Underserved Areas Housing Goal, from HMDA data. The results of the retrospective GSE analysis are provided in Table B.7b. The results of the GSE–HMDA comparative analysis are presented in the next section.

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[43] In New England, MSAs were defined through mid-2003 in terms of Towns rather than Counties, and the portion of a New England county outside of any MSA is regarded as equivalent to a county in establishing the metropolitan or non-metropolitan location of a property. The MSA definitions established by the Office of Management and Budget (OMB) in June, 2003 defined MSAs in New England in terms of counties.

[44] The procedure used to generate estimated rents in connection with Low- and Moderate Income and Special Affordable Housing Goals, as mentioned in Appendixes A and C, uses similar data series.

[45] HUD has deferred application of the 2000 census data and 2003 MSA designations to 2005, pending completion of the present rulemaking process.

[46] 8,717 tracts included both served and underserved area, out of a total of 61,493 tracts that could be classified as served or underserved or assigned an underservice factor.

Table B.7b

Effects of 2000 Census on Scoring Toward Underserved Areas Housing Goal

	1999	2000	2001	2002
Fannie Mae:				
Benchmark*	26.8%	31.0%	30.4%	30.2%
With 2000 Census Data	32.5%	38.1%	36.6%	35.9%
Adding 2003 MSAs	32.3%	38.2%	36.4%	35.7%
Tracts rather than Counties**	31.6%	37.5%	35.7%	35.0%
Freddie Mac:				
Benchmark*	27.6%	29.2%	28.2%	28.4%
With 2000 Census Data	32.6%	35.1%	33.5%	33.7%
Adding 2003 MSAs	32.4%	34.8%	33.3%	33.5%
Tracts rather than Counties**	31.6%	34.1%	32.5%	32.8%

* Baseline B in Table B.7a.

** Baseline B figures in parentheses in Table B.7a with tract-based determination of non-metropolitan served and underserved areas.

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Table B.7b shows four sets of estimates for each GSE, based respectively on the counting rules in place in 2001–2002 (but disregarding the bonus points and Temporary Adjustment Factor), on shifting from 1990 to 2000 census data on median incomes and minority concentrations, on the further addition 2003 MSA specification, and finally on shifting from counties to tracts as the basis for scoring loans in non-metropolitan areas.

2. GSEs' Mortgage Purchases in Metropolitan Neighborhoods

Metropolitan areas accounted for about 85 percent of total GSE purchases under the Underserved Areas Housing Goal in 2001 and 2002. This section uses HMDA and GSE data for metropolitan areas to examine the neighborhood characteristics of the GSEs' mortgage purchases. In subsection 2.a, the GSEs' performance in underserved neighborhoods is compared with the overall market. This section therefore expands on the discussion in Appendix A, which compared the GSEs' funding of affordable loans with the overall conventional conforming market. A subgoal that the Department is establishing for each GSE's acquisitions of home purchase loans financing properties in the underserved census tracts of metropolitan areas is also discussed subsection 2.a. In subsection 2.b., the characteristics of the GSEs' purchases within underserved areas are compared with those for their purchases in served areas.

a. *Comparisons With the Primary Market*

Market Comparisons Based on 1990 Census Geography. Section E.8–10 in Appendix A provided detailed information on the GSEs' funding of mortgages for properties located in underserved neighborhoods for the years 1993 to 2002. To take advantage of historical data going back to 1993, these comparisons were first made using 1990 Census tract geography. The findings with respect to the GSEs' funding of underserved neighborhoods are similar to those reported in Appendix A regarding the GSEs' overall affordable lending performance in the single-family-owner market. While both GSEs improved their performance, they historically lagged the conventional conforming market in providing affordable loans to underserved neighborhoods. The two GSEs themselves engaged in very different patterns of funding—Freddie Mac was less likely than Fannie Mae to fund home loans in underserved neighborhoods, as the following percentage shares for home purchase loans indicate:

Year	Freddie Mac (percent≤)	Fannie Mae (percent≤)	Market (w/o B&C) (percent≤)
1996–2002	21.7	23.5	25.4
1999–2002	22.9	24.0	25.8
2001–2002	24.1	25.6	25.9

Between 1996 and 2002, 21.7 percent of Freddie Mac's purchases financed properties in underserved neighborhoods, compared with 23.5 percent of Fannie Mae's purchases and 25.4 percent of home purchase loans originated in the conventional conforming market (excluding B&C loans). Thus, Freddie Mac performed at only 85 percent of the market (21.7 divided by 25.4), while Fannie Mae performed at 93 percent of the market. Freddie Mac's recent performance has been slightly closer to the market. Over the past four years (1999 to 2002), Freddie Mac performed at 89 percent of the market (22.9 percent for Freddie Mac compared with 25.8 percent for the market), and in 2001 and 2002, the first two years under HUD's higher housing goal targets, at 93 percent of the market (24.1 percent compared with 25.9 percent). (See Tables A.13 to A.16 in Appendix A for complete data going back to 1993.)

Fannie Mae has funded underserved areas at a higher level than Freddie Mac, as indicated above. And during 2001 and 2002, Fannie Mae average performance was only slightly below the market. The share of Fannie Mae's purchases going to underserved areas was 24.4 percent in 2001 to 26.7 percent in 2002, compared with market levels of 25.2 percent and 26.4 percent, respectively. However, like Freddie Mac, Fannie Mae's longer-term performance (since 1993 or 1996) as well as its recent average performance (1999 to 2002) has consistently been below market levels. Over the past four years, Fannie Mae performed at 93 percent of the market (24.0 percent for Fannie Mae compared with 25.8 percent for the market). Still, it is encouraging that Fannie Mae significantly improved its performance and closed its gap with the market during the first two years of HUD's higher housing goal levels.

Market Comparisons Based on 2000 Census Geography. As explained in Section A.2 of this appendix, HUD will be defining underserved areas based on 2000 Census data and re-specified metropolitan area boundaries beginning in 2005, the first year covered by the proposed rule. The number of census tracts in metropolitan areas covered by HUD's definition will increase from 21,587 tracts (based on 1990 Census) to 26,959 tracts (based on 2000 Census and new OMB metropolitan area specifications). The increase in the number of tracts defined as underserved means that both GSE performance and the market estimates will be higher than reported above. This section provides an analysis of the performance of the GSEs in the single-family-owner market based on 2000 census tract geography. For the years 1999, 2000, 2001, and 2002, HUD used the apportionment technique described above involving "underservice factors" to re-allocate 1990-based GSE and HMDA data into census tracts as defined by the 2000 Census.

The main results are provided in Table B.8, which compares the GSEs to the market using both the 1990 Census geography and the 2000 Census geography. Switching to the 2000-based tracts increases the underserved area share of market originations by nearly six percentage points. Between 1999 and 2002, 31.5 percent of home purchase mortgages (without B&C loans) were originated in underserved tracts based on 2000 geography, compared with 25.8 percent based on 1990 geography—a differential of 5.7 percentage points. As also shown in Table B.8, the underserved areas share of Fannie Mae's purchases rises by 5.5 percentage points, and the underserved areas share of Freddie Mac's purchases rises by 5.4 percentage points. Thus, the conclusions reported above and in Appendix A about the GSEs' performance relative to the market about remain the same when the analysis is conducted based on 2000 Census geography.

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Table B.8

Underserved Area Share of GSE Purchases and Mortgage Market Based on 1999-2002 HMDA Data in Metropolitan Areas Under 1990 and 2000 Geography Definitions

	Freddie Mac			Fannie Mae			Conventional Conforming Market W/O B&C Loans		
	1990-Based	2000-Based	Difference	1990-Based	2000-Based	Difference	1990-Based	2000-Based	Difference
Home Purchase Loans									
1999	20.9	26.1	5.2	20.4	25.7	5.3	25.2	30.7	5.5
2000	22.0	27.4	5.4	23.4	29.1	5.7	26.4	32.2	5.8
2001	22.3	27.4	5.1	24.4	29.8	5.4	25.2	30.9	5.7
2002	25.8	31.7	5.9	26.7	32.3	5.6	26.4	32.3	5.9
1999-02	22.9	28.3	5.4	24.0	29.5	5.5	25.8	31.5	5.7
1996-02 (Estimate)	21.7			23.5			25.4		
Total (Home Purchase and Refinance) Loans									
1999	23.3	28.3	5.0	21.7	26.9	5.2	26.9	32.4	5.5
2000	24.6	29.8	5.2	25.2	30.6	5.4	28.9	34.6	5.7
2001	22.5	27.3	4.8	24.2	29.3	5.1	24.9	30.3	5.4
2002	22.9	28.1	5.2	24.0	29.1	5.1	24.3	29.8	5.5
1999-02	23.1	28.2	5.1	23.8	29.0	5.2	25.7	31.1	5.4
1996-02 (Estimate)	22.4			23.2			25.5		

Source: GSE and HMDA data.

It is interesting to repeat the earlier 1990-based analysis of home purchase loans but this time based on the 2000 Census geography. The following results are obtained for home purchase loans from Table B.8:

Year	Freddie Mac (percent)	Fannie Mae (percent)	Market (w/o B&C) (percent)
1999	26.1	27.0	31.4
2000	27.4	29.9	32.9
2001	27.4	30.8	31.6
2002	31.7	32.3	32.3
1999–2002 (average)	28.3	29.5	31.5
1996–2002 (estimate)	27.1	29.0	31.1

Between 1999 and 2002, 28.3 percent of Freddie Mac's purchases and 29.5 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 31.5 percent home purchase loans originated in the conventional conforming market (excluding B&C loans). Thus, Freddie Mac performed at 90 percent of the market level, while Fannie Mae performed at 94 percent of the market level—both results similar to those reported above for underserved areas based on 1990 Census geography. The 2000-based results also show that Fannie Mae has improved its performance and matched the primary market in funding underserved areas during 2002. The share of Fannie Mae's purchases going to underserved areas increased from 25.7 in 1999 to 32.3 percent in 2002, which placed it at the market level of 32.3 percent. However, the 2000-based results show that, like Freddie Mac, Fannie Mae's longer-term performance (since 1996) as well as its recent average performance (1999 to 2001) have consistently been below market levels. (Note that the 1996–2002 averages reported above are estimated by adding the following 2000-Census versus 1990-Census differentials calculated for 1999–2002: 5.4 percentage points for Freddie Mac, 5.5 for Fannie Mae, and 5.7 for the market.)

Underserved Area Subgoal for Home Purchase Loans. The Department is proposing to establish a subgoal of 33 percent for each GSE's acquisitions of home purchase loans financing single-family-owner properties located in the underserved census tracts of metropolitan areas for 2005, with this proposed subgoal rising to 34 percent for 2006 and 35 percent for 2007–2008. If the GSEs meet this 2005 (2007–2008) subgoal, they will be leading the primary market by about 1.5 (3.5) percentage points, based on historical data. This *home purchase* subgoal will encourage the GSEs to provide additional credit and capital to urban neighborhoods that historically have not been adequately served by the mortgage industry—but in the future may be the very neighborhoods where the growing population of immigrants and minorities choose to live. As detailed in Section I.5 of this appendix, there are four specific reasons for establishing this subgoal: (1) The GSEs have the expertise, resources, and ability to lead the single-family-owner market, which is their "bread and butter" business; (2) the GSEs have been lagging the primary market in underserved areas, not leading it; (3) the GSEs can help reduce troublesome neighborhood disparities in access to mortgage credit; and (4) there are ample opportunities for the GSEs to expand their purchases in low-income and high-minority neighborhoods. Sections E.9 and G of Appendix A provide additional information on the opportunities for an enhanced GSE role in underserved area segments of the home purchase market and on the ability of the GSEs to lead that market.

As discussed above, underserved areas accounted for an average of 31.5 percent of home purchase loans originated in the conventional conforming market of metropolitan areas (computed over 1999–2002 or over 2001–2002). To reach the proposed 33-percent (35-percent) subgoal for 2005 (2007–2008), both GSEs will have to improve their performance—Fannie Mae by 1.9 (3.9) percentage points over its average performance of 31.1 percent during 2001 and 2002, and by 0.7 (2.7) percentage points over its performance of 32.3 percent in 2002; and Freddie Mac by 3.4 (5.4) percentage points over its average performance of 29.6 percent in 2001 and 2002, and by 1.3 (3.3) percentage points over its performance of 31.7 percent in 2002. Loans in the B&C portion of the subprime market are excluded from the market average of 31.5 percent for 1999–2001.

The subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas. HMDA data for non-metropolitan counties are not reliable enough to serve as a market benchmark. The Department is also setting home purchase subgoals for the other two goals-qualifying categories, as explained in Appendices A and C.

b. Characteristics of GSEs' Purchases of Mortgages on Properties in Metropolitan Underserved Areas

Several characteristics of loans purchased in 2002 by the GSEs in metropolitan underserved areas are presented in Table B.9. As shown, borrowers in underserved areas are more likely than borrowers in served areas to be first-time homebuyers, all female, all male and younger than 30. And, as expected, they are more likely to have below-median income and to be members of minority groups. For example, first-time homebuyers make up 8.7 percent of the GSEs' mortgage purchases in underserved areas and 6.1 percent of their business in served areas. In underserved areas, 55.1 percent of borrowers had incomes below the area median, compared with 36.7 percent of borrowers in served areas.

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Table B.9

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Metropolitan Areas, 2002

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	3,461,154	1,100,670	2,538,469	748,885	5,999,623	1,849,555
Loan Purpose						
Home Purchase	30.7 %	37.3 %	27.1 %	33.0 %	29.2 %	35.6 %
Refinancing	69.3	62.7	72.9	67.0	70.8	64.4
Origination Year						
Current Year	81.3 %	76.8 %	81.2 %	76.9 %	81.3 %	76.8 %
Prior Years	18.7	23.2	18.8	23.1	18.7	23.2
Loan-to-Value Ratio						
Over 95%	2.1 %	4.2 %	1.1 %	2.9 %	1.7 %	3.7 %
91-95%	6.1	8.6	6.2	8.5	6.2	8.6
81-90%	10.2	13.5	10.0	15.1	10.1	14.2
61-80%	54.7	53.6	55.3	54.0	55.0	53.7
60% or Less	26.9	20.1	27.3	19.4	27.1	19.8
Income of Borrower(s)						
60% of Area Median or Below	10.3 %	20.6 %	9.2 %	19.8 %	9.8 %	20.2 %
61-100% of Median	27.5	34.8	25.9	35.0	26.8	34.9
Below Area Median	37.8	55.4	35.1	54.7	36.7	55.1
Over 100% of Median	62.2	44.6	64.9	45.3	63.3	44.9
First-time Home Buyer	6.4 %	9.4 %	5.6 %	7.7 %	6.1 %	8.7 %
Race/National Origin of Borrower						
White	85.6 %	64.1 %	85.8 %	71.2 %	85.7 %	66.8 %
African American	2.7	8.7	2.1	6.4	2.4	7.8
Hispanic	4.7	17.2	3.4	11.1	4.2	14.9
Asian or Pacific Islander	4.8	7.6	4.6	6.7	4.7	7.3
American Indian or Alaskan Native	0.4	0.5	0.3	0.4	0.4	0.5
Other	1.7	1.8	3.8	4.3	2.6	2.8
Age of Borrower						
Under 30	9.0 %	11.4 %	7.9 %	10.6 %	8.5 %	11.1 %
30-39	30.9	30.5	29.5	29.3	30.3	30.0
40 and Over	60.2	58.1	62.6	60.1	61.2	58.8
Gender of Borrower(s)						
All Male	21.1 %	27.2 %	19.4 %	25.5 %	20.4 %	26.6 %
All Female	18.6	24.6	15.5	20.7	17.3	23.1
Male and Female	60.4	48.1	65.1	53.8	62.4	50.3

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

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Minorities' share of the GSEs' mortgage purchases in underserved areas (33.3 percent) was greater than two times their share in served areas (14.3 percent). And the pattern was even more pronounced for African Americans and Hispanics, who accounted for 22.7 percent of the GSEs' business in underserved areas, but only 6.6 percent of their purchases in served areas.

Fannie Mae and Freddie Mac have different purchasing behavior for home purchases and refinance loans in served and underserved. While Fannie Mae is less likely to purchase refinance mortgages in underserved area than served areas and more like to purchase home purchase loans in served areas than underserved areas, Freddie Mac purchase the same proportion of both home purchase and refinance loans in served areas as in underserved areas.

3. GSE Mortgage Purchases in Nonmetropolitan Areas

There are numerous studies that have evaluated the impact of the GSEs' purchases on metropolitan areas, but few address the impact on nonmetropolitan areas; therefore, our understanding of the GSEs and the nonmetropolitan markets is very limited.

A study of the GSE market share in underserved counties [47] found that location has a role in the accessibility of credit for some people in nonmetropolitan areas (low income, minority, and first-time homebuyers). West North Central counties (Minnesota, Missouri, South Dakota, Iowa, Kansas, Nebraska, and North Dakota) have much lower GSE activity than all other geographic regions, suggesting that the 1995 definition of underservice does not capture the specific characteristics of this region, leading to limited GSE activity.

Additionally, The Urban Institute prepared a report for HUD that investigated the factors influencing GSE activity in nonmetropolitan areas.[48] The authors found that Fannie Mae and Freddie Mac have increased their lending to nonmetropolitan areas since 1993; however, there are still weak areas in terms of the percentage of affordable loans being offered.[49] They also established that GSE underwriting criteria was not a major barrier in nonmetropolitan areas.

In nonmetropolitan areas, the financial market is often made up of locally owned community banks, manufactured home lenders, and subprime lenders. Industry representatives contacted by the Urban Institute researchers assessed that the barriers nonmetropolitan lenders faced were in the areas of availability of sales comparables, technology, and the type and number of lenders in the area. They also believed that for the GSEs' market share to improve in underserved nonmetropolitan areas, the GSEs would have to begin to build relationships with the community lenders and provide education/training on how to sell loans directly to the GSEs rather than using intermediaries.

a. Effects of 2000 Census Geography

In order to compare served and underserved areas, either in terms of GSE performance or socioeconomic characteristics, it is first necessary to update current geographic (county) designations, which reflect 1990 census median income and minority population data, to reflect newly available 2000 census data. Table B.10 shows the impact on 2000, 2001, and 2002 GSE purchases. These are reported for total GSE purchases and separately for Fannie Mae and Freddie Mac. As above, the results also are shown separately for counties that change classification and those that do not. This analysis is limited to nonmetropolitan areas based on both the pre- and post-June, 2003 OMB metropolitan area designations.

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[47] Heather MacDonald, "Fannie Mae and Freddie Mac in Nonmetropolitan Housing Markets: Does Space Matter?" *Cityscape: A Journal of Policy Development and Research*, Volume 5, 2001, pp. 219–264.

[48] Jeanette Bradley, Noah Sawyer and Kenneth Temkin, *Factors Influencing GSE Service to Rural Areas*. the Urban Institute, prepared for U.S. Department of Housing and Urban Development, 2002.

[49] Affordable loans are defined as borrowers earning less than 80 percent the Area Median Income.

Table B.10

Effects of 2000 Census on Designation of Nonmetropolitan Counties as Served or Underserved

	Based on 1990 Census Data		Based on 2000 Census Data		Transition			
	Served	Underserved	Served	Underserved	Remain served	Served to Underserved	Underserved to Served	Remain Underserved
Counties	797	1,514	792	1,260	533	93	225	1,151
Percent	34.5	65.5	38.6	61.4	26.6	4.6	11.2	57.5
GSE Purchases, 2000:								
Fannie Mae	131,622	84,099	113,829	66,346	83,313	6,072	17,184	56,414
Percent	61.0	39.0	63.2	36.8	93.2	6.8	23.3	76.7
Freddie Mac	115,606	74,141	102,995	58,427	76,216	5,534	15,026	50,485
Percent	60.9	39.1	63.8	36.2	93.2	6.8	22.9	77.1
GSE Purchases, 2001:								
Fannie Mae	291,554	185,435	254,313	143,767	187,513	11,937	37,616	124,179
Percent	61.1	38.9	63.9	36.1	94.0	6.0	23.2	76.8
Freddie Mac	273,079	155,084	248,597	116,991	184,760	11,381	37,773	100,593
Percent	63.8	36.2	68.0	32.0	94.2	5.8	27.3	72.7
GSE Purchases, 2002:								
Fannie Mae	366,795	246,158	320,984	192,317	235,845	15,332	47,799	166,869
Percent	59.8	40.2	62.5	37.5	93.9	6.1	22.3	77.7
Freddie Mac	347,716	197,949	319,437	148,797	236,643	14,255	47,675	127,740
Precent	63.7	36.3	68.2	31.8	94.3	5.7	27.2	72.8

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Applying 2000 census median income and minority population data results in a slight drop in the proportion of counties that are classified as underserved. Out of a total of 2,493 counties, 1,514 (65.5 percent) are underserved based on 1990 data, and 1,260 (61.4 percent) based on 2000 data. This small net change disguises a somewhat larger shift of counties, as about 11.2 percent of currently underserved counties are reclassified as served counties and 4.6 percent of currently served counties are reclassified as underserved.

Comparing underserved and served nonmetropolitan areas in Table B.10, it is apparent that underserved nonmetropolitan areas make up a larger percentage of nonmetropolitan areas as a whole than do served nonmetropolitan areas, as shown by the number of counties (1,260 for underserved (61.4%); 792 for served (38.6%)). These relationships hold true also for the number of households (9.5 million for underserved (50.5%); 9.3 million for served (49.5%)), and the population (24.9 million for underserved (51%); 23.9 million for served (49%)) as shown in Table B.5.

Table B.10 shows that Fannie Mae's performance in 2002 (40.2 percent) was somewhat higher than Freddie Mac's (36.3 percent). This gap widens slightly (1.8 percent) in applying 2000 census income and minority data and 2003 metropolitan area definitions.

b. Characteristics of GSEs' Purchases of Mortgages on Properties in Non-metropolitan Underserved Areas

Nonmetropolitan mortgage purchases made up 11.9 percent of the GSEs' total mortgage purchases in 2002. Mortgages in underserved counties made up 39.0 percent of the GSEs' business in nonmetropolitan areas.[50]

Unlike the underserved areas definition for metropolitan areas, which is based on census tracts, the rural underserved areas definition is based on counties. Rural lenders argued that they identified mortgages by the counties in which they were located rather than the census tracts; and therefore, census tracts were not an operational concept in rural areas. Market data on trends in mortgage lending for metropolitan areas are provided by HMDA; however, no comparable data source exists for rural mortgage markets. The absence of rural market data is a constraint for evaluating credit gaps in rural mortgage lending and for defining underserved areas.

One concern is whether the broad definition overlooks differences in borrower characteristics in served and underserved counties that should be included. Table B.11 compares borrower and loan characteristics for the GSEs' mortgage purchases in served and underserved areas.

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[50] Underserved areas make up about 56 percent of the census tracts in nonmetropolitan areas and 47 percent of the census tracts in metropolitan areas. This is one reason why underserved areas comprise a larger portion of the GSEs' single-family mortgages in nonmetropolitan areas (39 percent) than in metropolitan areas (23 percent).

Table B.11

Loan and Borrower Characteristics of Single-Family Mortgages Purchased by the GSEs In Nonmetropolitan Counties, 2002

Loan and Borrower Characteristics	Fannie Mae		Freddie Mac		Total	
	Served	Underserved	Served	Underserved	Served	Underserved
Number of Loans	368,835	262,120	352,928	222,616	721,763	484,736
Loan Purpose						
Home Purchase	28.7 %	35.5 %	24.4 %	26.8 %	26.6 %	31.5 %
Refinancing	71.3	64.5	75.6	73.2	73.4	68.5
Origination Year						
Current Year	82.8 %	74.9 %	82.9 %	80.3 %	82.9 %	77.4 %
Prior Years	17.2	25.1	17.1	19.7	17.1	22.6
Loan-to-Value Ratio						
Over 95%	3.0 %	3.4 %	1.1 %	1.3 %	2.0 %	2.4 %
91-95%	7.2	11.9	7.4	8.7	7.3	10.4
81-90%	12.3	16.7	11.5	13.7	11.9	15.3
61-80%	54.4	50.2	56.0	55.4	55.2	52.6
60% or Less	23.2	17.8	24.1	20.9	23.6	19.2
Income of Borrower(s)						
60% of Area Median or Below	11.3 %	10.8 %	10.4 %	9.4 %	10.9 %	10.2 %
61-100% of Median	27.4	25.1	26.5	23.5	27.0	24.3
Below Area Median	38.7	35.9	36.9	32.8	37.8	34.5
Over 100% of Median	61.3	64.1	63.1	67.2	62.2	65.5
First-time Home Buyer	5.6 %	5.8 %	4.7 %	5.1 %	5.2 %	5.5 %
Race/National Origin of Borrower						
White	95.5 %	88.1 %	95.1 %	87.3 %	95.3 %	87.7 %
African American	0.9	5.3	0.7	1.6	0.8	3.6
Hispanic	1.7	3.5	1.4	7.5	1.5	5.3
Asian or Pacific Islander	0.6	1.4	0.6	0.9	0.6	1.2
American Indian or Alaskan Native	0.4	0.8	0.3	0.4	0.4	0.6
Other	0.8	0.9	2.0	2.3	1.4	1.5
Age of Borrower						
Under 30	9.9	10.1	9.1	9.1	9.5	9.6
30-39	27.8	26.4	26.7	25.1	27.3	25.8
40 and Over	62.3	63.6	64.2	65.8	63.2	64.6
Gender of Borrower(s)						
All Male	20.0	21.6	17.9	19.0	19.0	20.4
All Female	15.1	16.1	13.0	13.5	14.1	15.0
Male and Female	64.9	62.3	69.1	67.5	67.0	64.6

Source: HUD analysis of GSEs' loan-level data on mortgages on owner-occupied one-unit properties. In computing the percentages, missing data are excluded.

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Fannie Mae is slightly more likely and Freddie Mac is less likely to purchase loans for first-time homebuyers in underserved areas than in served areas. Mortgages to first-time homebuyers accounted for 5.6 percent of Fannie Mae's mortgage purchases in served counties, compared with 5.8 percent of its purchases in underserved counties. For Freddie Mac the corresponding figures are 4.7 percent in served counties and 5.1 percent in underserved counties.

The GSEs are more likely to purchases mortgages for high-income borrowers in underserved than in served counties. Surprisingly, borrowers in served counties were more likely to have incomes below the median than in underserved counties (37.8 percent compared to 34.5 percent). These findings lend some support to the claim that, in rural underserved counties, the GSEs purchase mortgages for borrowers that probably encounter few obstacles in obtaining mortgage credit.

There are similarities and one difference between the types of loans that Fannie Mae and Freddie Mac purchase in served and underserved counties. The GSEs are similar in that they are slightly more likely to purchase refinance loans in underserved counties than in served counties; mortgage purchases with loan-to-value ratios above 80 percent are more likely to be in underserved counties than in served counties; and seasoned mortgage purchases are more likely to be in underserved than in served counties. The GSEs differ in that Fannie Mae is slightly more likely and Freddie Mac is less likely to purchase loans for first-time homebuyers in underserved areas than served areas.

E. Factor 4: Size of the Conventional Conforming Mortgage Market for Underserved Areas

HUD estimates that underserved areas account for 35–40 percent of the conventional conforming mortgage market. The analysis underlying this estimate is detailed in Appendix D.

F. Factor 5: Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see Section G of Appendix A for a discussion of this factor, as well as Section I.5 of this Appendix, which describes the home purchase subgoal which is designed to place the GSEs in a leadership role in the underserved market.

G. Factor 6: Need To Maintain the Sound Financial Condition of the Enterprises

HUD has undertaken a separate, detailed economic analysis of this rule, which includes consideration of (a) the financial returns that the GSEs earn on loans in underserved areas and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis and reviewed by the Office of Federal Housing Enterprise Oversight, HUD concludes that the goals raise minimal, if any, safety and soundness concerns.

H. Defining Nonmetropolitan Underserved Areas

1. Whether To Adopt a Tract-Based Definition of Underserved Areas

The current county-based definition for targeting GSE purchases to underserved nonmetropolitan areas was adopted in 1995 over alternative narrower definitions, such as census tracts, despite the use of census tracts in metropolitan areas. In the 1995 Final Rule, HUD found the merits of a county-based system of targeting outweighed a tract-based system. Now, with seven years of experience under a county-based system, the release of Census 2000 data, and improvements in information technology and systems, HUD can reexamine whether to switch to census tracts for defining underserved nonmetropolitan areas. This section compares impacts of the potential shift in definition for both served and underserved populations as determined by tract-based and county-based definitions using a number of common industry variables as focal points for analysis.

The rationale for choosing counties in 1995 rested primarily on perceived shortcomings of census tracts.[51] In particular, rural lenders did not perceive their market areas in terms of census tracts, but rather, in terms of counties. Another concern was a perceived lack of reliability in geocoding 1990 census tracts. At the same time, HUD found merit in using a tract-based geography for nonmetropolitan areas. Because tracts encompass more homogeneous populations than counties, they permit more precise targeting of underserved populations. In other words, more homogeneous geographic areas increase the potential for targeting the GSE mortgage purchases into areas where borrowers are more likely to face obstacles and other challenges in securing mortgage credit.

The criteria used for this analysis include the following:

• Do tracts provide a sharper delineation of served and underserved areas? Specifically, are underserved nonmetropolitan populations more clearly differentiated by adopting tracts vs. counties? Could service to the underserved nonmetropolitan populations be more comprehensive under tract-based definitions?

• What is the impact on GSE purchasing patterns if underserved areas are defined by tract?

• Applying the current criteria for identifying underserved areas to tracts would result in reclassifying approximately 23 percent of all tracts, with 28 percent of tracts in served counties being redesignated as underserved and 19 percent of tracts in underserved counties being redesignated as served. Overall, roughly the same percentage of families (and population) would be reclassified. However, because underserved tracts are somewhat less densely populated than served tracts, the corresponding proportions of families that shift from served and underserved counties are closer: 25 vs. 21 percent.

a. Do Census Tracts Allow a Sharper Delineation of Served and Underserved Areas?

This section compares the differences in housing need and economic, demographic, and housing conditions in served and underserved nonmetropolitan areas classified on, respectively, counties and tracts. Additionally, the "efficiency" with which counties and tracts cover the target populations is compared. That is, does tract-based targeting do a better job of capturing lower income households and excluding higher income households than county-based targeting?

Table B.12 presents several indicators of socioeconomic and housing condition in served and underserved areas under both a tract-based and a county-based definition. In addition, served and underserved counties are subdivided into their served and underserved tract components. This allows a closer examination of the population and housing characteristics of the tracts that are reclassified (*i.e.*, served to underserved or visa versa) under tract-based targeting. Thus, area characteristics of housing need and housing, economic, and demographic conditions can be compared, for the following four groups of tracts: (1) Tracts in served counties that would remain "served" classified as tracts; (2) tracts that remain "underserved"; (3) tracts that shift from served to underserved; and (4) tracts that shift from underserved to served. In addition, we provide counts of tracts falling into each of these groups. If a tract-based classification of underserved areas improves geographic targeting, the regrouping of tracts would be more similar to one another than to the other tracts in their respective counties: *e.g.*, formerly underserved areas that become served should be more similar to tracts that were and remain served than to underserved (unchanged).

[51] 60 FR 61925–61958 (1995) (Appendix B).

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Table B.12

Effects of Changing to Tract-Level Nonmetropolitan Underservice Definition On Socioeconomic and Housing Characteristics of Served and Underserved Tracts

	Tract Designations Based on County-Level Data		Tract Designations Based on Tract-Level Data		Analysis			
	Served	Underserved	Served	Underserved	Remain Served	Served to Underserved	Underserved to Served	Remain Underserved
Tracts	5,945	6,414	5,577	6,782	4,333	1,612	1,244	5,170
Percent	48.1%	51.9%	45.1%	54.9%	35.1%	13.0%	10.1%	41.2%
% owner-occupied	73.7%	74.0%	76.6%	71.6%	76.4%	65.2%	77.4%	73.5%
Excluding manufactured homes	73.2%	73.3%	76.4%	70.0%	76.2%	63.7%	77.2%	72.2%
Population	23,941,532	24,899,110	23,181,465	25,659,177	18,054,745	5,886,787	5,126,720	19,772,390
% African American	3.3%	13.4%	3.1%	13.2%	2.2%	6.6%	6.4%	15.2%
% Hispanic/Latino	3.4%	7.3%	3.1%	7.5%	2.9%	5.2%	3.7%	8.2%
% Minority	9.3%	25.8%	8.6%	25.9%	7.3%	15.4%	13.4%	29.1%
Poverty rate	7.5%	14.5%	6.6%	15.3%	6.1%	12.0%	8.4%	16.2%
Unemployment rate	5.2%	7.3%	4.8%	7.6%	4.6%	7.1%	5.4%	7.8%
School dropout rate	18.7%	28.1%	17.7%	28.9%	17.0%	24.1%	20.2%	30.1%
Migration rate	8.0%	7.4%	7.9%	7.5%	7.8%	8.6%	8.0%	7.2%
Median family income	$45,000	$35,421	$46,769	$34,025	$47,589	$36,601	$43,919	$33,230
Median housing value	$88,099	$67,358	$91,996	$63,744	$93,744	$69,140	$85,418	$62,103
Purchase affordability	178	183	177	186	177	184	179	186
Owner occupied vacancy rate	2.3%	2.6%	2.2%	2.7%	2.1%	2.8%	2.4%	2.7%
Median rent	$475	$375	$475	$425	$475	$475	$425	$375
Rental affordability	197	197	205	167	209	161	215	185
Rental vacancy rate	8.8%	10.1%	8.8%	9.9%	8.4%	9.5%	10.4%	10.0%
Without complete plumbing	1.7%	3.2%	1.6%	3.2%	1.6%	2.1%	1.9%	3.6%
Without complete kitchen facilities	1.8%	3.2%	1.7%	3.2%	1.6%	2.3%	2.0%	3.5%
More than one occupant per room	2.3%	4.3%	2.2%	4.3%	2.1%	3.2%	2.7%	4.7%

Note: Current underservice definition applied to tracts, based on 2000 Census.

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Socioeconomic and Demographic Conditions. Table B.12 shows that in important socioeconomic and demographic characteristics, tract-based targeting would more effectively distinguish underserved populations. Median family income, poverty, unemployment, school dropout rates, and minority population all exhibit greater differences between served and underserved areas using tracts. For example, the difference in median income between served and underserved counties is $9,579, or alternatively, between served and underserved tracts, the difference is $12,744. Similarly, there is a 7-percentage point gap in poverty rates (7.5 vs. 14.5 percent poverty) using counties, which widens to 8.6 percentage points (6.6 vs. 15.3 percent) using tracts. Minority population also is captured somewhat better with tracts, with the served/underserved gap increasing from 16.5 to 17.3 percentage points. In all cases, the levels of the indicators for underserved areas move in a direction consistent with targeting lower income households and areas with higher minority populations.

The 4-way breakdown of served and underserved counties reveals some significant differences between the two component groups. In most respects, "underserved tracts" (*i.e.*, those meeting the underserved criteria), whether located in an underserved or served county, are more alike than they are like served tracts. Using median income again to illustrate, the effect of reclassifying areas by tract characteristics is to put together two groups of underserved tracts: tracts that were in previously underserved counties and are not reclassified and tracts that were in served counties but meet the underserved criteria. A new group of served tracts is similarly formed. In both cases, the difference in median incomes of the constituent groups is about $3,500. In contrast, the served and underserved counties now encompass "served" and "underserved" groups of tracts whose respective median incomes differ by almost $11,000. Combined with the fact that a fairly large number of tracts are affected overall (*i.e.*, switch), these results support an assessment that counties are relatively crude for targeting underserved populations.

Housing Needs and Conditions. Table B.12 shows that tract-based targeting would produce modest gains in focusing GSE purchases on areas with relatively greater housing needs and conditions as measured by low owner-occupancy, higher vacancy rates, and crowding. For each of these indicators, measured need increases in underserved areas and the gap between served and underserved areas widens when tracts are used to classify areas. Most notably, the percent of owner-occupied housing units switches from being higher in underserved than served counties to being significantly lower among underserved tracts. With a shift to tracts overall ownership drops in underserved areas, from 74 to 72 percent, and increases in served areas from 74 to 77 percent. In contrast, the homeownership rate for tracts located in served counties that would be deemed underserved if judged separately is only 65 percent. In fact, this rate is much lower even than underserved tracts in underserved counties. Shifting these tracts from served to underserved largely accounts for the switching of homeownership rates.

Results for other indicators of housing need and conditions are less clear-cut. No definitive patterns are apparent for two, admittedly weak, measures of housing quality—units with complete plumbing and units with complete kitchen facilities, as well as for crowding. Purchase affordability, as measured by the ratio of median housing value to the income necessary to qualify for a loan for the median valued unit, is higher in underserved areas than in served areas. However, the measure of purchase affordability presented here is influenced by many market and other economic factors, some of which do not relate to housing need. For example, a low affordability ratio may reflect abundant supply, but it may also reflect low demand stemming from, *e.g.*, limited availability of credit or high interest rates.

Coverage Efficiency. The coverage efficiency index measures the effect of adopting tract-based targeting. This index can be used to indicate how well underserved areas encompass populations deemed to be underserved ("sensitivity") and to exclude populations that are deemed to be served ("specificity"). The index is computed for median income as the difference in two percentages: (1) the proportion of all families in nonmetropolitan areas that meet the applicable income threshold who live in underserved tracts minus (2) the proportion of all families in nonmetropolitan areas that do not meet the applicable underserved income threshold who live in underserved areas. This difference can range from 1 (perfect) to—1 (bad; perverse). For example, a coverage efficiency index equal to 1 implies that every family in need is living in an underserved area while there are no families who are not in need living in an underserved area; a coverage efficiency index equal to—1 implies that none of the families in need live in an underserved area, or equivalently, all families in underserved areas are not in need.

Comparing coverage efficiency for counties and tracts indicates that tracts do a better job; capturing a higher percentage of nonmetropolitan families whose income falls below the applicable income threshold and excluding more families whose income exceeds the threshold.[52] Overall, the efficiency index rises from 22.0 to 27.4 percent.

Given income thresholds that are not far away from median income in most places and the degree of income variation even with census tract boundaries, it should not come as a great surprise that neither the levels of coverage efficiency (22–27 percent) nor improvement produced in applying tracts (5 percent) are not more dramatic. Nevertheless, tracts do produce better tracking of lower income, very low income, and minority families.

b. Does GSE Performance Vary between Served and Underserved Tracts Within Underserved Counties?

A similar analytical approach is used to examine how a shift to tracts would impact GSE purchases. Having applied income and minority thresholds from the 2000 census and updating census tract geography, Table B.13 compares, respectively, 2000, 2001, and 2002 GSE purchases for served and underserved counties and tracts and also for the served and underserved tracts within county boundaries. On net there would be somewhat more tracts classified as underserved under a tract-based system than currently: 6,782 vs. 6,414. As noted above, however, 23.1 percent of all tracts are reclassified. Moving to tracts also would have a significant effect on the relative performance of the GSEs. In 2002, Fannie Mae's performance would drop 2.1 percentage points to 35.4 percent, while Freddie Mac's performance would increase by 0.9 percent to 32.7 percent.

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[52] In areas with 30 percent or greater minority population, all families with income in excess of 120 percent of the greater of State or national median income are counted as qualifying as "in need" for these computations. Similarly, in areas with less than 30 percent minority, those minority (headed) families with income between 95 and 120 percent of the applicable median income are not classified as "in need."

Table B.13

Effects of Changing to Tract-Level Nonmetropolitan Underservice Definition On GSE Underserved Percentages, 2000-2002

	Tract Designations Based on County-Level Data		Tract Designations Based on Tract-Level Data		Analysis			
	Served	Underserved	Served	Underserved	Remain served	Served to Underserved	Underserved to Served	Remain Underserved
Tracts	5,945	6,414	5,577	6,782	4,333	1,612	1,244	5,170
Percent	48.1	51.9	45.1	54.9	35.1	13.0	10.1	41.2
GSE Purchases, 2000:								
Fannie Mae	113,829	66,346	116,554	63,628	94,131	19,701	22,423	43,927
Percent	63.2	36.8	64.7	35.3	52.2	10.9	12.4	24.4
Freddie Mac	102,995	58,427	103,978	57,248	85,097	17,686	18,881	39,561
Percent	63.8	36.2	64.5	35.5	52.8	11.0	11.7	24.5
GSE Purchases, 2001:								
Fannie Mae	254,313	143,767	260,564	137,521	213,473	40,843	47,090	96,678
Percent	63.9	36.1	65.5	34.5	53.6	10.3	11.8	24.3
Freddie Mac	248,597	116,991	247,621	117,822	209,066	39,397	38,555	78,425
Percent	68.0	32.0	67.8	32.2	57.2	10.8	10.6	21.5
GSE Purchases, 2002:								
Fannie Mae	320,984	192,317	331,386	181,957	269,614	51,488	61,771	130,469
Percent	62.5	37.5	64.6	35.4	52.5	10.0	12.0	25.4
Freddie Mac	319,437	148,797	315,068	153,221	266,511	52,914	48,556	100,307
Precent	68.2	31.8	67.3	32.7	56.9	11.3	10.4	21.4

Note: Current underservice definitions applied to tracts, based on 2000 Census.

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Differences between qualifying purchases of single-family and multifamily loans are further increased when assessed at the tract level. Performance for single-family loans drops 0.7 percentage points to 35.2, but for multifamily increases by 2.5 percentage points to 46.8. These changes dramatically compound the results observed in updating to 2000 census data, resulting in a widening of the single- and multifamily performance difference from the current level of 7.0 percentage points to 11.6 percentage points.

2. Alternative Definitions of Underservice

The current definition of underservice in nonmetropolitan areas was established in 1995 to be relatively broad, encompassing nearly twice as many underserved as served counties and somewhat more than half of the total nonmetropolitan population. This was done primarily to ensure that certain areas with low incomes and/or high minority populations, which might not be considered underserved in comparison to the rest of their State, would nevertheless be identified as underserved from a national perspective. This section summarizes a new analysis, based on 2000 census data, to evaluate the extent to which the current definition focuses GSE purchasing activity toward stimulating mortgage lending in areas with populations having greatest housing need. Alternative definitions of underservice are considered as follows: (1) Variations of the current thresholds; (2) applying only the State median income level for qualifying underserved counties and tracts; and (3) establishing different thresholds in micropolitan and "outside of core" nonmetropolitan areas. In each case the objective is to assess how redesignating served and underserved areas would affect relative conditions and needs and GSE purchasing performance. In distinguishing micropolitan and "outside of core" areas, it is of interest to determine whether it would be appropriate to establish different thresholds for underservice. The overarching criterion for evaluating and comparing definitions is their ability to serve very low-income, low-income and moderate-income households, households in poverty, first-time homebuyers, minorities, and households in remote locations.[53]

In the current definition, areas are classified as underserved if either the minority population share is greater than 30 percent and median income is less than 120 percent of the greater of State nonmetropolitan or national nonmetropolitan median income; or area median income is less than or equal to 95 percent of the greater of State nonmetropolitan or national nonmetropolitan median income. The greater of State nonmetropolitan or national median income is termed the "reference income." Denoting the current thresholds as "30/120/95," the following set of alternative thresholds are evaluated:

- 30/120/95 vs. 30/120/90 vs. 30/120/80—to examine the effect of lowering the general income threshold from 95 percent to 90 percent to 80 percent.
- 30/120/95 vs. 30/110/95 vs. 30/110/80—to examine the effect of lowering both the minority (from 120% to 110%) and general income (from 95% to 80%) thresholds; and
- 30/120/95 vs. 50/120/95—to examine the effect of increasing the minority population threshold that must be attained before applying the minority income threshold.

For each alternative, indicators of socioeconomic and housing conditions are calculated for served and underserved areas for each alternative and compare the results to the current definition. Of particular interest is whether certain thresholds of minority population and median income capture the differences in housing needs and conditions between served and underserved areas better than others. The "coverage efficiency" of each alternative relative to households below the poverty line, below 50, 70, and 95 percent of area reference income, and below the alternative income level(s) used to define underservice, is also presented. GSE purchasing activity is also examined for each alternative definition, specifically, the percentage of eligible loans that qualify towards the goal for underserved areas defined by different thresholds. Each analysis is conducted both with counties and tracts as the geographic unit.

County Results. The main effect of lowering the general income threshold from 95 to 90 to 80 percent of the reference income is to roughly halve the number of counties and population residing in underserved areas. Under the current definition, 11.6 million people reside in underserved areas as opposed to fewer than 10 million in served areas. With a general income threshold of 80 percent, 5.7 million would be left in underserved areas. A 90 percent threshold would produce a shift of approximately half this amount.

In terms of social, economic, demographic, and housing characteristics, lowering the income threshold from 95 to 80 percent would have the following notable consequences:

- Minority population in underserved areas would increase from 12.4 to 20.8 percent with no significant change in served areas.
- Median income would fall in both served and underserved areas with the difference remaining nearly constant at $10,000.
- Poverty, unemployment, school drop out rates all would be higher in both served and underserved areas. The gap would increase for each of these characteristics.
- Migration into underserved areas (from other States) would be relatively lower than into served areas with an 80 percent income threshold.
- Indicators of homeownership would decline somewhat in underserved areas relative to served areas. For all units, for example, ownership would decline from 74.3 to 72.9 percent in underserved areas and increase from 73.5 to 74.3 percent in served areas.
- Median housing values would fall in both served and underserved areas with a significant narrowing in the gap from approximately $25,000 to $19,000 at an 80 percent median income threshold.
- Housing affordability would decline in underserved areas, becoming nearly equal with affordability in served areas at 80 percent.
- Crowding would be higher in underserved areas, absolutely and relative to served areas. Thus, more narrowly defined underserved areas would more strongly manifest conditions and needs associated with underservice: lower income, higher poverty, higher minority populations, lower homeownership, lower affordability, more crowding, etc. However, served areas would expand to encompass significant numbers of these same underserved and target populations.

Use of the coverage efficiency index highlights one of the tradeoffs between using a low median income threshold versus a high median income threshold in redefining underservice. Coverage efficiency based on all variables examined, including "underserved," poor, very low income, low income and even moderate income families, declines sharply as the income threshold is lowered from 95 to 80 percent, becoming negative for most groups. Coverage for the "underserved" cohort declines from 22.0 to −1.0 percent, and for families with up to 95 percent of reference income, it declines from 17.2 to −10.0 percent. These changes result from losing almost half of the families in target income ranges without any appreciable gain in specificity, *i.e.*, shrinking the proportion of people living in underserved counties with incomes above the respective target levels. Similar patterns are observed for families with below 70 percent of reference income, below 50 percent of reference income, and families in poverty.

The second set of comparisons builds on the first set by lowering the income threshold applicable to areas with a relatively high minority populations (30 percent) from 120 to 110 percent in addition to the general threshold. This change further shrinks, albeit, only marginally, the size and population of underserved areas. Minority underserved populations would be smaller and socioeconomic and housing conditions would be worse. Not surprisingly, coverage efficiencies and GSE purchase performance levels also would decline across the board, although the marginal effects of reducing the minority income threshold are quite small. The 30/110/80 alternative is the narrowest definition examined and produces the biggest loses in efficiency and GSE performance.

The third variation of the current definition is an increase in the minority population threshold from 30 to 50 percent. Thus, if an area does not qualify as underserved against the general income threshold of 95 percent it could still qualify if its population is 50 percent minority and median income is less than or equal to 120 percent of the reference income level.

Relatively few counties qualify solely under the current minority thresholds. Raising the population threshold would trim this number by an additional 73 counties (457 tracts). Not surprisingly, the percent minority in underserved areas would decrease. However, the areas being redesignated as served are apparently somewhat above average in terms of

[53] A more comprehensive presentation of this analysis may be found in Economic Systems, Inc., *Indicators of Mortgage Market Underservice in Non-Metropolitan Areas*, Interim Report to HUD, March 2003, Chapter 6.

socioeconomic and housing conditions in underserved areas and below-average in terms of conditions in served areas. Coverage efficiencies for all cohorts would be lower than for the current definition of underservice and GSE performance overall would be approximately 90 percent of the current level.

Using the State median income, alone, as the general reference income would reduce the number underserved counties relative to the current definition, and, although there would still be more underserved counties (1,274 vs. 1,064), the underserved population actually would become smaller than the served population. The effect of this alternative on differences in housing conditions and needs between served and underserved areas is generally small and ambiguous, but overall, results in less contrast. Consistent with the results for other alternatives, applying a State median income standard, alone, would result in lower coverage efficiency across all target groups.

Census Tract Results. As discussed above, the adoption of a tract-based system would result in greater coverage efficiency of underserved populations and sharper distinctions in the socioeconomic, demographic and housing characteristics of served and underserved areas. That is, tracts more effectively carve out areas that exhibit characteristics that are associated with underservice, such as low income, large minority populations and low homeownership. The converse is true for served areas. In analysis at the tract level, these patterns tend to be maintained quite consistently. A tract-based system would improve the power to differentiate underserved and served populations. According to virtually every indicator of socioeconomic, demographic, and housing conditions, applying State median income, alone, with a tract-based geography would produce superior differentiation to the current county-based definition. In terms of coverage efficiency, we again see improvement with tracts, but not enough to offset the loss of eliminating the national median income threshold. For the underserved population, for example, coverage efficiency would be 16.9 percent with tracts, still below 22 percent under the current definition.[54]

I. Determination of the Underserved Areas Housing Goal

The proposed annual goal for each GSE's purchases of mortgages financing housing for properties located in geographically targeted areas (central cities, rural areas, and other underserved areas) is 38 percent of eligible units financed in 2005, 39 percent in 2006 and 2007, and 40 percent in 2008. The 2008 goal will remain in effect in subsequent years, unless changed by the Secretary prior to that time. The goal of 38 percent for 2005 is larger than the goal of 31 percent for 2001–03 mainly because, compared with the 1990 Census, the 2000 Census includes a larger number of census tracts that meet HUD's definition of underserved area. The proposed new 38 percent-40 percent goals are commensurate with recent market share estimates of 37–40 percent for 1999–2002, presented in Appendix D.

In addition, an Underserved Areas Housing Subgoal of 33 percent is proposed for the GSEs' acquisitions of single-family-owner home purchase loans in metropolitan areas in 2005, with the proposed subgoal rising to 34 percent in 2006 and 35 percent in both 2007 and 2008. The subgoal is designed to encourage the GSEs to lead the primary market in providing mortgage credit in underserved areas.

This section summarizes the Secretary's consideration of the six statutory factors that led to the Underserved Area Housing Goal and the subgoal for home purchase loans in metropolitan areas. This section discusses the Secretary's rationale for defining underserved areas and it compares the characteristics of such areas and untargeted areas. The section draws heavily from earlier sections which have reported findings from HUD's analyses of mortgage credit needs as well as findings from other research studies investigating access to mortgage credit.

1. Housing and Credit Disparities in Metropolitan Areas

There are families who are not being adequately served by the nation's housing and mortgage markets. A major HUD-funded study of discrimination in the sales and rental markets found that while discrimination against minorities was generally down since 1989, it remained at unacceptable levels in 2000. The greatest share of discrimination against Hispanic and African American home seekers can still be attributed to being told that units are unavailable when they are available to whites and being shown and told about fewer units than a comparable white home seeker. There has also been an upward trend of discrimination in the area of geographic steering for African Americans.

Racial disparities in mortgage lending are also well documented. HUD-sponsored studies of the pre-qualification process conclude that African Americans and Hispanics faced a significant risk of unequal treatment when they visit mainstream mortgage lenders. Numerous studies of HMDA data have shown that mortgage denial rates are substantially higher for African Americans and Hispanics, even after controlling for applicant income. And the now-famous Boston Fed study found that the higher denial rates for minorities remained after controlling for a host of underwriting characteristics, such as the credit record of the applicant. Partly as a result of these racial disparities in the housing and mortgage markets, the homeownership rate for minorities is 25 percentage points below that for whites.

There are also neighborhoods that are not being adequately served by the nation's housing and mortgage industries. The existence of substantial neighborhood disparities in homeownership and mortgage credit is well documented for metropolitan areas. HUD's analysis of HMDA data shows that mortgage credit is substantially lower in high-minority and low-income neighborhoods and mortgage denial rates are much higher for residents of these neighborhoods. The economics literature discusses the underlying causes of these disparities in access to mortgage credit, particularly as related to the roles of discrimination, segregation, "redlining" of specific neighborhoods, and the barriers posed by underwriting guidelines that disadvantage applicants from inner city neighborhoods. Studies reviewed in Section B of this Appendix found that the racial and income composition of neighborhoods influence mortgage access even after accounting for demand and risk factors that may influence borrowers' decisions to apply for loans and lenders' decisions to make those loans. Therefore, the Secretary concludes that high-minority and low-income neighborhoods in metropolitan areas are underserved by the mortgage system. The income and minority composition of an area is a good measure of whether that area is being underserved by the mortgage market.

2. Identifying Underserved Portions of Metropolitan Areas

To identify areas underserved by the mortgage market, HUD focused on two traditional measures used in a number of studies based on HMDA data: application denial rates and mortgage origination rates per 100 owner-occupied units. Tables B.2 and B.3 in Section B of this Appendix presented detailed data on denial and origination rates by the racial composition and median income of census tracts for metropolitan areas. Aggregating this data is useful in order to examine denial and origination rates for broader groupings of census tracts:[55]

Minority composition (percent)	Denial rate (percent)	Orig. rate
0–30	8.7	19.3
30–50	11.2	19.3
50–100	16.3	14.7

Tract income	Denial rate (percent)	Orig. rate
Less than 90% of AMI	15.6	13.9
90–120%	10.1	18.6
Greater than 120%	7.1	22.7

Two points stand out. First, high-minority census tracts have higher denial rates and lower origination rates than low-minority tracts. Specifically, tracts that are over 50 percent minority have nearly twice the denial rate and three-fourths the origination rate of tracts that are under 30 percent minority.[56]

[54] Note that, unlike the other panels in tables 6.3 and 6.8, "underserved population" is defined according to the applicable definition. Thus, eliminating the national median income test, narrows the defined cohort of underserved families. Despite this, coverage falls.

[55] Denial rates are computed for mortgage applications without manufactured housing loans. Origination rates equal home purchase and refinance mortgages (without subprime loans) per 100 owner occupants in a census tract.

[56] The differentials in denial rates are due, in part, to differing risk characteristics of the prospective

Second, census tracts with lower incomes have higher denial rates and lower origination rates than higher income tracts. Tracts with income less than 90 percent of area median income have over twice the denial rate and three-fifths the origination rate of tracts with income over 120 percent of area median income.

In both the 1995 and the 2000 GSE Rules, HUD's research determined that "underserved areas" could best be characterized in metropolitan areas as census tracts where: (1) median income of families in the tract does not exceed 90 percent of area (MSA) median income or (2) minorities comprise 30 percent or more of the residents and median income of families in the tract does not exceed 120 percent of area median income. The earlier analysis was based on 1990 Census data. HUD has now conducted the same analysis using 2000 Census data and has determined that the above definition continues to be a good proxy for underserved areas in metropolitan areas. The income and minority cutoffs produce sharp differentials in denial and origination rates between underserved areas and adequately served areas. For example, in 2002 the mortgage denial rate in underserved areas (14.0 percent) was over one-and-a-half times that in adequately served areas (8.9 percent).

These minority population and income thresholds apply in the suburbs as well as in central cities. The average denial rate in underserved suburban areas (13.7 percent) is 1.7 times that in the remaining served areas of the suburbs (8.0 percent), and is almost as large as the average denial rate (15.8 percent) in underserved central city tracts. Low-income and high-minority suburban tracts appear to have credit problems similar to their central city counterparts. Thus HUD uses the same definition of underserved areas throughout metropolitan areas—there is no need to define such areas differently in central cities and in the suburbs.

This definition of metropolitan underserved areas based on 2000 Census geography includes 26,316 of the 51,040 census tracts in metropolitan areas, covering 49.2 percent of the metropolitan population in 2000. (By contrast, the 1990-based definition included 21,587 of the 45,406 census tracts in metropolitan areas, covering 44.3 percent of the metropolitan population in 1990.) The 2000-based definition includes 75.7 percent of the population living in poverty in metropolitan areas. The unemployment rate in underserved areas is more than twice that in served areas, and owner units comprise only 51.6 percent of total dwelling units in underserved tracts, versus 75.9 percent of total units in served tracts. As shown in Table B.14, this definition covers most of the population in several distressed central cities including Bridgeport (100 percent), Newark (99 percent), and Detroit (93 percent). The nation's five largest cities also contain large concentrations of their population in underserved areas: New York (68 percent), Los Angeles (72 percent), Chicago (75 percent), Houston (73 percent), and Phoenix (50 percent).

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borrowers in different areas. However, use of denial rates is supported by the findings in the Boston Fed study which found that denial rate differentials persist, even after controlling for risk of the borrower. See Section B for a review of that study.

Table B.14

Needy Areas in Central Cities Would be Covered

Central Cities with More than 90 Percent of Population Included in Geographically Targeted Tracts			
Bridgeport			100%
Trenton			100%
Lawrence			100%
York			100%
Atlantic City-Cape May			100%
Newburgh			100%
Newark			100%
Gary			99%
Reading			96%
Detroit			93%
Harrisburg-Lebanon-Carlisle			93%
			92%
Five Largest Cities			
New York			68%
Los Angeles			72%
Chicago			75%
Houston			73%
Phoenix			50%
Central Cities with Small Concentrations			
Large Cities		Small Cities	
Johnson City-Kingport-Bristol	28%	Jonseboro, AR	14%
Knoxville	33%	Steubenville, OH- Weirton, WV	15%
Eugene-Springfield	35%	Wheeling, WV	19%
Lincoln	36%	Bismarck, ND	20%
Boise City	37%	Dubuque, IA	25%
Lexington	38%	Missoula, MT	26%
Lakeland-Winter Haven	38%	Eau Claure, WI	26%
Santa Rosa	40%	Joplin, MO	27%

Source: 2000 Census.

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3. Identifying Underserved Portions of Nonmetropolitan Areas

Based on an exploration of alternative numerical criteria for identifying underserved nonmetropolitan areas using 2000 census data, HUD has concluded that the current definition of underservice is broad but efficacious and that any narrower definition of underservice would not serve congressional intent under FHEFSSA. Narrowing the definition of underservice potentially could promote more intense purchasing in needier communities, but this seems unlikely. On the contrary, the greatest marginal impact on GSE purchasing could be in the very areas that would be excluded under the alternatives.

Research comparing a tract-based system for defining underserved areas with the current county-based system, using 2000 census data, indicates that a tract-based system would result in more effective geographic targeting of GSE purchases. Although the total number of tracts designated as served and underserved areas would change very little, 23 percent of all tracts would be reclassified, reassigning approximately equal numbers of families from served to underserved and from underserved to served.

The main effect of the reclassification is to align tracts into more homogeneous and distinct groups as measured by differences in key socioeconomic and demographic characteristics such as median family income, poverty, unemployment, school dropouts, and minority population. As a result of reclassification, underserved areas stand out more as areas of lower income and economic activity and somewhat larger minority populations.

Tract-based targeting would potentially focus GSE purchases in areas with relatively greater housing needs and conditions as measured by owner-occupancy, vacancy rates, and crowding. For each of these indicators, measured need increases in underserved areas and the gap between served and underserved areas widens when tracts are used to classify areas. Most notably, homeownership would be significantly lower in underserved areas relative to served areas under a tract-based system. Currently, and contrary to expectations, homeownership actually is slightly greater in underserved areas. Driving this reversal is the fact that tracts in served counties that would be reclassified as underserved tracts have an ownership rate of just 65 percent, which is much lower even than in the underserved tracts in underserved counties, where ownership is 73 percent. Meanwhile, the served tracts in served and underserved counties have the same ownership rate of 77 percent, which is significantly higher than in underserved areas.

Two groups of measures of housing conditions—housing quality and affordability—exhibit less clear-cut results from applying tracts. However, we conclude that these results are consistent with the ambiguous patterns discussed in chapter 4 above and do not undermine the overall conclusion that basing geographic targeting on tracts would more sharply define areas with greater housing need and adverse housing conditions.

Not surprisingly, the results from analyzing housing, socioeconomic, and demographic characteristics are further reinforced in finding that a tract-based system would better capture underserved populations and exclude served populations from geographic targeting. Defining underserved families as those in any area whose income was less than 95 percent of the reference income (or in areas with a minority population of 30 percent or more, families with incomes below 120 percent of the reference income) the use of more refined tract geography results in a 5 percentage point increase in the coverage efficiency index, from 22 to 27 percent. This reflects two improvements under a tract system: underserved areas would capture more of the nonmetropolitan "underserved" families (62 vs. 65 percent) and fewer "served" families (decreasing from 40 to 37 percent of families in underserved areas).

4. Past Performance of the GSEs

Goals Performance. In the October 2000 rule, the underserved areas goal was set at 31 percent for 2001–03. Effective on January 1, 2001, several changes in counting requirements came into effect for the undeserved areas goal, as follows: (a) "bonus points" (double credit) for purchases of mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; (b) a "temporary adjustment factor" (1.35 units credit) for Freddie Mac's purchases of mortgages on large (more than 50 unit) multifamily properties; and (c) eligibility for purchases of certain qualifying government-backed loans to receive goal credit. Under these counting rules, as shown in Figure B.2, Fannie Mae's performance in 2001 was 32.6 percent and Freddie Mac's performance was 31.7 percent; thus both GSEs surpassed the goal of 31 percent.

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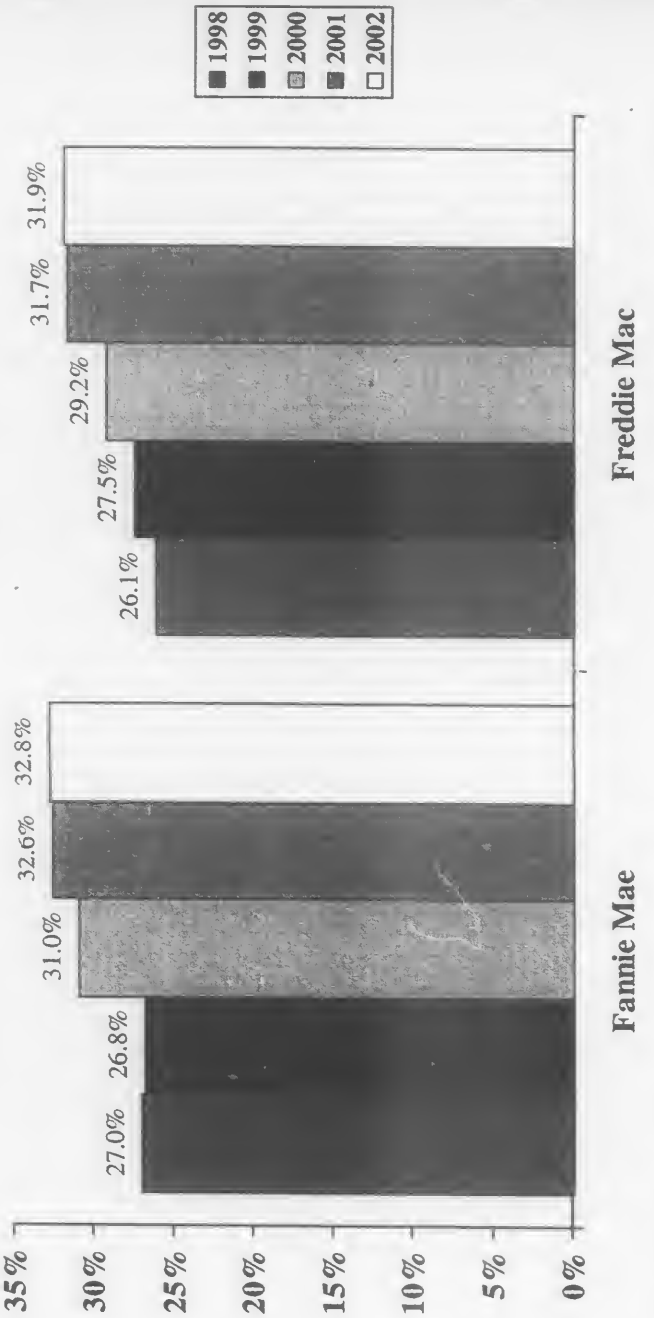
Figure B.2

Mortgage Purchases in Underserved Areas



Underserved Areas Housing Goal was 24% of units financed for 1998-2000 and 31% for 2001-02.

Source: HUD analysis of GSEs' loan-level data. Due to changes in goal counting procedures in 2001, performance in 2001-02 is not strictly comparable with performance in 1998-2000, as discussed in text.

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Counting requirements (a) and (b) expired at the end of 2003, while (c) will remain in effect after that. If this counting approach—without the bonus points and the "temporary adjustment factor"—had been in effect in 2000 and 2001, and the GSEs' had purchased the same mortgages that they actually did purchase in both years, then Fannie Mae's performance would have been 31.0 percent in 2000, 30.4 percent in 2001, and 30.2 percent in 2002. Freddie Mac's performance would have been 29.2 percent in 2000, 28.2 percent in 2001, and 29.4 percent in 2002. Therefore, Fannie Mae would have just matched the underserved areas goal of 30 percent in 2000 and fallen short in 2001 and 2002, while Freddie Mac would have fallen short of the goal in 2000–2002.

The above performance figures are for underserved areas (census tracts in metropolitan areas and counties in non-metropolitan areas) defined in terms of 1990 Census geography. Switching to 2000 Census data increases the coverage of underserved areas, which increases the share of the GSEs' purchases in underserved areas by approximately 5 percentage points. Based on 2000 Census geography, and excluding counting requirements (a) and (b) then Fannie Mae 's performance would have been 38.1 percent in 2000, 36.6 percent in 2001, and 35.9 percent in 2002. Freddie Mac's performance would have been 35.1 percent in 2000, 33.5 percent in 2001, and 33.6 percent in 2002.

Single-Family-Owner Home Purchase Mortgages. Sections E.9 of Appendix A and D.2 of this appendix compared the GSEs' funding of home purchase loans in underserved areas with originations by lenders in primary market. To take advantage of HMDA and GSE data going back to 1993, the analysis was conducted using 1990 Census tract geography. While both GSEs have improved their performance since 1993, they have both lagged the conventional conforming market in providing affordable loans to underserved areas. The 1990-based analysis shows that the two GSEs have engaged in very different patterns of funding—Freddie Mac has been much less likely than Fannie Mae to fund home loans in underserved neighborhoods. HUD will begin defining underserved areas based on 2000 Census geography and new OMB definitions of metropolitan areas in 2005, the first year of the proposed rule. As noted above, the 2000-based definition of underserved areas includes 5,372 more census tracts in metropolitan areas than the 1990-based definition, which means the GSE-market comparisons need to be updated to incorporate tract designations from the 2000 Census. Therefore, for the years 1999, 2000, 2001, and 2002, HUD used various apportionment techniques to re-allocate 1990-based GSE and HMDA data into census tracts as defined by the 2000 Census. Switching to the 2000-based tracts increases the underserved area share of market originations by 5.7 percentage points. Between 1999 and 2002, 31.5 percent of mortgage originations (without B&C loans) were originated in underserved tracts based on 2000 geography, compared with 25.8 percent based on 1990 geography. As shown in Table B.8 of Section D.2, the underserved areas share of each GSE's purchases also rises by approximately 5.5 percentage points. Thus, conclusions about the GSEs' performance relative to the market are similar whether the analysis is conducted in terms of 2000 Census geography or 1990 Census geography.

The analysis for home purchase loans based on 2000 Census geography will be summarized here (see Section D.2 of this appendix for a similar analysis using 1990-based geography):

Year	Freddie Mac (percent)	Fannie Mae (percent)	Market (w/o B&C) (percent)
1999	26.1	27.0	31.4
2000	27.4	29.9	32.9
2001	27.4	30.8	31.6
2002	31.7	32.3	32.3
1999–2002 (average)	28.3	29.5	31.5
1996–2001 (estimate)	27.1	29.0	31.1

Between 1999 and 2002, 28.3 percent of Freddie Mac's purchases and 29.5 percent of Fannie Mae's purchases financed properties in underserved neighborhoods, compared with 31.5 percent home purchase loans originated in the conventional conforming market (excluding B&C loans). Thus, Freddie Mac performed at 90 percent of the market level, while Fannie Mae performed at 94 percent of the market level—both results similar to those reported above for underserved areas based on 1990 Census geography. The 2000-based results also show that Fannie Mae has improved its performance and matched the primary market in funding underserved areas during 2002. The share of Fannie Mae's purchases going to underserved areas increased from 27.0 in 1999 to 32.3 percent in 2002, which placed it at the market level. However, the 2000-based results show that, like Freddie Mac, Fannie Mae's longer-term performance (since 1996) as well as its recent average performance (1999 to 2001) has consistently been below market levels. But, it is encouraging that Fannie Mae significantly improved its performance relative to the market during the first two years of HUD's higher housing goal levels. (See Section D.2 for the method of estimating the 1996–2002 average results.)

5. Ability To Lead the Single-Family-Owner Market: A Subgoal for Underserved Areas

The Secretary believes the GSEs can play a leadership role in underserved markets. Thus, as discussed in Section D.2, the Department is proposing to establish a subgoal of 33 percent for each GSE's acquisitions of home purchase loans for single-family-owner properties located in the underserved census tracts of metropolitan areas in 2005, rising to 34 percent in 2006 and 35 percent in both 2007 and 2008. If the GSEs meet this subgoal, they will be leading the primary market by about 1.5 percentage points in 2005 and 3.5 percentage points in 2007–2008, based on historical data. As discussed above, underserved areas accounted for an average of 31.5 percent of home purchase loans originated in the conventional conforming market of metropolitan areas (computed over 1999–2002 or over 2001–2002). To reach the 33-percent (35-percent) subgoal for 2005 (2007–2008), both GSEs would have to improve their performance—Fannie Mae by 1.9 (3.9) percentage points over its average performance of 31.1 percent during 2001 and 2002, and by 0.7 (2.7) percentage points over its performance of 32.3 percent in 2002; and Freddie Mac by 3.4 (5.4) percentage points over its average performance of 29.6 percent in 2001 and 2002, and by 1.3 (2.3) percentage points over its performance of 31.7 percent in 2002. Loans in the B&C portion of the subprime market are excluded from the market average of 31.5 percent for 1999–2001.

The subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas. HMDA data for non-metropolitan counties are not reliable enough to serve as a market benchmark. The Department is also setting home purchase subgoals for the other two goals-qualifying categories, as explained in Appendices A and C.

The approach taken is for the GSEs to obtain their leadership position by staged increases in the underserved areas subgoal; this will enable the GSEs to take new initiatives in a correspondingly staged manner to achieve the new subgoal each year. Thus, the increases in the underserved areas subgoal are sequenced so that the GSEs can gain experience as they improve and move toward the new higher subgoal targets.

Appendix A discusses in some detail the factors that the Department considered when setting the subgoal for low- and moderate-income loans. Several of the considerations were general in nature—for example, related to the GSEs' overall ability to lead the single-family-owner market—while others were specific to the low-mod subgoal. Because the reader can refer to Appendix A, this appendix provides a briefer discussion of the more general factors. The specific considerations that led to the subgoal for underserved areas can be organized around the following four topics:

(1) *The GSEs have the ability to lead the market.* As discussed in Appendix A, the GSEs have the ability to lead the primary market for single-family-owner loans, which is their "bread-and-butter" business. Both GSEs have been dominant players in the home purchase market for years, funding 57 percent of the single-family-owner mortgages financed between 1999 and 2002. Through their many new product offerings and their various partnership initiatives, the GSEs have shown that they have the capacity to operate in underserved neighborhoods. They also have the staff expertise and financial resources to make the extra effort to lead the primary market in funding single-family-owner mortgages in undeserved areas.

(2) *The GSEs have lagged the market.* Even though they have the ability to lead the market, they have not done so, as discussed above. The type of improvement needed to meet this new underserved area subgoal was demonstrated by Fannie Mae during 2001 and 2002. During 2001, underserved area loans declined as a percentage of primary market originations (from 32.2 to 30.9 percent), but they increased as a percentage of Fannie Mae's purchases (from 29.1 to 29.8 percent); and during 2002, they increased further as a percentage of Fannie Mae's purchases (from 29.8 to 32.3 percent), placing Fannie Mae at the market level.

(3) *There are disparities among neighborhoods in access to mortgage credit.* There remain troublesome neighborhood disparities in our mortgage markets, even after the substantial growth in conventional lending to low-income and minority neighborhoods that accompanied the so-called "revolution in affordable lending". There is growing evidence that inner city neighborhoods are not being adequately served by mainstream lenders. Some have concluded that a dual mortgage market has developed in our nation's financing system, with conventional mainstream lenders serving white families living in the suburbs and FHA and subprime lenders serving minority families concentrated in inner city neighborhoods.[57] In addition to the unavailability of mainstream lenders, families living in these often highly-segregated neighborhoods face many additional hurdles, such as lack of cash for a down payment, credit problems, and discrimination. Immigrants and minorities, who disproportionately live in underserved areas, are projected to account for almost two-thirds of the growth in the number of new households over the next ten years. To meet the diverse and unique needs of these families, the GSEs must continue adjusting their underwriting guidelines and offering new products so that they can better serve these areas and hopefully attract more mainstream lenders into our inner city neighborhoods.

(4) *There are ample opportunities for the GSEs to improve their performance.* Mortgages are available for the GSEs to purchase in underserved areas. They can improve their performance and lead the primary market in purchasing loans in these low-income and high-minority neighborhoods. The underserved areas share of the home purchase market has consistently been around 31 percent since 1995, which suggests a degree of underlying strength in the market. According to the market share data reported in Table A.30 of Appendix A, the GSEs have been purchasing about half of new originations in underserved areas, which means there are plenty of purchase opportunities left for them in the non-GSE portion of that market. In addition, the GSEs' purchases under the subgoal are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their track record. In fact, both GSEs have often purchased seasoned loans that were used to finance properties in underserved areas (see Table A.11 in Appendix A).

To summarize, although single-family-owner mortgages comprise the "bread-and-butter" of their business, the GSEs have lagged behind the primary market in financing properties in underserved areas. For the reasons given above, the Secretary believes that the GSEs can do more to raise the share of their home loan purchases in underserved areas. This can be accomplished by building on efforts that the enterprises have already started, including their new affordable lending products, their many partnership efforts, their outreach to inner city neighborhoods, their incorporation of greater flexibility into their underwriting guidelines, and their purchases of CRA loans. A wide variety of quantitative and qualitative indicators indicate that the GSEs' have the resources and financial strength to improve their affordable lending performance enough to lead the market in underserved areas.

6. Size of the Mortgage Market for Underserved Areas

As detailed in Appendix D, the market for mortgages in underserved areas is projected to account for 35–40 percent of dwelling units financed by conventional conforming mortgages; in estimating the size of the market, HUD used alternative assumptions about future economic and market conditions that were less favorable than those that existed over the last five years. Between 1999 and 2002, the underserved areas market averaged 39 percent. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Secretary has the authority to revise the goals.

7. The Underserved Areas Housing Goal for 2005–2008

The proposed Underserved Areas Housing Goal for 2005 is 38 percent of eligible purchases, rising to 39 percent in 2006 and 40 percent in 2007 and 2008. Five percent of the seven percentage point increase in 2005 simply reflects the expanded coverage of HUD's definition in the 2000 Census tract data. The bonus points for small multifamily properties and owner-occupied 2–4 units, as well as Freddie Mac's Temporary Adjustment Factor, will no longer be in effect for goal counting purposes. It is recognized that neither GSE would have met the 38-percent target for 2005 in the past three years. Fannie Mae's performance is projected to have been 37.5 percent in 2000, 35.7 percent in 2001, and 35.0 percent in 2002, under a 2000-based underserved area goal. Freddie Mac's performance is projected to have been 34.1 percent in 2000, 32.5 percent in 2001, and 32.8 percent in 2002. However, the market for the Underserved Areas Housing Goal averaged 39 percent between 1999 and 2002. Thus, the GSEs should be able to improve their performance enough to meet these targets of 38 percent-40 percent.

The objective of HUD's proposed Underserved Areas Housing Goal is to bring the GSEs' performance to the upper end of HUD's market range estimate for this goal (35–40 percent), consistent with the statutory criterion that HUD should consider the GSEs' ability to lead the market for each Goal. To enable the GSEs to achieve this leadership, the Department is proposing modest increases in the Underserved Areas Housing Goal for 2005 which will increase further through 2008, to achieve the ultimate objective for the GSEs to lead the market under a range of foreseeable economic circumstances by 2008. Such a program of staged increases is consistent with the statutory requirement that HUD consider the past performance of the GSEs in setting the Goals. Staged increases in the Underserved Areas Housing Goal will provide the enterprises with opportunity to adjust their business models and prudently try out business strategies, so as to meet the required 2008 level without compromising other business objectives and requirements.

The analysis of this section implies that there are many opportunities for Fannie Mae and Freddie Mac to improve their overall performance on the Underserved Areas Housing Goal. The GSEs provided financing for 49 percent of the single-family and multifamily units that were financed in the conventional conforming market between 1999 and 2002. However, in the underserved areas portion of the market, the GSE's purchases represented only 41 percent of the dwelling units that were financed in the market. Thus, there appears to be ample room for the GSEs to increase their purchases of loans that qualify for the Underserved Areas Housing Goal. In addition, there are

[57] See Dan Immergluck, *Stark Differences: The Explosion of the Subprime Industry and Racial Hypersegmentation in Home Equity Lending,* Woodstock Institute, October 2000; and Daniel Immergluck and Marti Wiles, *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development,* Woodstock Institute, Chicago, IL, November 1999. For a nationl analyses, see the HUD report *Unequal Burden: Income and Racial Disparities in Subprime Lending in America,* April 2000; and Randall M. Scheesele, *Black and White Disparities in Subprime Mortgage Refinance Lending,* Housing Finance Working Paper No. HF–114, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, April 2002.

several market segments that would benefit from a greater secondary market role by the GSEs, and many of these market segments are concentrated in underserved areas.

8. Conclusions

Having considered the projected mortgage market serving low- and moderate-income families, economic, housing and demographic conditions for 2005–08, and the GSEs' recent performance in purchasing mortgages in underserved areas the Secretary has determined that the proposed annual goal of 38 percent of eligible units financed in, 2005, 39 percent in 2006 and 2007, and 40 percent in 2008 is feasible. The Secretary has also proposed a subgoal of 33 percent for the GSEs' purchases of single-family-owner mortgages in metropolitan areas, for 2005, rising to 34 percent in 2006 and 35 percent in 2007 and 2008. The Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the proposed goals and subgoals are necessary and appropriate.

Appendix C—Departmental Considerations To Establish the Special Affordable Housing Goal

A. Introduction

1. Establishment of the Goal

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) requires the Secretary to establish a special annual goal designed to adjust the purchase by each GSE of mortgages on rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very-low-income families (the Special Affordable Housing Goal).

In establishing the Special Affordable Housing Goal, FHEFSSA requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the Special Affordable Housing Goal for previous years;
2. The performance and efforts of the GSEs toward achieving the Special Affordable Housing Goal in previous years;
3. National housing needs of targeted families;
4. The ability of the GSEs to lead the industry in making mortgage credit available for low-income and very-low-income families; and
5. The need to maintain the sound financial condition of the enterprises.

2. The Goal and Subgoals

Special Affordable Housing Goal. The proposed rule provides that the Special Affordable Housing Goal will be 22 percent in 2005, 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008.

Units That Count Toward the Goal. Units that count toward the Special Affordable Housing Goal include units occupied by low-income owners and renters in low-income areas, and very low-income owners and renters. Other low-income rental units in multifamily properties count toward the goal where at least 20 percent of the units in the property are affordable to families whose incomes are 50 percent of area median income or less, or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less.

Multifamily Subgoal. HUD has established a special affordable subgoal for GSE purchases of multifamily mortgages. This subgoal is expressed in terms of a minimum annual dollar volume of multifamily mortgage purchases for units qualifying for the goal, rather than as a percentage of total units financed, as for the three housing goals. Both GSEs have consistently surpassed the multifamily subgoal since its establishment in 1996. The proposed rule increases the subgoal such that, of the total Special Affordable mortgage purchases each year, each GSE must purchase special affordable multifamily mortgages in dollar amount equal to at least 1 percent of its combined (*i.e.*, single-family and multifamily) annual average mortgage purchases over the 2000–2002 period. The proposed level of this subgoal is $5.49 billion per year for Fannie Mae and $3.92 billion per year for Freddie Mac.

Single-Family-Owner Home Purchase Subgoal. The Department proposes to establish a subgoal of 17 percent for the share of each GSE's purchases of single-family-owner home purchase mortgages that qualify as special affordable and are originated in metropolitan areas in 2005, with the proposed subgoal rising to 18 percent in 2006, and 19 percent in 2007 and 2008.

B. Consideration of the Factors

In considering the factors under FHEFSSA to establish the Special Affordable Housing Goal, HUD relied upon data gathered from the American Housing Survey through 2000, the Census Bureau's 1991 Residential Finance Survey, the 1990 and 2000 Censuses of Population and Housing, Home Mortgage Disclosure Act (HMDA) data for 1992 through 2002, and annual loan-level data from the GSEs on their mortgage purchases through 2002. Appendix D discusses in detail how these data resources were used and how the size of the conventional conforming market for this goal was estimated.

The remainder of Section C discusses the factors listed above, and Section D provides the Secretary's rationale for establishing the Special Affordable Housing Goal.

Factors 1 and 2. Data submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years, and the Performance and Efforts of the Enterprises Toward Achieving the Special Affordable Housing Goal in Previous Years

The discussions of these two factors have been combined because they overlap to a significant degree.

This section discusses each GSE's performance under the Special Affordable Housing Goal over the 1996–2002 period.[1] As explained in Appendix A, the data presented are "official HUD results" which, in some cases, differ from goal performance reported by the GSEs in the Annual Housing Activities Reports (AHARs) that they submit to the Department.

The main finding of this section is that both Fannie Mae and Freddie Mac surpassed the Department's Special Affordable Housing Goals for each of the seven years during this period. Specifically:

- The goal was set at 12 percent for 1996; Fannie Mae's performance was 15.4 percent and Freddie Mac's performance was 14.0 percent.
- The goal was set at 14 percent for 1997–2000. Freddie Mac's performance was 15.2 percent in 1997, 15.9 percent in 1998, 17.2 percent in 1999, and 20.7 percent in 2000; and Fannie Mae's performance was 17.0 percent in 1997, 14.3 percent in 1998, 17.6 percent in 1999, and 19.2 percent in 2000.
- In HUD's Housing Goals 2000 Final Rule, the special affordable goal was set at 20 percent for 2001–03. As of January 1, 2001, several changes in counting requirements took effect for the special affordable goal, as follows: "bonus points" (double credit) for purchases of goal-qualifying mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; a "temporary adjustment factor" (1.20 units credit, subsequently increased by Congress to 1.35 units credit) for Freddie Mac's purchases of goal-qualifying mortgages on large (more than 50-unit) multifamily properties; changes in the treatment of missing data; a procedure for the use of imputed or proxy rents for determining goal credit for multifamily mortgages; and changes regarding the "recycling" of funds by loan originators. These changes are explained below. Fannie Mae's performance was 21.6 percent in 2001 and 21.4 percent in 2002, and Freddie Mac's performance was 22.6 percent in 2001 and 21.4 percent in 2002, thus both GSEs surpassed this higher goal in both years. This section discusses the October 2000 counting rule changes in detail and provides data on what goal performance would have been in 2001–02 without these changes.[2]

In addition, HUD has established a special affordable subgoal for GSE purchases of multifamily mortgages. This subgoal is expressed in terms of a minimum annual dollar volume of multifamily mortgage purchases for units qualifying for the goal, rather than as a percentage of total units financed, as for the three housing goals. As discussed below, both GSEs surpassed the multifamily subgoal in each of these years.

a. Performance on the Special Affordable Housing Goal in 1996–2002

HUD's Housing Goals 1995 Final Rule specified that in 1996 at least 12 percent of the number of units financed by each of the GSEs that were eligible to count toward the Special Affordable Housing Goal should qualify for the goal (that is, be for very low-income families or low-income families in low-income areas), and at least 14 percent should qualify in 1997–2000. HUD's October

[1] Performance for the 1993–95 period was discussed in HUD's Housing Goals 2000 Final Rule.

[2] To separate out the effects of changes in counting rules that took effect in 2001, this section also compares performance in 2001 to estimated performance in 2000 if the 2001 counting rules had been in effect in that year.

2000 rule made various changes in the goal counting rules, as discussed below, and increased the Special Affordable Housing Goal to 20 percent for 2001–03.

In the December 1995 rule, the minimum special affordable multifamily subgoals for 1996–2000 were set at 0.8 percent of the total dollar volume of each GSE's mortgage purchases in 1994, or $1.29 billion annually for Fannie Mae and $0.99 billion annually for Freddie Mac. These subgoals were increased for 2001–03 in the October 2000 rule, to $2.85 billion annually for Fannie Mae and $2.11 billion annually for Freddie Mac, or 1.0 percent of the average dollar volume of each GSE's mortgage purchases over the 1997–99 period.

Table C.1 and Figure C.1 show performance on the special affordable goal and the special affordable multifamily subgoal over the 1996–2002 period, based on HUD's analysis. The table shows that Fannie Mae surpassed the goals by 3.4 percentage points and 3.0 percentage points in 1996 and 1997, respectively, while Freddie Mac surpassed the goals by narrower margins, 2.0 and 1.2 percentage points. In 1998 Fannie Mae's performance fell by 2.7 percentage points, while Freddie Mac's performance continued to rise, by 0.7 percentage point, thus for the first time Freddie Mac outperformed Fannie Mae on this goal. Freddie Mac showed a gain in performance to 17.2 percent in 1999, while Fannie Mae exhibited an even greater gain, to 17.6 percent.

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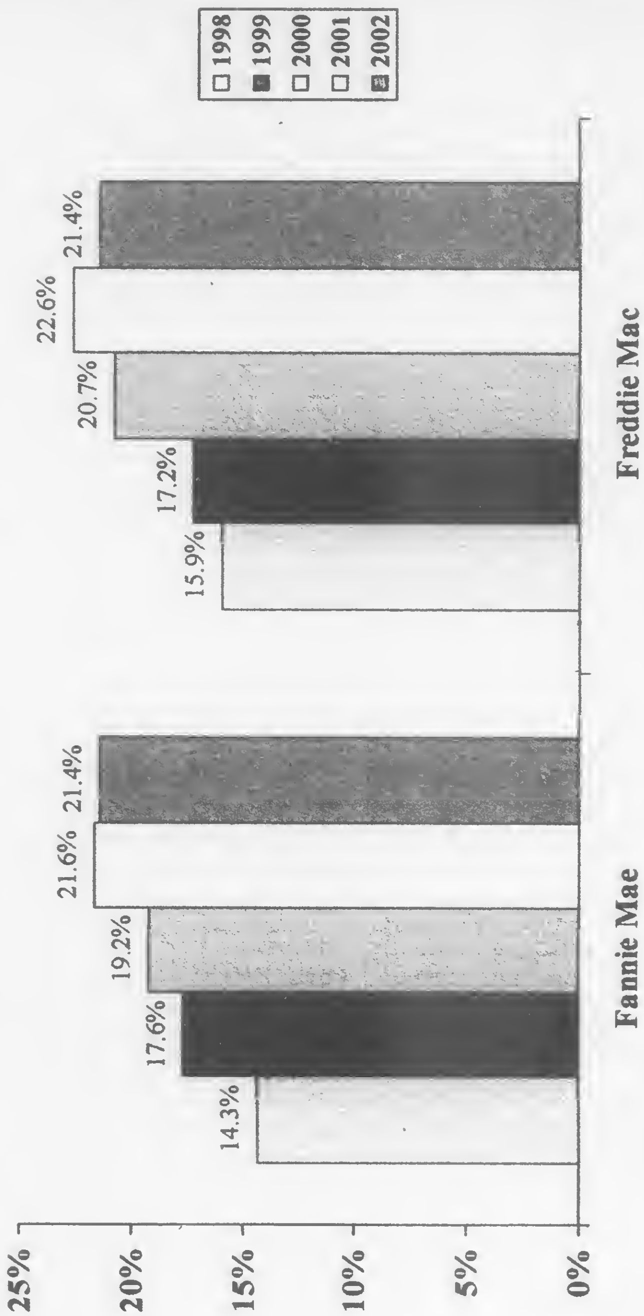
Table C.1
GSEs' Performance on Special Affordable Goal, 1996-2002

	1996	1997	1998	1999	2000	2001*	2002*
Special Affordable Goal	12%	14%	14%	14%	14%	20%	20%
Multifamily Subgoal (in billions of $):							
Fannie Mae	$1.29	$1.29	$1.29	$1.29	$1.29	$2.85	$2.85
Freddie Mac	$0.99	$0.99	$0.99	$0.99	$0.99	$2.11	$2.11
Fannie Mae:							
Units Eligible to Count Toward Goal	1,852,233	1,748,044	3,486,040	2,935,075	2,138,166	4,541,473	5,849,381
Special Affordable Units	285,642	296,366	499,948	517,169	411,239	979,168	1,252,871
Percent Special Affordable	15.4%	17.0%	14.3%	17.6%	19.2%	21.6%*	21.4%*
Special Affordable Multifamily Purchases	$2.37	$3.19	$3.53	$4.06	$3.79	$7.36	$7.57
Ratio to Subgoal	1.84	2.47	2.74	3.15	2.94	2.58	2.66
Freddie Mac:							
Units Eligible to Count Toward Goal	1,299,589	1,175,271	2,658,174	2,228,906	1,580,868	3,238,781	4,275,957
Special Affordable Units	181,505	178,736	422,900	383,329	327,793	730,611	913,021
Percent Special Affordable	14.0%	15.2%	15.9%	17.2%	20.7%	22.6%*	21.4%*
Special Affordable Multifamily Purchases	$1.06	$1.21	$2.69	$2.26	$2.40	$4.65	$5.22
Ratio to Subgoal	1.07	1.22	2.72	2.28	2.42	2.20	2.47

* Performance in 2001-2002 not directly comparable with performance in 1996-2000 due to changes in goal counting rules, as discussed in tex and shown in Table C.2.

Figure C.1
Special Affordable Mortgage Purchases



Special Affordable Goal was 14% of units financed for 1998-2000 and 20% for 2001 and 2002.

Source: HUD analysis of GSEs' loan-level data. Due to changes in goal counting procedures in 2001, performance in 2001-02 is not strictly comparable with performance in 1998-2000, as discussed in text.

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Both GSEs exhibited sharp gains in goal performance in 2000—Fannie Mae's performance increased by 1.6 percentage points, to a record level of 19.2 percent, while Freddie Mac's performance increased even more, by 3.5 percentage points, which also led to a record level of 20.7 percent. Fannie Mae's performance was 21.6 percent in 2001 and 21.4 percent in 2002; Freddie Mac's performance was 22.6 percent in 2001 and 21.4 percent in 2002. However, as discussed below, using consistent accounting rules for 2000–02, each GSE's Special Affordable Housing Goal performance in 2001 was below its performance in 2000, and in 2002 each enterprise's performance was below its 2001 performance level.

With regard to the special affordable multifamily subgoal, Fannie Mae's purchases have exceeded the subgoal by wide margins in all years, with performance ranging from 184 percent of the goal in 1996 to 315 percent of the goal in 1999. Fannie Mae's subgoal was more than doubled in the October 2000 rule, to a minimum of $2.85 billion in each year from 2001 through 2003, but its qualifying purchases amounted to $7.36 billion, or 258 percent of the goal, in 2001, and $7.57 billion, or 260 percent of the goal, in 2002.

Freddie Mac has also exceeded its special affordable multifamily subgoals in every year, albeit by smaller margins than Fannie Mae. In 1996 Freddie Mac's special affordable multifamily mortgage purchases amounted to $1.06 billion, or 107 percent of the goal. This ratio rose to 122 percent in 1997, and exceeded 200 percent for each year from 1998 through 2000. Freddie Mac's subgoal was more than doubled in the October 2000 rule, to a minimum of $2.11 in each year from 2001 through 2003, but its qualifying purchases amounted to $4.65 billion, or 220 percent of the goal, in 2001, and $5.22 billion, or 247 percent of the goal, in 2002.

The official figures for Freddie Mac's special affordable goal performance presented above differ from the corresponding figures presented by Freddie Mac in its Annual Housing Activity Reports to HUD by 0.1–0.2 percentage point for 1996–2000, reflecting minor differences in the application of counting rules. The official figures for special affordable goal performance by both GSEs are the same as those submitted by the enterprises for both GSEs for 2001, and for Fannie Mae for 2002. However, for 1996–2000, HUD's official special affordable goal performance figures for Fannie Mae were approximately 1–3 percentage points lower than the corresponding figures reported by the enterprise. This was due to differences between HUD and Fannie Mae in the application of counting requirements applicable to purchases of portfolios of seasoned loans, based on a statutory requirement that the proceeds of such GSE purchases by the loan sellers should be "recycled" in order for the GSE to receive Special Affordable goal credit.[3] This discrepancy did not persist in 2001–02 because of a change in counting requirements, described below. And for 2002, HUD's official goal performance figure was 21.4 percent, somewhat above the figure of 20.6 percent submitted to the Department by Freddie Mac.

Fannie Mae's performance on the Special Affordable Housing Goal surpassed Freddie Mac's in 1996–97. This pattern was reversed in 1998, as Freddie Mac surpassed Fannie Mae in goal performance for the first time, though by only 0.2 percentage point. This improved relative performance of Freddie Mac was due to its increased purchases of multifamily loans, as it re-entered that market, and to increases in the goal-qualifying shares of its single-family mortgage purchases. However, Fannie Mae again surpassed Freddie Mac in special affordable goal performance in 1999, 17.6 percent to 17.2 percent; Freddie Mac regained the lead in 2000, 20.7 percent to 19.2 percent. Freddie Mac's official performance also exceeded Fannie Mae's official performance in 2001, but this reflected a difference in the counting rules applicable to the two GSEs that was enacted by Congress; if the same counting rules were applied to both GSEs, Fannie Mae's performance would have exceeded Freddie Mac's performance, by 21.6 percent to 21.1 percent.

In 2002, Freddie Mac's performance on the special affordable goal was the same as Fannie Mae's performance (21.4 percent), even though Freddie Mac had the advantage of the Temporary Adjustment Factor, which did not apply to performance by Fannie Mae. Freddie Mac's performance would have trailed Fannie Mae's without this factor, and in fact Freddie Mac would have only slightly exceeded the goal, at 20.2 percent.

b. Changes in the Goal Counting Rules for 2001–03

Several changes in the counting rules underlying the calculation of special affordable goal performance took effect beginning in 2001. Most of these also applied to the low- and moderate-income goal and are discussed in Appendix A; only brief summaries of those changes are given here:

• *Bonus points for multifamily and single-family rental properties.* Each qualifying unit in a small multifamily property counted as two units in the numerator in calculating special affordable goal performance on all of the goals for 2001–03. And, above a threshold equal to 60 percent of the average number of qualifying rental units financed in owner-occupied properties over the preceding five years, each qualifying unit in a 2–4 unit owner-occupied property also counted as two units in the numerator in calculating goal performance.

• *Freddie Mac's Temporary Adjustment Factor.* Freddie Mac received a "Temporary Adjustment Factor" of 1.35 units of credit for each qualifying unit financed in "large" multifamily properties (*i.e.*, those with 51 or more units) in the numerator in calculating special affordable goal performance for 2001–03.[4] This factor did not apply to special affordable units in large multifamily properties whose mortgages were financed by Fannie Mae during this period.

• *Missing data for single-family properties.* The GSEs may exclude loans with missing borrower income from the denominator if the property is located in a below-median income census tract, subject to a ceiling of 1 percent of total owner-occupied units financed. The enterprises are also allowed to exclude single-family rental units with missing rental information from the denominator in calculating performance for the special affordable goal.

• *Missing data and proxy rents for multifamily properties.* If rent is missing for multifamily units, the GSEs may apply "proxy rents," up to a ceiling of 5 percent of total multifamily units financed, in determining whether such units qualify for the special affordable goal. If such proxy rents cannot be estimated, these multifamily units are excluded from the denominator in calculating performance under these goals.

• *Change in "recycling" requirements.* Under Section 1333(b)(1)(B) of FHEFSSA, if a GSE acquires a portfolio of mortgages originated in a previous year (that is, seasoned mortgages) that qualify under the Special Affordable Housing goal, the seller must be "engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal" and such purchases or refinancings must "support additional lending for housing that otherwise qualifies under such goal" in order to receive credit toward the goal. This has been referred to as the "recycling requirement." The 2000 rule both clarified the conditions under which HUD would regard these statutory conditions to be satisfied and established certain categories of lenders that would be presumed to meet the recycling requirements. These included BIF-insured and SAIF-insured depository institutions that are regularly in the business of mortgage lending and which are subject to, and have received at least a satisfactory Community Reinvestment Act performance evaluation rating under specified conditions.[5]

c. Effects of Changes in the Counting Rules on Goal Performance

Because of the changes in special affordable goal counting rules that took effect in 2001, direct comparisons between official goal performance in 2000 and 2001–02 are somewhat of an "apples-to-oranges comparison." For this reason, the Department has calculated what performance would have been in 2000 under the 2001–03 rules; this may be compared with official performance in 2001–02—an "apples-to-apples

[3] During 1996–2000 Freddie Mac took steps to acquire representations and warranties from lenders to attest that they were "recycling" the proceeds from the sales of qualifying loans. Fannie Mae did not take such steps; rather, Fannie Mae excluded such loans from the denominator in making its own calculations of its special affordable goal performance. In 1996–2000 HUD counted all eligible loans in the denominator, and, in the absence of measures to verify "recycling" by Fannie Mae, did not award credit in the numerator of the special affordable goal for most of Fannie Mae's seasoned mortgage purchases.

[4] See *Congressional Record*, December 15, 2000, pp. H12295–96.

[5] The revised requirements are codified at 24 CFR 81.14(e)(4). The changes are discussed in detail in the rule preamble, 68 FR 65074–76 (October 31, 2000).

comparison." HUD has also calculated what performance would have been in 2001–02 under the 1996–2000 rules; this may be compared with official performance in 2000—an "oranges-to-oranges comparison." These comparisons are presented in Table C.2.

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Table C.2

Effects of Counting Rule Changes on the GSEs' Performance on the Special Affordable Goal

GSE	Year	Baseline A*	Technical Changes[1]	Baseline B*	Bonus Points: Small MF[2]	Bonus Points: SF Rental[3]	Temporary Adjustment Factor (TAF)[4]	Baseline C*
Fannie Mae	1999	**17.6%**	0.8%	18.5%	0.2%	0.6%	NA	19.3%
	2000	**19.2%**	2.2%	21.4%	0.2%	0.5%	NA	22.2%
	2001	18.6%	1.6%	20.2%	0.4%	0.9%	NA	**21.6%**
	2002	18.6%	1.3%	19.9%	0.7%	0.9%	NA	**21.4%**
	Change, 2001-02	0.0%	-0.3%	-0.3%	0.3%	0.0%	NA	-0.2%
Freddie Mac	1999	**17.2%**	0.2%	17.4%	0.1%	0.4%	1.3%	19.2%
	2000	**20.7%**	0.3%	21.0%	0.1%	0.6%	1.8%	23.4%
	2001	19.1%	0.2%	19.3%	1.1%	0.7%	1.4%	**22.6%**
	2002	18.4%	0.2%	18.6%	0.7%	0.9%	1.2%	**21.4%**
	Change, 2001-02	-0.7%	0.0%	-0.7%	-0.4%	0.2%	-0.2%	-1.2%

Details may not add to total due to rounding.

*Note: Baseline A represents performance under 1996-2000 scoring, thus figures for 1999-2000 in bold are official performance in those years. Baseline B adjusts Baseline A for technical changes in counting rules. Baseline C represents performance under 2001-03 scoring, thus figures for 2001 in bold are official performance in that year. Scoring of loans in this table is based on the 1990 Census and pre-2003 MSAs.

[1] *Technical changes* include credit for purchases of certain qualifying government-backed loans, exclusions of loans with missing information from the denominator in calculating performance, and the use of imputed or proxy rent for multifamily properties.

[2] *Small multifamily bonus points*: For 2001-03, every qualifying unit in a 5-50 unit multifamily property counts as two units in the numerator in calculating goal performance.

[3] *Single-family rental bonus points*: Above a threshold, every qualifying unit in a 2-4 unit property in which one unit is owner-occupied and the other units are rental counts as two units in the numerator in calculating goal performance for 2001-03.

[4] *Temporary adjustment factor (TAF)*: In December 2000 Congress enacted a provision whereby every qualifying unit in a large (> 50 unit) multifamily property counts as 1.35 units in calculating goal performance for Freddie Mac for 2001-03. This provision does not apply to goal performance for Fannie Mae.

Specifically, Table C.2 shows performance under the special affordable goal in three ways. *Baseline A* presents performance under the counting rules in effect for 1996–2000. *Baseline B* incorporates the technical changes in counting rules—changes in the treatment of missing data (including use of proxy rents), and changes in procedures related to the "recycling" requirement. *Baseline C* incorporates in addition to the technical changes the bonus points and, for Freddie Mac, the temporary adjustment factor. Baseline B corresponds to the counting approach proposed in this rule to take effect in 2005. Boldface figures under Baseline A for 1999–2000 and under Baseline C for 2001–02 indicate official goal performance based on the counting rules in effect in those years—*e.g.*, for Freddie Mac, 17.2 percent in 1999, 20.7 percent in 2000, 22.6 percent in 2001, and 21.4 percent in 2002.

• *Performance on the Special Affordable Housing Goal under 1996–2000 Counting Rules Plus Technical Changes.* If the "Baseline B" counting approach had been in effect in 2000–02 and the GSEs' had purchased the same mortgages that they actually did purchase in those years, Fannie Mae would have surpassed the special affordable goal in both 2000 and 2001, but not in 2002, while Freddie Mac would have surpassed the goal in 2000 but fallen short in both 2001 and 2002. Specifically, Fannie Mae's performance would have been 21.4 percent in 2000, 20.2 percent in 2001, and 19.9 percent in 2002. Freddie Mac's performance would have been 21.0 percent in 2000, 19.3 percent in 2001, and 18.6 percent in 2002.

• *Performance on the Special Affordable Housing Goal under 2001–2003 Counting Rules.* If the 2001–03 counting rules had been in effect in 2000–02 and the GSEs' had purchased the same mortgages that they actually did purchase in that year (*i.e.*, abstracting from any behavioral effects of "bonus points," for example), both GSEs would have substantially surpassed the special affordable goal in all three years, but both GSEs' performance figures would have deteriorated somewhat from 2000 to 2001 and also from 2001 to 2002. Specifically, Fannie Mae's "Baseline C" performance would have been 22.2 percent in 2000, 21.6 percent in 2001, and 21.4 percent in 2002. Freddie Mac's performance would have been 23.4 percent in 2000, 22.6 percent in 2001, and 21.4 percent in 2002. Measured on this consistent basis, then, Fannie Mae's performance fell by 0.6 percentage point in 2001 and 0.2 percentage point in 2002. Freddie Mac's "Baseline C" performance fell by 0.8 percentage point in 2001 and 1.2 percent in 2002. These reductions were primarily due to 2001–02 being years of heavy refinance activity.

Details of Effects of Changes in Counting Rules on Goal Performance in 2001–02. As discussed above, counting rule changes that took effect in 2001 had significant impacts on the performance of both GSEs on the special affordable goal in 2001—3.0 percentage points for Fannie Mae and 3.5 percentage points for Freddie Mac. This section breaks down the effects of these changes on goal performance for both GSEs; results are shown in Table C.2.

• *Freddie Mac.* The largest impact of the counting rule changes on Freddie Mac's goal performance was due to the application of the temporary adjustment factor for purchases of mortgages on large multifamily properties, as enacted by Congress; this added 1.4 percentage points to goal performance in 2001, as shown in Table C.2. Bonus points for purchases of mortgages on small multifamily properties added 1.1 percentage points to performance, and bonus points for purchase of mortgages on owner-occupied 2–4 unit rental properties added 0.7 percentage point to performance. The remaining impact (0.2 percentage point) was due to technical changes in counting rules—primarily, the exclusion of single-family units with missing information from the denominator in calculating goal performance. Changes in the Department's counting rules related to "recycling" did not play a role in Freddie Mac's performance on the special affordable goal. These same patterns also generally appeared in 2002.

• *Fannie Mae.* The temporary adjustment factor applied to Freddie Mac's goal performance, but not to Fannie Mae's performance, thus counting rule changes had less impact on its performance than on Freddie Mac's performance in 2001. The largest impacts of the counting rule changes on Fannie Mae's goal performance were due to the application of bonus points for purchases of mortgages on owner-occupied 2–4 unit rental properties, which added 0.9 percentage point to performance; bonus points for purchases of mortgages on small multifamily properties, which added 0.4 percentage point to performance; and technical changes, which added 1.6 percentage points to performance—this included the change in the Department's rules regarding "recycling" and the exclusion of single-family units with missing information from the denominator in calculating goal performance.[6] The use of proxy rents for multifamily properties played a minor role in determining Fannie Mae's special affordable goal performance. These same patterns also appeared in 2002.

d. Bonus Points for the Special Affordable Housing Goal

As discussed above and in Appendix A, the Department established "bonus points" to encourage the GSEs to step up their activity in 2001–03 in two segments of the mortgage market—the small (5–50 unit) multifamily mortgage market, and the market for mortgages on 2–4 unit properties where 1 unit is owner-occupied and 1–3 units are occupied by renters. Bonus points did not apply to purchases of mortgages for owner-occupied 1-unit properties, for investor-owned 1–4 unit properties, and for large (>50-unit) properties, although as also discussed above, a "temporary adjustment factor" applied to Freddie Mac's purchases of qualifying mortgages on large multifamily properties.

Bonus points for small multifamily properties. Each unit financed in a small multifamily property that qualified for any of the housing goals was counted as two units in the numerator (and one unit in the denominator) in calculating goal performance for that goal. For example, if a GSE financed a mortgage on a 40-unit property in which 10 of the units qualified for the special affordable goal, 20 units would be entered in the numerator and 40 units in the denominator for this property in calculating goal performance.

Fannie Mae financed 37,449 units in small multifamily properties in 2001 that were eligible for the special affordable goal, and 58,277 such units in 2002—a two-year increase of more than 700 percent from the 7,196 such units financed in 2000. Small multifamily properties also accounted for a greater share of Fannie Mae's multifamily business in 2001–02—7.4 percent of total multifamily units financed in 2001 and 13.2 percent in 2002, up from 2.5 percent in 2000. However, HUD's 2000 rule reported information from the 1991 Residential Finance Survey that small multifamily properties accounted for 37 percent of all multifamily units, thus Fannie Mae was still less active in this market than in the market for large multifamily properties.

Within the small multifamily market, there was no evidence that Fannie Mae targeted affordable properties to a greater extent in 2001–02 than in 2000. That is, 61 percent of Fannie Mae's small multifamily units qualified for the special affordable goal in 2000; this fell to 46 percent in 2001 and 52 percent in 2002.

Freddie Mac financed 50,299 units in small multifamily properties in 2001 that were eligible for the special affordable goal and 43,979 such units in 2002, a two-year increase of more than 1300 percent from the 2,996 such units financed in 2000. Small multifamily properties also accounted for a significantly greater share of Freddie Mac's multifamily business in 2001–02—16.0 percent of total multifamily units financed in 2001 and 13.2 percent in 2002, up from 1.8 percent in 2000.

Within the small multifamily market, there was some evidence that Freddie Mac targeted affordable properties to a greater extent in 2001 than in 2000. That is, 55 percent of Freddie Mac's small multifamily units qualified for the special affordable goal in 2000; this rose to 73 percent in 2001 and 64 percent in 2002.

In summary, then, there is evidence that bonus points for small multifamily properties had an impact on Fannie Mae's role in this market in 2001–02 and an even larger impact on Freddie Mac's role in this market. In addition, Fannie Mae has announced a program to increase its role in this market further in future years.[7]

Bonus points for single-family rental properties. Above a threshold, each unit financed in a 2–4 unit property with at least one owner-occupied unit (referred to as "OO24s" below) that qualified for any of the housing goals was counted as two units in the numerator (and one unit in the denominator) in calculating goal performance

[6] Exclusion of loans with missing information had a greater impact on Fannie Mae's goal performance than on Freddie Mac's goal performance.

[7] "Fannie Courting Multifamily Sellers; Small Banks Balking," *American Banker*, January 13, 2003, p. 1.

for that goal in 2001–03. The threshold was equal to 60 percent of the average number of such qualifying units over the previous five years. For example, Fannie Mae financed an average of 24,780 special affordable units in these types of properties between 1996 and 2000, and 55,118 such units in 2001. Thus Fannie Mae received 40,250 bonus points in this area in 2001—that is, 55,118 minus 60 percent of 24,780. So 95,368 units were entered in the numerator for these properties in calculating special affordable goal performance.

Fannie Mae financed 176,369 units in OO24s that were eligible for the special affordable goal in 2001 and 229,827 such units in 2002, a two-year increase of nearly 200 percent from the 77,985 such units financed in 2000. However, Fannie Mae's total single-family business increased at approximately the same rate as its OO24 business in 2001 and 2002, thus the share of this business accounted for by OO24s was the same in 2001–02 as in 2000—4 percent.

Within the OO24 market, there was no evidence that Fannie Mae targeted special affordable properties to a greater extent in 2001–02 than in 2000. That is, approximately 30 percent of Fannie Mae's OO24 units qualified for the special affordable goal in each of these three years.

Freddie Mac financed 96,204 units in OO24s that were eligible for the special affordable goal in 2001 and 146,242 such units in 2002, a two-year increase of nearly 200 percent from the 49,993 such units financed in 2000. However, Freddie Mac's total single-family business increased at approximately the same rate as its OO24 business between 2000 and 2002, thus the share of this business accounted for by OO24s was the same in 2002 as in 2000—4 percent.

As for Fannie Mae, within the OO24 market there was no evidence that Freddie Mac targeted special affordable properties to a greater extent in 2001–02 than in 2000. That is, approximately 36 percent of Freddie Mac's OO24 units qualified for the special affordable goal in each of these three years.

e. Effects of 2000 Census on Scoring of Loans Toward the Special Affordable Housing Goal

Background. Scoring of housing units under the Special Affordable Housing Goal is based on data for mortgagors' incomes for owner-occupied units, rents for rental units, area median incomes, and, for units that are in the low-income but not the very low-income range, decennial census data used to determine whether the median income for the area where the property is located is in the low-income range. Specifically, for single-family owner-occupied units scoring is based on—

• The mortgagors' income at the time of mortgage origination

• The median income of an area specified in the same way as for the Low- and Moderate-Income Housing Goal, that is: (i) For properties located in Metropolitan Statistical Areas (MSAs) the area is the MSA; and (ii) for properties located outside of MSAs, the area is the county or the non-metropolitan portion of the State in which the property is located, whichever has the larger median income, as of the year of mortgage origination (which may be for the current year or a prior year).

• Also, if the property is located in a Metropolitan Statistical Area (MSA), the determination for purposes of the Special Affordable Housing Goal involves data on median income of the MSA; or if the property is located elsewhere, the median income of the county or the non-metropolitan portion of the State in which the property is located, whichever is larger, as of the most recent decennial census.

Analogous specifications to those detailed in Appendix A for the Low- and Moderate-Income Housing Goal are applied in the case of the Special Affordable Housing Goal for rental units in single-family properties with rent data available (assuming no income data available for actual or prospective tenants), for rental units in multifamily properties where rent data are available, and for rental units in multifamily properties where rent data are not available.

Thus, scoring loans under the Special Affordable Housing Goal requires a data series showing annual median incomes for MSAs, non-metropolitan counties, and the non-metropolitan portions of states; decennial census data on median incomes for census tracts; and decennial census data on median incomes for MSAs, non-metropolitan counties, and the non-metropolitan portions of States.[8]

For scoring loans purchased by the GSEs year-by-year from 1993 through 2002, area median income estimates produced by HUD's Economic and Market Analysis Division were used. The same median income data series described in Appendix A for the Low- and Moderate-Income Goal was used. The determination of low-income areas was based on 1990 census data.

2005 Procedure. Relative to the above procedure, scoring of loans purchased by the GSEs in and after 2005 will be affected by two factors—first, re-benchmarking of area median incomes to the 2000 census as described in Appendix A, with a shift from 1990 to 2000 census data for identifying low-income areas, and second, the Office of Management and Budget's June, 2003, re-specification of MSA boundaries based on analysis of 2000 census data.[9]

Analysis. For purposes of specifying the level of the Special Affordable Housing Goal, the HUD estimates of area median incomes for MSAs, non-metropolitan counties, and the non-metropolitan parts of States, as described in Appendix A, were used in conjunction with the data identifying low-income areas based on the 2000 census, to re-score loans purchased by the GSEs between 1999 and 2002. The same data series were used further in estimating the share of loans originated in metropolitan areas that would be eligible to score toward the Special Affordable Housing Goal, from HMDA data. The results of the retrospective GSE analysis are provided in Table C.3. The results of the GSE–HMDA comparative analysis are presented in the next section.

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[8] In New England, MSAs were defined through mid-2003 in terms of Towns rather than Counties, and the portion of a New England county outside of any MSA was regarded as equivalent to a county in establishing the metropolitan or non-metropolitan location of a property. The MSA definitions established by the Office of Management and Budget (OMB) in June, 2003 defined MSAs in New England in terms of counties.

[9] HUD has deferred application of the 2003 MSA specification to 2005, pending completion of the present rulemaking process.

Table C.3

Effects of 2000 Census on Scoring Toward Special Affordable Housing Goal

	1999	2000	2001	2002
Fannie Mae:				
Benchmark*	18.5%	21.4%	20.2%	19.9%
With 2000 Re-benchmarking and 2000 Low-Income Areas	19.2%	22.6%	21.2%	20.7%
Adding 2003 MSAs	18.9%	22.1%	20.5%	19.8%
Freddie Mac:				
Benchmark*	17.4%	21.0%	19.3%	18.6%
With 2000 Re-benchmarking and 2000 Low-Income Areas	18.2%	21.8%	20.1%	19.0%
Adding 2003 MSAs	17.6%	21.1%	19.3%	17.9%

* Baseline B in Table C.2.

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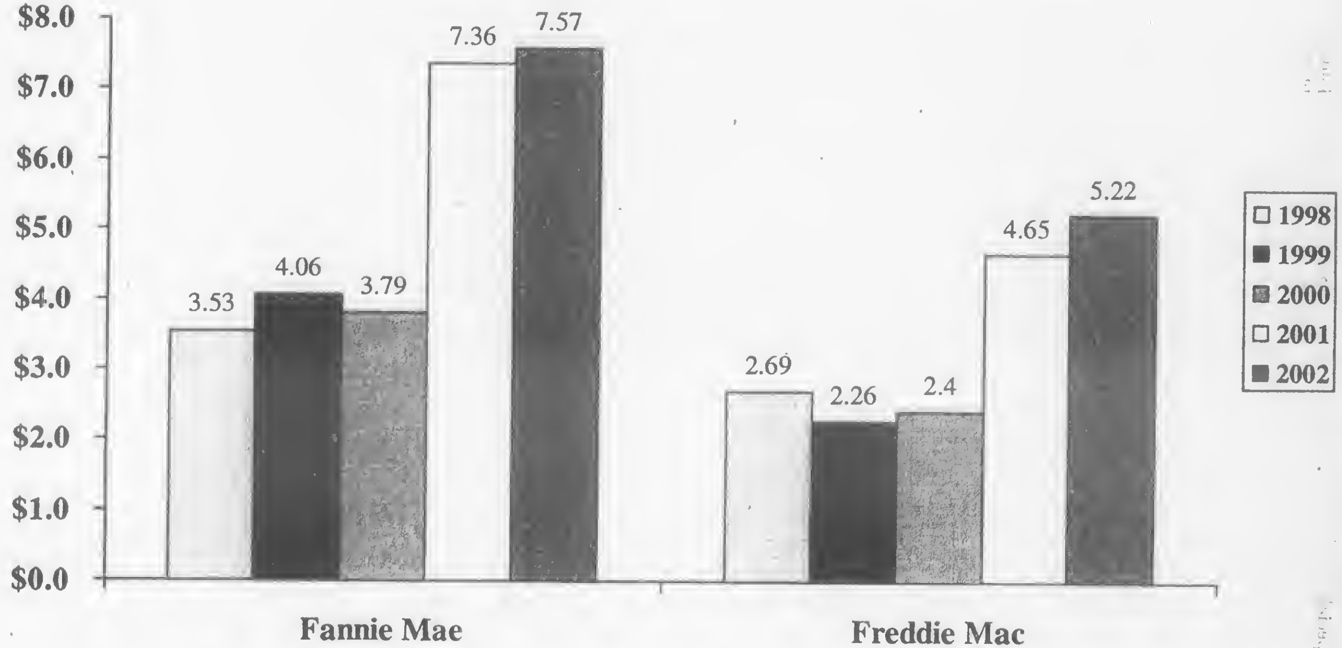
Table C.3 shows three sets of estimates for each GSE, based respectively on the counting rules in place in 2001–2002 (but disregarding the bonus points and Temporary Adjustment Factor), on the addition of 2000 census re-benchmarking and low-income areas, and finally on the further addition of 2003 MSA specification.

F. The GSEs' Multifamily Special Affordable Purchases

Since 1996 each GSE has been subject to an annual dollar-based subgoal for Special Affordable multifamily mortgage purchases, as discussed above. This subgoal was established for 1996–2000 as 0.8 percent of the total dollar volume of single-family and multifamily mortgages purchased by the respective GSE in 1994. Thus Fannie Mae's subgoal was $1.29 billion per year and Freddie Mac's subgoal was $988 million per year during that period. Fannie Mae surpassed the subgoal by $1.08 billion, $1.90 billion, $2.24 billion, $2.77 billion, and $2.50 billion in 1996, 1997, 1998, 1999, and 2000 respectively, while Freddie Mac exceeded the subgoal by $18 million, $220 million, $1.70 billion, $1.27 billion, and $1.41 billion.

The subgoal was established for 2001–03 as 1.0 percent of the average annual volume of each GSE's total mortgage purchases over the 1997–99 period. Thus Fannie Mae's subgoal was established as $2.85 billion per year and Freddie Mac's as $2.11 billion per year. In 2001 Fannie Mae exceeded its subgoal by $4.51 billion and Freddie Mac exceeded its subgoal by $2.54 billion. In 2002, Fannie Mae exceeded its subgoal by $4.72 billion and Freddie Mac exceeded its subgoal by $3.11 billion. Those subgoals are also in effect for 2004. Table C.1 includes figures on subgoal performance, and they are depicted graphically in Figure C.2.

Figure C.2
Multifamily Special Affordable Mortgage Purchases
(Billions of Dollars Per Year)



Multifamily Special Affordable Goals were $1.29 billion per year for Fannie Mae and $988 million per year for Freddie Mac for 1998-2000, and $2.85 billion per year for Fannie Mae and $2.11 billion per year for Freddie Mac for 2001-02.

Source: HUD analysis of GSEs' loan-level data.

g. Characteristics of the GSEs' Special Affordable Purchases

The following analysis presents information on the composition of the GSEs' Special Affordable purchases according to area income, unit affordability, tenure of unit and property type (single- or multifamily).

Tables C.4 and C.5 show that each GSE's reliance on multifamily housing units to meet the special affordable goal has been variable from year to year since 1996. Fannie Mae's multifamily purchases were at 37.7 percent in 1996 and 28.8 percent in 2001 with a high of 44.0 percent in 1997 and a low of 27.8 percent in 1998. Freddie Mac's multifamily purchases represented 29.4 percent of all purchases qualifying for the goal in 1996 and 27.0 percent in 2001, with a high of 31.5 percent in 1997 and a low of 21.6 percent in 1999. The two GSEs' purchase percentages for single-family owner properties exhibited a similar variability through this entire period, as did their purchases of mortgages financing single-family rental units from 1996 through 2000. Both GSEs' high points for mortgages financing single-family rental units occurred in 2001: Fannie Mae's purchase percentage was 17.1 percent while Freddie Mac's was 17.2 percent.

Table C.4

Fannie Mae's Special Affordable Purchases By Unit Affordability and Area Income, 1996-2002

Year of Purchase and Type of Unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1996						
Single-family owner	25,103	93,029	23,328		141,460	49.5%
Single-family rental	11,242	18,207	6,938		36,387	12.7%
Multifamily	23,703	59,556	15,399	9,136	107,794	37.7%
Total	60,048	170,792	45,665	9,136	285,641	100.0%
Percent	21.0%	59.8%	16.0%	3.2%	100.0%	
1997						
Single-family owner	23,909	91,400	20,825		136,134	45.9%
Single-family rental	9,169	15,290	5,399		29,858	10.1%
Multifamily	27,522	80,069	13,294	9,488	130,373	44.0%
Total	60,600	186,759	39,518	9,488	296,365	100.0%
Percent	20.4%	63.0%	13.3%	3.2%	100.0%	
1998						
Single-family owner	43,631	212,519	41,108		297,257	59.5%
Single-family rental	18,158	34,396	11,314		63,868	12.8%
Multifamily	34,481	74,417	19,799	10,126	138,822	27.8%
Total	96,270	321,332	72,221	10,126	499,947	100.0%
Percent	19.3%	64.3%	14.4%	2.0%	100.0%	
1999						
Single-family owner	41,943	205,048	36,366		283,357	54.8%
Single-family rental	21,161	38,663	12,063		71,887	13.9%
Multifamily	38,292	95,623	15,586	12,423	161,924	31.3%
Total	101,396	339,334	64,015	12,423	517,168	100.0%
Percent	19.6%	65.6%	12.4%	2.4%	100.0%	
2000						
Single-family owner	33,781	143,596	26,500		203,877	49.6%
Single-family rental	21,458	27,829	10,817		60,104	14.6%
Multifamily	31,200	91,160	12,250	12,648	147,258	35.8%
Total	86,439	262,585	49,567	12,648	411,239	100.0%
Percent	21.0%	63.9%	12.1%	3.1%	100.0%	
2001						
Single-family owner	79,563	349,042	66,861		495,466	54.1%
Single-family rental	52,893	75,465	27,816		156,174	17.1%
Multifamily	62,449	145,919	35,496	20,216	264,080	28.8%
Total	194,905	570,426	130,173	20,216	915,720	100.0%
Percent	21.3%	62.3%	14.2%	2.2%	100.0%	
2002						
Single-family owner	107,583	496,681	86,861		691,125	59.9%
Single-family rental	76,216	111,582	43,056		230,854	20.0%
Multifamily	60,058	126,710	30,289	13,988	231,045	20.0%
Total	243,857	734,973	160,206	13,988	1,153,024	100.0%
Percent	21.1%	63.7%	13.9%	1.2%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal.

Table C.5

Freddie Mac's Special Affordable Purchases By Unit Affordability and Area Income, 1996-2002

Year of purchase and Type of unit	Very-Low Income Units in Low-Income Areas	Very-Low Income Units Outside Low-Income Areas	Other Low-Income Units in Low-Income Areas	Other Units Qualifying For Goal*	Total Units Qualifying For Goal	Percent
1996						
Single-family owner	15,330	70,731	16,018		102,080	56.2%
Single-family rental	7,539	14,339	4,178		26,056	14.4%
Multifamily	12,634	28,301	8,760	3,675	53,370	29.4%
Total	35,503	113,371	28,956	3,675	181,506	100.0%
Percent	19.6%	62.5%	16.0%	2.0%	100.0%	
1997						
Single-family owner	15,742	66,656	15,449		97,847	54.7%
Single-family rental	7,469	11,612	5,552		24,633	13.8%
Multifamily	16,131	28,789	8,133	3,203	56,256	31.5%
Total	39,342	107,057	29,134	3,203	178,736	100.0%
Percent	22.0%	59.9%	16.3%	1.8%	100.0%	
1998						
Single-family owner	40,690	176,846	33,869		251,404	59.4%
Single-family rental	14,665	28,691	7,364		50,720	12.0%
Multifamily	30,736	63,272	21,609	5,159	120,776	28.6%
Total	86,091	268,809	62,842	5,159	422,900	100.0%
Percent	20.4%	63.6%	14.9%	1.2%	100.0%	
1999						
Single-family owner	37,675	168,684	31,452		237,810	62.0%
Single-family rental	18,054	33,305	11,179		62,538	16.3%
Multifamily	20,969	46,765	10,001	5,247	82,982	21.6%
Total	76,698	248,754	52,632	5,247	383,330	100.0%
Percent	20.0%	64.9%	13.7%	1.4%	100.0%	
2000						
Single-family owner	35,718	133,527	25,639		194,884	59.5%
Single-family rental	16,781	26,542	10,212		53,535	16.3%
Multifamily	19,769	45,414	8,327	5,865	79,375	24.2%
Total	72,268	205,483	44,178	5,865	327,794	100.0%
Percent	22.0%	62.7%	13.5%	1.8%	100.0%	
2001						
Single-family owner	54,008	249,431	45,014		348,453	55.8%
Single-family rental	31,375	56,855	19,030		107,260	17.2%
Multifamily	48,265	87,375	23,882	9,231	168,753	27.0%
Total	133,648	393,661	87,926	9,231	624,466	100.0%
Percent	21.4%	63.0%	14.1%	1.5%	100.0%	
2002						
Single-family owner	77,100	342,640	61,355		481,095	61.5%
Single-family rental	40,279	71,176	30,487		141,942	18.1%
Multifamily	38,370	86,633	25,674	9,004	159,681	20.4%
Total	155,749	500,449	117,516	9,004	782,718	100.0%
Percent	19.9%	63.9%	15.0%	1.2%	100.0%	

* Low-income rental units in multifamily properties where at least 20 percent of the units are affordable to families whose incomes are 50 percent of area median income or less or where at least 40 percent of the units are affordable to families whose incomes are 60 percent of area median income or less, which do not otherwise qualify under the goal

Tables C.4 and C.5 also show the allocation of units qualifying for the goal as related to the family income and area median income criteria in the goal definition. Very-low-income families (shown in the two leftmost columns in the tables) accounted for 80.8 percent of Fannie Mae's units qualifying under the goal in 1996, rising to 83.6 percent in 2001. For Freddie Mac, very-low-income families accounted for 82.1 percent of units qualifying under the goal in 1996, rising to 84.4 percent in 2001. In contrast, mortgage purchases from low-income areas (shown in the first and third columns in the tables) accounted for 37.0 percent of Fannie Mae's units qualifying under the goal in 1996, compared to 35.5 percent in 2001. The corresponding percentages for Freddie Mac were 35.6 percent in 1996 and 35.5 percent in 2001. Thus given the definition of special affordable housing in terms of household and area income characteristics, both GSEs have consistently relied substantially more on low-income characteristics of households than low-income characteristics of census tracts to meet this goal.

h. The GSEs' Performance Relative to the Market

Section E.9 in Appendix A uses HMDA data and GSE loan-level data for home purchase mortgages on single-family-owner properties in metropolitan areas to compare the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market. (See Tables A.13 to A.16 in Appendix A.). There were two main findings with respect to the special affordable category. *First,* Freddie Mac and Fannie Mae have historically lagged depositories and the overall market in providing mortgage funds for special affordable borrowers. Between 1993 and 2002, 11.8 percent of Freddie Mac's mortgage purchases were for special affordable borrowers, 12.7 percent of Fannie Mae's purchases, 15.4 percent of loans originated by depositories, and 15.4 percent of loans originated in the conventional conforming market (without estimated B&C loans). For the recent years, the GSE-market comparisons are as follows:

Year	Feddie Mac (percent)	Fannie Mae (percent)	Market (w/o B&C) (percent)
1999	12.8	12.5	17.0
2000	14.7	13.3	16.8
2001	14.4	14.9	15.6
2002	15.8	16.3	16.3
1996–2002 (average)	12.8	13.5	16.0
1999–2002 (average)	14.5	14.4	16.4
2001–2002 (average)	15.1	15.6	16.0

During the period between 1999 and 2002, both GSEs' performance was at approximately 88 percent of the market—special affordable loans accounted for 14.4 percent of Fannie Mae's purchases, 14.5 percent of Freddie Mac's purchases, and 16.4 percent of loans originated in the conforming market.

Second, while both GSEs have improved their performance over the past few years, Fannie Mae has been made more progress than Freddie Mac in closing its gap with the market. During the first two years (2001 and 2002) of HUD's new housing goal targets, the average share of Fannie Mae's purchases going to special affordable loans was 15.6 percent, which was close to the market average of 16.0 percent. The share of Freddie Mac's purchases going to special affordable loans was 15.1 percent during this period.

Section G in Appendix A discusses the role of the GSEs both in the overall special affordable market and in the different segments (single-family owner, single-family rental, and multifamily rental) of the special affordable market. The GSEs' special affordable purchases accounted for 35 percent of all special affordable owner and rental units that were financed in the conventional conforming market between 1999 and 2002. The GSEs' 35-percent share of the special affordable market was two-thirds of their 49-percent share of the overall market. Even in the owner market, where the GSEs account for 57 percent of the market, their share of the special affordable market was only 49 percent during this period. While the GSEs improved their market shares during 2001 and 2002, this analysis shows that the GSEs have not been leading the single-family market in purchasing loans that qualify for the Special Affordable Goal. There is room and ample opportunities for the GSEs to improve their performance in purchasing affordable loans at the lower-income end of the market. Section C.3 of this appendix discusses a home purchase subgoal designed to place the GSEs in such a leadership position in the special affordable single-family-owner market.

Factor 3. National Housing Needs of Low-Income Families in Low-Income Areas and Very-Low-Income Families

This discussion concentrates on very-low-income families with the greatest needs. It complements Section C of Appendix A, which presents detailed analyses of housing problems and demographic trends for lower-income families which are relevant to the issue addressed in this part of Appendix C.

Data from the American Housing Survey demonstrate that housing problems and needs for affordable housing continue to be more pressing in the lowest-income categories than among moderate-income families, as established in HUD's analysis for the 1995 and 2000 Final Rules. Table C.6 displays figures on several types of housing problems—high housing costs relative to income, physical housing defects, and crowding—for both owners and renters. Figures are presented for households experiencing multiple (two or more) of these problems as well as households experiencing a severe degree of either cost burden or physical problems. Housing problems in 2001 continued to be much more frequent for the lowest-income groups.[10] Incidence of problems is shown for households in the income range covered by the special affordable goal, as well as for higher income households.

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[10] Tabulations of the 2001 American Housing Survey by HUD's Office of Policy Development and Research. The results in the table categorize renters reporting housing assistance as having no housing problems.

Table C.6

Incidence of Housing Problems by Household Income, 2001

	Household Income as a Percent of Area Median Income, 2001			
	0-60%	61-80%	81-100%	>100%
Renter Households (Thousands)				
Total	17,892	4,413	3,619	8,118
Rent Burden > 50% of income	6,238	112	77	27
31-50% of income	5,344	927	368	277
Severely Inadequate Housing	774	108	92	206
Moderately Inadequate	1,616	281	199	442
Crowded	1,151	206	121	196
Multiple Problems*	2,084	106	36	60
Priority Problems**	6,740	217	170	233
As Percent of Total				
Rent Burden > 50% of income	34.9%	2.5%	2.1%	0.3%
31-50% of income	29.9%	21.0%	10.2%	3.4%
Severely Inadequate Housing	4.3%	2.4%	2.6%	2.5%
Moderately Inadequate	9.0%	6.4%	5.5%	5.4%
Crowded	6.4%	4.7%	3.4%	2.4%
Multiple Problems*	11.6%	2.4%	1.0%	0.7%
Priority Problems**	37.7%	4.9%	4.7%	2.9%
Owner Households (Thousands)				
Total	18,432	7,510	7,631	38,792
Cost Burden > 50% of income	5,624	550	321	391
31-50% of income	4,208	1,814	1,517	2,446
Severely Inadequate Housing	389	102	127	336
Moderately Inadequate	874	260	179	694
Crowded	436	122	162	259
Multiple Problems*	821	139	104	80
Priority Problems**	5,908	636	449	728
As Percent of Total				
Cost Burden > 50% of income	30.5%	7.3%	4.2%	1.0%
31-50% of income	22.8%	24.2%	19.9%	6.3%
Severely Inadequate Housing	2.1%	1.4%	1.7%	0.9%
Moderately Inadequate	4.7%	3.5%	2.3%	1.8%
Crowded	2.4%	1.6%	2.1%	0.7%
Multiple Problems*	4.5%	1.8%	1.4%	0.2%
Priority Problems**	32.1%	8.5%	5.9%	1.9%

* Two or three of the following: housing costs > 30%, severe or moderate physical problems, and overcrowding.

** Housing costs > 50% of income or severely inadequate housing among unassisted households.

Note: Incomes of renter households are estimated based on rents, adjusted for number of bedrooms.

This analysis shows that priority problems of severe cost burden or severely inadequate housing are noticeably concentrated among renters and owners with incomes below 60 percent of area median income: 30.5 percent of renter households and 34.9 percent of owner households had priority problems. In contrast, in the next higher income range, up to 80 percent of area median income, 2.5 percent of renter households and 7.3 percent of owner households had priority problems. The table demonstrates the significance of affordability problems: Sixty-five percent of very-low-income renter families had rent burden over 30 percent of income; 35 percent had rent burden over 50 percent of income. Thirteen percent had moderately or severely inadequate housing; 6 percent lived in crowded conditions, defined as more than one person per room.

Factor 4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available for Low-Income and Very-Low-Income Families

The discussion of the ability of Fannie Mae and Freddie Mac to lead the industry in Section G of Appendix A is relevant to this factor—the GSEs' roles in the owner and rental markets, their role in establishing widely-applied underwriting standards, their role in the development of new technology for mortgage origination, their strong staff resources, and their financial strength. Additional analyses of the potential ability of the enterprises to lead the industry in the low- and very-low-income market appears below in Section D, which explains the Department's rationale for the home purchase subgoal for Special Affordable loans.

Factor 5. The Need To Maintain the Sound Financial Condition of the GSEs

HUD has undertaken a separate, detailed economic analysis of this final rule, which includes consideration of (a) the financial returns that the GSEs earn on special affordable loans and (b) the financial safety and soundness implications of the housing goals. Based on this economic analysis, HUD concludes that the housing goals in this final rule raise minimal, if any, safety and soundness concerns.

C. Determination of the Special Affordable Housing Goal

Several considerations, many of which are reviewed in Appendixes A and B and in previous sections of this Appendix, led to the determination of the Special Affordable Housing Goal, the multifamily special affordable subgoal, and the special affordable subgoal for home purchase loans on single-family-owner properties in metropolitan areas.

1. Severe Housing Problems

The data presented in Section C.3 demonstrate that housing problems and needs for affordable housing are much more pressing in the lowest-income categories than among moderate-income families. The high incidence of severe problems among the lowest-income renters reflects severe shortages of units affordable to those renters. At incomes below 60 percent of area median, 34.7 percent of renters and 21.6 percent of owners paid more than 50 percent of their income for housing. In this same income range, 65.6 percent of renters and 42.4 percent of owners paid more than 30 percent of their income for housing. In addition, 31.5 percent of renters and 23.8 percent of owners exhibited "priority problems", meaning housing costs over 50 percent of income or severely inadequate housing. Homeownership gaps and other disparities in the housing and mortgage markets discussed in Section H of Appendix A also apply to Special Affordable housing and mortgages.

2. GSE Performance and the Market

a. *The GSEs' Special Affordable Housing Goals Performance*

In the October 2000 rule, the special affordable goal was set at 20 percent for 2001–03. Effective on January 1, 2001, several changes in counting requirements came into effect for the special affordable goal, as follows: (a) "Bonus points" (double credit) for purchases of mortgages on small (5–50 unit) multifamily properties and, above a threshold level, mortgages on 2–4 unit owner-occupied properties; (b) a "temporary adjustment factor" (1.35 unit credit) for Freddie Mac's purchases of mortgages on large (more than 50 unit) multifamily properties; (c) changes in the treatment of missing data; (d) a procedure for the use of imputed or proxy rents for determining goal credit for multifamily mortgages; and (e) changes regarding the "recycling" of funds by loan originators. Fannie Mae's performance in 2001 was 21.6 percent and Freddie Mac's performance was 22.6 percent, thus both GSEs surpassed this higher goal.

Counting requirements (a) and (b) expired at the end of 2003 while (c)–(e) will remain in effect after that. If this counting approach—without the bonus points and the "temporary adjustment factor"—had been in effect in 2000–2002, and the GSEs' had purchased the same mortgages that they actually did purchase in both years, then Fannie Mae's performance would have been 21.4 percent in 2000, 20.2 percent in 2001, and 19.9 percent in 2002. Freddie Mac's performance would have been 21.0 percent in 2000, 19.3 percent in 2001, and 18.6 percent in 2002. Fannie Mae would have surpassed the special affordable goal in both 2000 and 2001 while Freddie Mac would have surpassed the goal in 2000 and fallen short in 2001.

The above performance figures are for the special affordable goal defined in terms of 1990 Census geography. Switching to 2000 Census data slightly increases the coverage of special affordable goal, which increases the special affordable share of the GSEs' purchases by up to one percentage point. Based on 2000 Census geography, and excluding counting requirements (a) and (b), then Fannie Mae 's performance would have been 21.7 percent in 2000, 20.1 percent in 2001, and 19.4 percent in 2002. Freddie Mac's performance would have been 20.8 percent in 2000, 19.1 percent in 2001, and 17.8 percent in 2002.

b. Single-Family Market Comparisons in Metropolitan Areas

The Special Affordable Housing Goal is designed, in part, to ensure that the GSEs maintain a consistent focus on serving the very low-income portion of the housing market where housing needs are greatest. Section C compared the GSEs' performance in special affordable lending to the performance of depositories and other lenders in the conventional conforming market for single-family home loans. The analysis showed that while both GSEs have improved their performance, they have historically lagged depositories and the overall market in providing mortgage funds for very low-income and other special affordable borrowers. Between 1999 and 2002, special affordable borrowers accounted for 14.4 percent of the home loans purchased by Fannie Mae, 14.5 percent of Freddie Mac's purchases, 16.4 percent of home loans originated by depositories, and 16.4 percent of all home loans originated in the conventional conforming market (without B&C loans). Section C also noted that while both GSEs have improved their performance over the past few years, Fannie Mae has made more progress than Freddie Mac in closing its gap with the market. During the first two years (2001 and 2002) of HUD's new housing goal targets, the average share of Fannie Mae's purchases going to special affordable loans was 15.6 percent, which was close to the market average of 16.0 percent. The share of Freddie Mac's purchases going to special affordable loans was 15.1 percent during this period. (See Figure C.3.)

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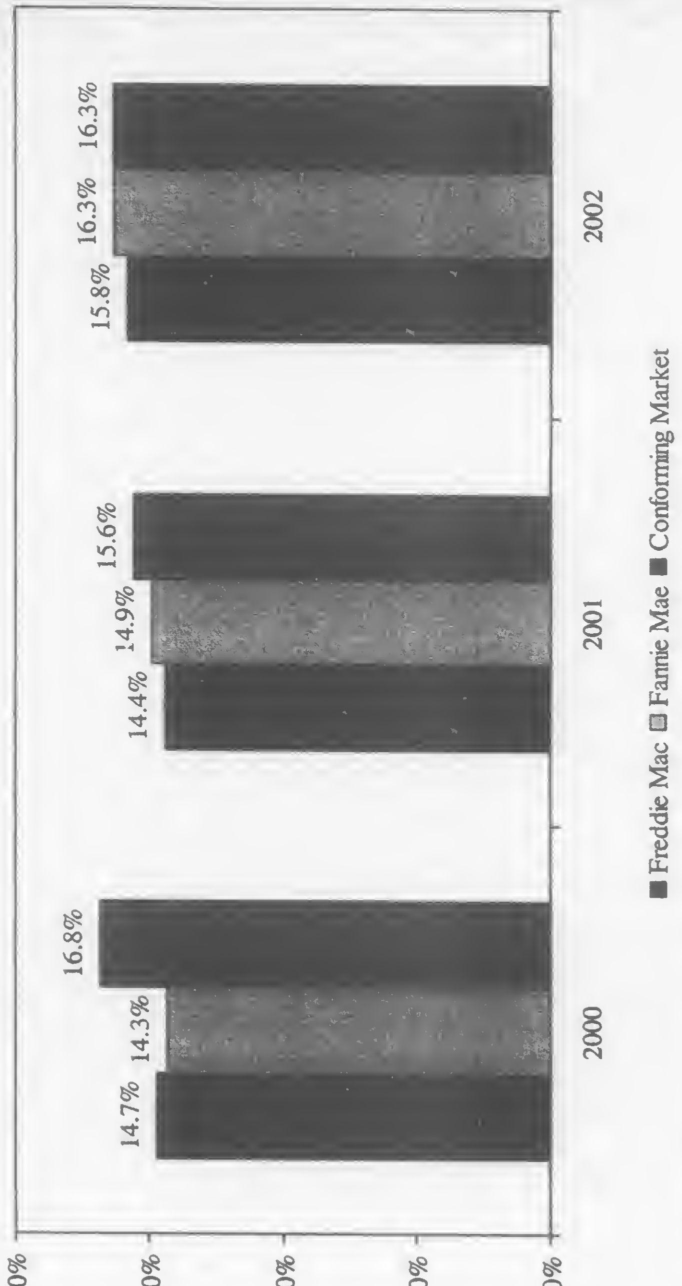
Figure C.3
Special Affordable Shares of Conventional Conforming Market Originations and GSE Purchases, 2000-2002



Source: Conforming market (without B&C loans) data are from 2000-2002 HMDA; GSE data are from loan-level data reported to HUD. Data are for single-family home purchase loans in metropolitan areas. See Table A.15 for further explanation.

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3. Ability To Lead the Single-Family Owner Market: A Special Affordable Sub Goal

The Secretary believes the GSEs can play a leadership role in the special affordable market. Thus, the Department is proposing to establish a subgoal of 17 percent for each GSE's purchases of home purchase loans for special affordable families in the single-family-owner market of metropolitan areas for 2005, rising to 18 percent in 2006, and 19 percent in both 2007 and 2008. The purpose of this subgoal is to encourage the GSEs to improve their purchases of mortgages for very-low-income and minority first-time homebuyers who are expected to enter the housing market over the next few years. If the GSEs meet this goal, they will be leading the primary market by approximately one-half percentage point in 2005 and 2.5 percentage points by 2007 and 2008, based on the income characteristics of home purchase loans reported in HMDA. HMDA data show that special affordable families accounted for an average of 16.4 percent of single-family-owner loans originated in the conventional conforming market of metropolitan areas between 1999 and 2002—the special affordable market share was 16.0 percent for both the longer 1996–2002 period and the shorter 2001–2002 period. Loans in the B&C portion of the subprime market are not included in these averages. As explained in Appendix D, HUD also projected special affordable shares for the market for 1999 to 2002 using the new 2000 Census geography and the new OMB specifications. For special affordable loans, the 1999–2002 market average using these projected data was also 16.4 percent.

To reach the proposed 17-percent subgoal for 2005, both GSEs will have to improve their performance—Fannie Mae by 2.6 percentage points over its average performance of 14.4 percent between 1999 and 2002, by 1.4 percentage points over its average performance of 15.6 percent during 2001 and 2002, and by 0.7 percentage point over its 16.3 percent performance in 2002; and Freddie Mac by 2.5 percentage points over its average performance of 14.5 percent between 1999 and 2002, by 1.9 percentage points over its average performance of 15.1 percent during 2001 and 2002, and by 1.2 percentage point over its 15.8 percent performance in 2002. By 2007–2008 the required increases in subgoal performance over past performance will be 2 percentage points higher than the increases cited in the preceding sentence. For example, Fannie Mae would have to increase its performance by 2.7 percentage points over its 16.3 percent performance in 2002; and Freddie Mac would have to increase its performance by 3.2 percentage points over its 15.8 percent performance in 2002. The special affordable performances of Fannie Mae and Freddie Mac were also projected to take into account the new 2000 Census geography and the new OMB specifications. On average, the results with the new data were similar to the old data, but the differential was higher during 2002. For home purchase loans, the 1999–2002 average performance for Fannie Mae was 14.3 percent with the projected data, versus 14.4 percent with the historical data; the largest difference was in 2002, when Fannie Mae's performance was 15.8 percent with the projected data, compared with 16.3 percent with the historical data. The 1999–2002 average performance for Freddie Mac was 14.1 percent with the projected data, versus 14.5 percent with the historical data; the largest difference was also in 2002, when Freddie Mac's performance was 15.1 percent with the projected data, compared with 15.8 percent with the historical data. Thus, the increases in each GSE's performance needed to meet the proposed special affordable home purchase subgoal in 2005–08 will be slightly higher than those noted above.

The approach taken is for the GSEs to obtain their leadership position by staged increases in the special affordable subgoal; this will enable the GSEs to take new initiatives in a correspondingly staged manner to achieve the new subgoal each year. Thus, the increases in the special affordable subgoal are sequenced so that the GSEs can gain experience as they improve and move toward the new higher subgoal targets.

The subgoal applies only to the GSEs' purchases in metropolitan areas because the HMDA-based market benchmark is only available for metropolitan areas. HMDA data for non-metropolitan counties are not reliable enough to serve as a market benchmark. The Department is also setting home purchase subgoals for the other two goals-qualifying categories, as explained in Appendices A and B. Sections E.9 and G of Appendix A provide additional information on the opportunities for an enhanced GSE role in the special affordable segment of the home purchase market and on the ability of the GSEs to lead that market.

The preamble and Appendix A discuss in some detail the factors that the Department considered when setting the subgoal for low- and moderate-income loans. Several of the considerations were general in nature—for example, related to the GSEs' overall ability to lead the single-family-owner market—while others were specific to the low-mod subgoal. Because the reader can refer to Appendix A, this appendix provides a briefer discussion of the more general factors. The specific considerations that led to the subgoal for special affordable loans can be organized around the following four topics:

(1) *The GSEs have the ability to lead the market.* As discussed in Appendix A, the GSEs have the ability to lead the primary market for single-family-owner loans, which is their "bread-and-butter" business. Both GSEs have been dominant players in the home purchase market for years, funding 57 percent of the single-family-owner mortgages financed between 1999 and 2002. Through their many new product offerings and their various partnership initiatives, the GSEs have shown that they have the capacity to reach out to very-low-income and other special affordable borrowers. They also have the staff expertise and financial resources to make the extra effort to lead the primary market in funding single-family-owner mortgages for special affordable borrowers.

(2) *The GSEs have lagged the market.* Even though they have the ability to lead the market, they have not done so. While the GSEs have significantly improved their performance, according to numerous studies by the Department and independent researchers, they have historically lagged the primary market in providing funds for special affordable borrowers (see above GSE-market comparisons). The type of improvement needed to meet this new special affordable subgoal was demonstrated by Fannie Mae during 2001 and 2002. Between 2000 and 2001, special affordable loans declined as a percentage of Freddie Mac's purchases (from 14.7 to 14.4 percent) and as a percentage of primary market originations (from 16.8 to 15.6 percent), but they increased as a percentage of Fannie Mae's purchases (from 13.3 to 14.9 percent). During 2002, Fannie Mae further increased its special affordable share (from 14.9 percent tin 2001 to 16.3 percent in 2002), placing it at the market level. This subgoal is designed to encourage Fannie Mae as well as Freddie Mac to lead the special affordable market.

(3) *Disparities in Homeownership and Credit Access Remain.* There remain troublesome disparities in our housing and mortgage markets, even after the "revolution in affordable lending" and the growth in homeownership that has taken place since the mid-1990s. The homeownership rate for African-American and Hispanic households remains 25 percentage points below that of white households. Minority families face many barriers in the mortgage market, such as lack of capital for down payment and lack of access to mainstream lenders (see above). Immigrants and minorities—many of whose very-low-income levels will qualify them as special affordable—are projected to account for almost two-thirds of the growth in the number of new households over the next ten years. As emphasized in Appendix A, changing population demographics will result in a need for the primary and secondary mortgage markets to meet nontraditional credit needs, respond to diverse housing preferences, and overcome information and other barriers that many immigrants and minorities face. The GSEs have to increase their efforts in helping special affordable families—but so far they have played a surprisingly small role in serving minority first-time homebuyers. It is estimated that the GSEs accounted for 46.5 percent of all (both government and conventional) home loans originated between 1999 and 2001; however, they accounted for only 14.3 percent of home loans originated for African-American and Hispanic first-time homebuyers. A subgoal for special affordable home purchase loans should increase the GSEs' efforts in important sub-markets such as the one for minority first-time homebuyers.

(4) *There are ample opportunities for the GSEs to improve their performance.* Special affordable mortgages are available for the GSEs to purchase, which means they can improve their performance and lead the primary market in purchasing loans for these very-low-income borrowers. Sections B, C, and I of Appendix A and Section H of Appendix D explain that the special affordable lending market has shown an underlying strength over the past few years that is unlikely to vanish (without a

significant increase in interest rates or a decline in the economy). The special affordable share of the home purchase market has averaged 16.0 percent since 1996 and annually has ranged from 15.0 percent to 17.0 percent. Second, the market share data reported in Table A.30 of Appendix A demonstrate that there are newly-originated loans available each year for the GSEs to purchase. The GSEs' purchases of single-family owner loans represented 57 percent of all single-family-owner loans originated between 1999 and 2002, compared with 49 percent of the special affordable loans that were originated during this period. Thus, half of the special affordable conforming market is not touched by the GSEs. As noted above, the situation is even more extreme for special sub-markets such the minority first-time homebuyer market where the GSEs have only a minimal presence. Between 1999 and 2001, the GSEs purchased only 33 percent of conventional conforming loans originated for minority first-time homebuyers, even though they purchased 57 percent of all home loans originated in the conventional conforming market during that period. But also important, the GSEs' purchases under the subgoal are not limited to new mortgages that are originated in the current calendar year. The GSEs can purchase loans from the substantial, existing stock of special affordable loans held in lenders' portfolios, after these loans have seasoned and the GSEs have had the opportunity to observe their payment performance. In fact, based on Fannie Mae's recent experience, the purchase of seasoned loans appears to be one useful strategy for purchasing goals-qualifying loans.

To summarize, although single-family-owner mortgages comprise the "bread-and-butter" of their business, the GSEs have lagged behind the primary market in financing special affordable loans. For the reasons given above, the Secretary believes that the GSEs can do more to raise the special affordable shares of the home loans they purchase on single-family-owner properties. This can be accomplished by building on efforts that the enterprises have already started, including their new affordable lending products aimed at special groups such as first-time homebuyers, their many partnership efforts, their outreach to inner city neighborhoods, their incorporation of greater flexibility into their underwriting guidelines, and their purchases of seasoned CRA loans. A wide variety of quantitative and qualitative indicators indicate that the GSEs' have the resources and financial strength to improve their special affordable performance enough to lead the market.

4. Size of the Overall Special Affordable Mortgage Market

As detailed in Appendix D, single-family and multifamily special affordable mortgages are estimated to account for 24–28 percent of the dwelling units financed by conventional conforming mortgages; in estimating the size of the market, HUD used alternative assumptions about future economic and market affordability conditions that were less favorable than those that existed over the past several years. Between 1999 and 2002, the special affordable market averaged 28 percent. HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. Should conditions change such that the goals are no longer reasonable or feasible, the Secretary has the authority to revise the goals.

5. The Special Affordable Housing Goal for 2005–2008

The proposed Special Affordable Housing Goal for 2005 is 22 percent of eligible purchases, a two percentage point increase over the current goal of 20 percent, with the proposed goal rising to 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008. The bonus points for small multifamily properties and owner-occupied 2–4 units, as well as Freddie Mac's Temporary Adjustment Factor, will no longer be in effect for goal counting purposes. It is recognized that neither GSE would have met the 22-percent target in the past three years. Under the new counting rules, Fannie Mae's special affordable performance is estimated to have been 18.6 percent in 1999, 21.7 percent in 2000, 20.1 percent in 2001, and 19.4 percent in 2002—Fannie Mae would have to increase its performance in 2005 by 2.0 percentage points over its average (unweighted) performance of 20.0 percent over these last four years. By 2008 this increase relative to average 1999–2002 performance would be 8.0 percentage points. Freddie Mac's performance is projected to have been 17.4 percent in 1999, 20.8 percent in 2000, 19.1 percent in 2001, and 17.8 percent in 2002—Freddie Mac would have to increase its performance in 2005 by 3.2 percentage points over its average (unweighted) performance of 18.8 percent over these last four years. By 2008 this increase relative to average 1999–2002 performance would be 9.2 percentage points. As explained in Appendix D, the Special Affordable market averaged 28 percent between 1999 and 2002. Thus, the GSEs should be able to improve their performance enough to meet the proposed targets of 22 percent in 2005, 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008.

The objective of HUD's proposed Special Affordable Goal is to bring the GSEs' performance to the upper end of HUD's market range estimate for this goal (24–28 percent), consistent with the statutory criterion that HUD should consider the GSEs' ability to lead the market for each Goal. To enable the GSEs to achieve this leadership, the Department is proposing modest increases in the Special Affordable Goal for 2005 which will increase further, year-by-year through 2008, to achieve the ultimate objective for the GSEs to lead the market under a range of foreseeable economic circumstances by 2008. Such a program of staged increases is consistent with the statutory requirement that HUD consider the past performance of the GSEs in setting the Goals. Staged annual increases in the Special Affordable Goal will provide the enterprises with opportunity to adjust their business models and prudently try out business strategies, so as to meet the required 2008 level without compromising other business objectives and requirements.

Section C compared the GSEs' role in the overall market with their role in the special affordable market. The GSEs' purchases provided financing for 23,580,594 dwelling units, which represented 49 percent of the 48,270,415 single-family and multifamily units that were financed in the conventional conforming market between 1999 and 2002. However, in the special affordable part of the market, the 4,595,201 units that were financed by GSE purchases represented only 35 percent of the 13,232,549 dwelling units that were financed in the market. Thus, there appears to ample room for the GSEs to improve their performance in the special affordable market. In addition, there are several market segments (*e.g.*, first-time homebuyers) that would benefit from a greater secondary market role by the GSEs, and special affordable borrowers are concentrated these markets.

6. Multifamily Special Affordable Subgoals

Based on the GSEs' past performance on the special affordable multifamily subgoals, and on the outlook for the multifamily mortgage market, HUD is proposing that these subgoals be retained and increased for the 2005–2008 period. Unlike the overall goals, which are expressed in terms of minimum goal-qualifying percentages of total units financed, these subgoals for 2001–03 and in prior years have been expressed in terms of minimum dollar volumes of goal-qualifying multifamily mortgage purchases. Specifically, each GSE's special affordable multifamily subgoal is currently equal to 1.0 percent of its average total (single-family plus multifamily) mortgage volume over the 1997–99 period. Under this formulation, in October 2000 the subgoals were set at $2.85 billion per year for Fannie Mae and $2.11 billion per year for Freddie Mac, in each of calendar years 2001 through 2003. These represented increases from the goals for 1996–2000, which were $1.29 billion annually for Fannie Mae and $0.99 billion annually for Freddie Mac. These subgoals are also in effect for 2004.

HUD's Determination. The multifamily mortgage market and both GSEs' multifamily transactions volume grew significantly over the 1993–2001 period, indicating that both enterprises have provided increasing support for the multifamily market, and that they have the ability to continue to provide further support for the market.

Specifically, Fannie Mae's total eligible multifamily mortgage purchase volume increased from $4.6 billion in 1993 to $12.5 billion in 1998, and then jumped sharply to $18.7 billion in 2001 and $18.3 billion in 2002. Its special affordable multifamily mortgage purchases followed a similar path, rising from $1.7 billion in 1993 to $3.5 billion in 1998 and $4.1 billion in 1999, and also jumping sharply to $7.4 billion in 2001 and $7.6 billion in 2002. As a result of its strong performance, Fannie Mae's purchases have been at least twice its minimum subgoal in every year since 1997—247 percent of the subgoal in that year, 274 percent in 1998, 315 percent in 1999, 294 percent in 2000, and, under the new higher subgoal level, 258 percent in 2001, and 266 percent in 2002.

Freddie Mac's total eligible multifamily mortgage purchase volume increased even more sharply, from $0.2 billion in 1993 to $6.6 billion in 1998, and then jumped sharply in 2001 to $11.8 billion and $13.3 billion in 2002. Its special affordable multifamily mortgage purchases followed a similar path, rising from $0.1 billion in 1993 to $2.7 billion in 1998, and also jumping sharply to $4.6 billion in 2001 and $5.2 billion in 2002. As a result of its strong performance, Freddie Mac's purchases have also been at least twice its minimum subgoal in every year since 1998—272 percent of the subgoal in that year, 229 percent in 1999, 243 percent in 2000, and, under the new higher subgoal level, 220 percent in 2001, and 247 percent in 2002.

The Special Affordable Housing Multifamily Subgoals set forth in this proposed rule are reasonable and appropriate based on the Department's analysis of this market. The Department's decision to retain the multifamily subgoal is based on the fact that HUD's analysis indicates that multifamily housing still serves the housing needs of lower-income families and families in low-income areas to a greater extent than single-family housing. By retaining the multifamily subgoal, the Department ensures that the GSEs continue their activity in this market, and that they achieve at least a minimum level of special affordable multifamily mortgage purchases that are affordable to lower-income families. The Department proposes to establish each GSE's special affordable multifamily subgoal as 1.0 percent of its average annual dollar volume of total (single-family and multifamily) mortgage purchases over the 2000–2002 period. In dollar terms, the Department's proposal is $5.49 billion per year in special affordable multifamily mortgage purchases for Fannie Mae, and $3.92 billion per year in special affordable multifamily mortgage purchases for Freddie Mac. These subgoals would be less than actual special affordable multifamily mortgage purchase volume in 2001 and 2002 for both GSEs; thus the Department believes that they would be feasible for the 2005–2008 period.

7. Conclusion

HUD has determined that the Special Affordable Housing Goal in this proposed rule addresses national housing needs within the income categories specified for this goal, while accounting for the GSEs' past performance in purchasing mortgages meeting the needs of very-low-income families and low-income families in low-income areas. HUD has also considered the size of the conventional mortgage market serving very-low-income families and low-income families in low-income areas. Moreover, HUD has considered the GSEs' ability to lead the industry as well as their financial condition. HUD has determined that a Special Affordable Housing Goal of 22 percent in 2005, 24 percent in 2006, 26 percent in 2007, and 28 percent in 2008 is both necessary and achievable. HUD has also determined that a multifamily special affordable subgoal for 2005–2008 set at 1.0 percent of the average of each GSE's respective dollar volume of combined (single-family and multifamily) 1999–2001 mortgage purchases in is both necessary and achievable. Finally, HUD is proposing to establish a subgoal of 17 percent for the GSEs' purchases of single-family-owner mortgages that qualify for the special affordable goal and are originated in metropolitan areas, for 2005, with this subgoal rising to 18 percent in 2006, and 19 percent in both 2007 and 2008. The Secretary has considered the GSEs' ability to lead the industry as well as the GSEs' financial condition. The Secretary has determined that the proposed goals, the proposed multifamily subgoals, and the proposed single-family-owner subgoals are necessary and appropriate.

Appendix D—Estimating the Size of the Conventional Conforming Market for Each Housing Goal

A. Introduction

In establishing the three housing goals, the Secretary is required to assess, among a number of factors, the size of the conventional market for each goal. This appendix explains HUD's methodology for estimating the size of the conventional market for each of the three housing goals. Following this overview, Section B summarizes the main components of HUD's market-share model and identifies those parameters that have a large effect on the relative market shares. Sections C and D discuss two particularly important market parameters, the size of the multifamily market and the share of the single-family mortgage market accounted for by single-family rental properties. Section E provides a more systematic presentation of the model's equations and main assumptions. Sections F, G, and H report HUD's estimates for the Low- and Moderate-Income Goal, the Underserved Areas Goal, and the Special Affordable Housing Goal, respectively.

In developing this rule, HUD has followed the same basic approach that it followed in the last two GSE rules. HUD has carefully reviewed existing information on mortgage activity in order to understand the weakness of various data sources and has conducted sensitivity analyses to show the effects of alternative parameter assumptions. HUD is well aware of uncertainties with some of the data and much of this appendix is spent discussing the effects of alternative assumptions about data parameters and presenting the results of an extensive set of sensitivity analyses.

In an earlier critique of HUD's market share model, Blackley and Follain (1995, 1996) concluded that conceptually HUD had chosen a reasonable approach to determining the size of the mortgage market that qualifies for each of the three housing goals.[1] Blackley and Follain correctly note that the challenge lies in getting accurate estimates of the model's parameters. In their comments on the 2000 Proposed GSE Rule, both Fannie Mae and Freddie Mac stated that HUD's market share model (outlined in Section B below) was a reasonable approach for estimating the goals-qualifying (low-mod, special affordable, and underserved areas) shares of the mortgage market. Freddie Mac stated:

> We believe the Department takes the correct approach in the Proposed Rule by examining several different data sets, using alternative methodologies, and conducting sensitivity analysis. We applaud the Department's general approach for addressing the empirical challenges.[2]

Similarly, Fannie Mae stated that "HUD has developed a reasonable model for assessing the size of the affordable housing market".[3]

However, both GSEs have criticized HUD's implementation of its market methodology. Their major criticisms and HUD's responses to their criticisms can be found in Section B of Appendix D of the 2000 Final Rule. HUD recognizes that there is no single, perfect data set for estimating the size of the affordable lending market and that available data bases on different sectors of the market must be combined in order to implement its market share model (as outlined in Section B below). As this appendix will show, HUD has carefully combined various mortgage market data bases in a manner which draws on the strength of each in order to implement its market methodology and to arrive at a reasonable range of estimates for the three goals-qualifying shares of the mortgage market. In this appendix, HUD demonstrates the robustness of its market estimates by reporting the results of numerous sensitivity analyses that examine a range of assumptions about the relative importance of the rental and owner markets and the goals-qualifying shares of the owner portion of the mortgage market.

This appendix reviews in some detail HUD's efforts to combine information from several mortgage market data bases to obtain reasonable values for the model's parameters. The next section provides an overview of HUD's market share model.

B. Overview of HUD's Market Share Methodology [4]

1. Definition of Market Share

The size of the market for each housing goal is one of the factors that the Secretary is required to consider when setting the level

[1] Dixie M. Blackley and James R. Follain, "A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises," unpublished report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and "HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises," unpublished paper, March 1996.

[2] See Freddie Mac, "Comments on Estimating the Size of the Conventional Conforming Market for Each Housing Goal: Appendix III to the Comments of the Federal Home Loan Mortgage Corporation on HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)", May 8, 2000, page 1.

[3] See Fannie Mae, "Fannie Mae's Comments on HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)", May 8, 2000, page 53.

[4] Readers not interested in this overview may want to proceed to Section C, which begins the market analysis by examining the size of the multifamily market.

of each housing goal.[5] Using the Low- and Moderate-Income Housing Goal as an example, the market share in a particular year is defined as follows:

Low- and Moderate-Income Share of Market: The number of dwelling units financed by the primary mortgage market in a particular calendar year that are occupied by (or affordable to, in the case of rental units) families with incomes equal to or less than the area median income *divided by* the total number of dwelling units financed in the conforming conventional primary mortgage market.

There are three important aspects to this definition. First, the market is defined in terms of "dwelling units" rather than, for example, "value of mortgages" or "number of properties." Second, the units are "financed" units rather than the entire stock of all mortgaged dwelling units; that is, the market-share concept is based on the mortgage *flow* in a particular year, which will be smaller than total outstanding mortgage debt. Third, the low- and moderate-income market is expressed relative to the overall conforming conventional market, which is the relevant market for the GSEs.[6] The low- and moderate-income market is defined as a percentage of the conforming market; this percentage approach maintains consistency with the method for computing each GSE's performance under the Low- and Moderate-Income Goal (that is, the number of low- and moderate-income dwelling units financed by GSE mortgage purchases relative to the overall number of dwelling units financed by GSE mortgage purchases).

2. Three-Step Procedure

Ideally, computing the low- and moderate-income market share would be straightforward, consisting of three steps:

Step 1: Projecting the market shares of the four major property types included in the conventional conforming mortgage market, *i.e.*—

(a) Single-family owner-occupied dwelling units (SF–O units);

(b) Rental units in 2–4 unit properties where the owner occupies one unit (SF 2–4 units);[7]

(c) Rental units in one-to-four unit investor-owned properties (SF Investor units); and,

(d) Rental units in multifamily (5 or more units) properties (MF units).[8]

Step 2: Projecting the "goal percentage" for each of the above four property types (for example, the "Low- and Moderate-Income Goal percentage for single-family owner-occupied properties" is the percentage of those dwelling units financed by mortgages in a particular year that are occupied by households with incomes below the area median).

Step 3: Multiplying the four percentages in (2) by their corresponding market shares in (1), and summing the results to arrive at an estimate of the overall share of dwelling units financed by mortgages that are occupied by low- and moderate-income families.

The four property types are analyzed separately because of their differences in low- and moderate-income occupancy. Rental properties have substantially higher percentages of low- and moderate-income occupants than owner-occupied properties. This can be seen in the top portion of Table D.1, which illustrates Step 3's basic formula for calculating the size of the low- and moderate-income market.[9] In this example, low- and moderate-income dwelling units are estimated to account for 53.9 percent of the total number of dwelling units financed in the conforming mortgage market.

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[5] Sections 1332(b)(4), 1333(a)(2), and 1334(b)(4).

[6] So-called "jumbo" mortgages, greater than $300,700 in 2002 for 1-unit properties, are excluded in defining the conforming market. There is some overlap of loans eligible for purchase by the GSEs with loans insured by the FHA and guaranteed by the Veterans Administration.

[7] The owner of the SF 2–4 property is counted in (a).

[8] Property types (b), (c), and (d) consist of rental units. Property types (b) and (c) must sometimes be combined due to data limitations; in this case, they are referred to as "single-family rental units" (SF–R units).

[9] The property shares and low-mod percentages reported here are based on one set of model assumptions; other sets of assumptions are discussed in Section E.

Table D.1

Illustration of Market Share Calculations

Property Type	Low- and Moderate-Income Market (Step 1) Share of Market (Percent)	(Step 2) Low-Mod Share (Percent)	(Step 3) Multiply (1) x (2) (Percent)
(a) SF-Owner	72.2	40.0	28.9
(b) SF-2-4 Rental	2.0	90.0	1.8
(c) SF Investor	10.8	90.0	9.7
(d) MF	15.0	90.0	13.5
Total Low-Mod Market	100.0		53.9

Property Type	Underserved Areas Market[1] (Step 1) Share of Market (Percent)	(Step 2) Underserved Areas Share (Percent)	(Step 3) Multiply (1) x (2) (Percent)
(a) SF-Owner	72.2	26.0	18.8
(b) SF-2-4 Rental	2.0	42.5	0.9
(c) SF Investor	10.8	42.5	4.6
(d) MF	15.0	48.0	7.2
Total Underserved Areas Market	100.0		31.4

[1] This example assumes a 1990-Census-based definition of underserved areas. As discussed in section G, underserved areas in terms of 2000 Census geography increases the "underserved area shares" in step 2 by about six percentage points.

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To examine the other housing goals, the "goal percentages" in Step 2 would be changed and the new "goal percentages" would be multiplied by Step 1's property distribution, which remains constant. For example, the Underserved Areas Goal [10] would be derived as illustrated in the bottom portion of Table D.1. In this example, units eligible under the Underserved Areas Goal are estimated to account for 31.4 percent of the total number of dwelling units financed in the conforming mortgage market.[11]

3. Data Issues

Unfortunately, complete and consistent mortgage data are not readily available for carrying out the above three steps. A single data set for calculating either the property shares or the housing goal percentages does not exist. However, there are several major data bases that provide a wealth of useful information on the mortgage market. HUD combined information from the following sources: the Home Mortgage Disclosure Act (HMDA) reports, the American Housing Survey (AHS), HUD's Survey of Mortgage Lending Activity (SMLA), Property Owners and Managers Survey (POMS) and the Census Bureau's Residential Finance Survey (RFS). In addition, information on the mortgage market was obtained from the Mortgage Bankers Association, Fannie Mae, Freddie Mac and other organizations.

Property Shares. To derive the property shares, HUD started with forecasts of single-family mortgage originations (expressed in dollars). These forecasts, which are available from the GSEs and industry groups such as the Mortgage Bankers Association, do not provide information on conforming mortgages, on owner versus renter mortgages, or on the number of units financed. Thus, to estimate the number of single-family units financed in the conforming conventional market, HUD had to project certain market parameters based on its judgment about the reliability of different data sources. Sections D and E report HUD's findings related to the single-family market.

Total market originations are obtained by adding multifamily originations to the single-family estimate. Because of the wide range of estimates available, the size of the multifamily mortgage market turned out to be one of the most controversial issues raised during the initial rule-making process during 1995; this was also an issue that the GSEs focused on in their comments on the 2000 proposed rule. Because most renters qualify under the Low- and Moderate-Income Goal, the chosen market size for multifamily can have a substantial effect on the overall estimate of the low- and moderate-income market (as well as on the estimate of the special affordable market). Thus, it is important to consider estimates of the size of the multifamily market in some detail, as Section C does. In addition, given the uncertainty surrounding estimates of the multifamily mortgage market, it is important to consider a range of market estimates, as Sections F–H do.

Goal Percentages. To derive the goal percentages for each property type, HUD relied heavily on HMDA, AHS, and POMS data. For single-family-owner originations, HMDA provides comprehensive information on borrower incomes and census tract locations for metropolitan areas. Unfortunately, it provides no information on the incomes of renters living in mortgaged properties (either single-family or multifamily) or on the rents (and therefore the affordability) of rental units in mortgaged properties. The AHS, however, does provide a wealth of information on rents and the affordability of the outstanding stock of single-family and multifamily rental properties. An important issue here concerns whether rent data for the stock of rental properties can serve as a proxy for rents on newly-mortgaged rental properties. During the 2000 rule-making process, POMS data were used to examine the rents of newly-mortgaged rental properties; thus, the POMS data supplements the AHS data. The data base issues as well as other technical issues related to the goal percentages (such as the need to consider a range of mortgage market environments) are discussed in Sections F, G, and H, which present the market share estimates for the Low- and Moderate-Income Goal, the Underserved Areas Goal, and the Special Affordable Goal, respectively.

4. Conclusions

HUD is using the same basic methodology for estimating market shares that it used in 1995 and 2000. As demonstrated in the remainder of this appendix, HUD has attempted to reduce the range of uncertainty around its market estimates by carefully reviewing all known major mortgage data sources and by conducting numerous sensitivity analyses to show the effects of alternative assumptions. Sections C, D, and E report findings related to the property share distributions called for in Step 1, while Sections F, G, and H report findings related to the goal-specific market parameters called for in Step 2. These latter sections also report the overall market estimates for each housing goal calculated in Step 3.

In considering the levels of the goals, HUD carefully examined past comments by the GSEs and others on the methodology used to establish the market share for each of the goals. Based on that thorough evaluation, as well as HUD's additional analysis for this Proposed Rule, HUD concludes that its basic methodology is a reasonable and valid approach to estimating market shares. As in the past, HUD recognizes the uncertainty regarding some of these estimates, which has led the Department to undertake a number of sensitivity and other analyses to reduce this uncertainty and also to provide a range of market estimates (rather than precise point estimates) for each of the housing goals.

C. Size of the Conventional Multifamily Mortgage Market [12]

This section provides estimates of (a) the annual dollar volume of conventional multifamily mortgage originations and (b) the annual average loan amount per unit financed. The estimates build on research reported in the Final Rule on HUD's Regulation of Fannie Mae and Freddie Mac as published in the **Federal Register** on October 31, 2000, especially in Appendix D. That material from the 2000 Rule will not be repeated here but will be referenced or summarized where appropriate.

The section uses the information on dollar volume of multifamily originations and average loan amounts to estimate the number of multifamily units financed each year as a *percentage share* of the total (both single-family and multifamily) number of dwelling units financed each year; the years covered include 1991 to 2002. This percentage share, called the "multifamily mix", is an important parameter in HUD's projection model of the mortgage market for 2005–08.

Estimating this "multifamily mix" is important because relative to its share of the overall housing market, the multifamily rental sector has disproportionate importance for the housing goals established for Fannie Mae and Freddie Mac. This is because most multifamily rental units are occupied by households with low or moderate incomes. In 2001, for example, Freddie Mac purchased mortgages on approximately 3.5 million housing units, of which only 12 percent were multifamily rental units. However, of Freddie Mac's purchases qualifying as mortgages on low- and moderate-income housing, fully 25 percent of the units financed were multifamily rental units. Fannie Mae's experience is similar. Ten percent of all housing units on which mortgages were purchased in 2001 were multifamily rental units, but 21 percent of the units with qualifying mortgages were multifamily rentals.

The methods used in the 2000 Rule for estimating the size of the multifamily mortgage market and related variables were the product of extensive research by HUD and review by interested parties. The approach here is first to extend those estimates through 2002 using the same methods as in the 2000 Rule, and then to present alternative methods, along with commentary.

1. Data Sources

The data sources available for estimating the size of the multifamily mortgage market are more limited in scope and timeliness than was the case for the 2000 Rule. Among the key sources described in detail in the 2000 Rule, the following are now less useful:

Survey of Mortgage Lending Activity. This survey has been discontinued; estimates are available only through 1997.

Residential Finance Survey: The 1991 Residential Finance Survey (RFS) is now 13 years out of date.

Urban Institute Statistical Model: This model, developed in 1995 and calibrated

[10] This goal will be referred to as the "Underserved Areas Goal".

[11] The example in Table D.1 is based on 1990 Census tract geography. As explained in Section G, switching to 2000 Census tract geography (scheduled for 2005) increases the underserved areas market share by approximately five percentage points.

[12] This section is based on analysis by Jack Goodman under contract with the Urban Institute.

using data from 1975–1990, is now even further removed from its calibration period and probably captures current market conditions less well.

Estimates from the GSEs: As part of their comments on the proposed 2000 Rule, Fannie Mae and Freddie Mac shared with HUD their own estimates of the size of the multifamily mortgage market.

Fortunately, several key sources are available with the timeliness and quality comparable to the sources used during development of the 2000 Rule. These sources are: the Home Mortgage Disclosure Act (HMDA); activity reports submitted to HUD and the Office of Federal Enterprise Oversight (OFHEO) by Fannie Mae and Freddie Mac; non-GSE mortgage-backed security issuance from the Commercial Mortgage Alert database; and multifamily mortgage activity by life insurance companies, as estimated by the American Council of Life Insurers (ACLI). For background information on each of these sources, readers are referred to Appendix D of the 2000 Rule.

2. Estimates Based on "HUD New" Methodology

In the 2000 Rule, HUD developed a new methodology for estimating aggregate multifamily conventional loan originations. The method, here labeled "HUD New", was developed to make full use of the available data, and in particular the four sources listed above, which encompass most of the multifamily mortgage market.

The advantages of HUD New are that it provides reasonably complete coverage of the market, produces those estimates within nine months of the end of the year, generally includes only current originations and avoids double counting. The main disadvantage of HUD New is that it produces a lower bound estimate. Some loan originators are missed, including pension funds, government entities at the federal, state, and local levels, real estate investment trusts, and some mortgage bankers. Also excluded are loans made by private individuals and partnerships. In addition to these exclusions, estimates from the covered lenders require some judgmental adjustments to conform to the definitions and time intervals of HUD New.

Despite these limitations, HUD New is one sound way to estimate the size of the multifamily conventional mortgage market. The method requires unavoidable judgment calls on which analysts will differ. However, due to the reasonableness of the HUD New approach, the value of maintaining continuity in estimation methods, and the fact that no data has become available in the past few years that would argue for modifying HUD New, it is used here for the baseline estimate of the size of the conventional multifamily mortgage market in 2000, 2001 and 2002.

The estimates from HUD New are presented in Table D.2. This table is the counterpart of Table D.5 in the 2000 Rule. The historical years have two columns each, one for the estimates presented in the 2000 Rule and one for estimates independently produced as part of this research. Footnotes to the table provide more complete descriptions of the components. Additional background on the calculations is provided in the 2000 Rule (Appendix D, Section C).

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Table D.2
Estimated Multifamily Conventional Origination Volume, 1995-2002
New HUD Methodology
($ millions)

	1995	1995r	1996	1996r	1997	1997r	1998	1998r	1999 [6]	1999r	2000 [7]	2000r	2001 (New)	2002 (New) [8]
Fannie Mae [1]	$ 3,322	$ 3,327	$ 4,315	$ 4,322	$ 4,370	$ 4,378	$ 7,644	$ 7,657	$ 6,697	$ 6,708	$ 5,641	$ 6,953	$ 12,818	$ 11,129
Freddie Mac [1]	1,047	1,049	1,491	1,493	7,136	1,501	2,615	2,620	4,803	4,811	5,096	4,040	6,371	7,140
CMBS multifamily [2]	0	n/a	4,436	4,436	1,499	7,136	15,677	15,677	10,805	10,805	8,271	7,221	9,244	7,892
HMDA-portfolio [3]	15,714	15,714	17,321	17,321	18,521	18,521	22,485	22,485	19,336	23,359	19,162	21,840	27,173	35,454
Life insurance companies [4]	3,072	4,419	4,115	4,115	4,403	4,403	4,465	4,465	2,865	2,865	3,805	2,094	3,373	6,089
Private pension funds [5]	427	427	812	812	835	835								
St. & local retirement funds [5]	228	228	197	197	228	228								
Federal credit agencies [5]	627	627	404	404	408	408								
St. & local credit agencies [5]	358	358	1,394	1,394	840	840								
Total	24,795	26,149	34,484	34,493	38,240	38,250	52,886	52,904	44,505	48,547	41,976	42,148	58,979	67,704

[1] Source: OFHEO, 2002 Annual Report, Tables 1 and 11. Includes cash purchases from lenders plus lender-originated securitizations; excludes non-GSE securities and repurchased GSE securities. Figures in OFHEO tables are reduced here by 33 percent to adjust for seasoned and government-insured loans, as explained in the 2000 Rule.

[2] Commercial Mortgage Alert (CMA) database. Excludes agency, bank, thrift, insurance company, foreign, and seasoned securitizations.

[3] HMDA tabulation by HUD; includes conventional multifamily loans originated by depositories but not sold, plus conventional multifamily loans acquired by depositories but not sold, less overlap.

[4] Source: American Council of Life Insurers, Mortgage Commitments Survey; figures are loan commitments from Q4 of previous year plus commitments in first three quarters of current years (to approximate the time lag from loan commitment to origination).

[5] Source: Survey of Mortgage Lending Activity.

[6] HMDA figure projected based on 1998 HMDA in conjunction with 1998-1999 change in transactions volume for GSE and CMBS market segments.

[7] Estimate based on partial-year data.

[8] CMBS estimate based on partial-year data.

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The revisions to the historical estimates result from both revisions to some of the input data and recalculations. For the years 1995 through 1998, the revisions are small for the estimates of total originations. The only one of note is a 5 percent upward revision to the estimate for 1995, prompted by a recalculation of the entry for life insurance companies. The revision to 1999 is larger, and results mostly from the substitution of the actual HMDA results for that year for the projected value used in the 2000 Rule. Surprisingly, the revised estimate for 2000 based on complete data for that year only varies slightly from the projection made at the time of the 2000 Rule.

Most of the historical estimates produced in 2000 can be replicated or closely approximated, including those for Fannie and Freddie, CMBS, HMDA, and life insurance companies. The replicability of the CMBS figures is especially heartening, in light of all the selection criteria and hand calculations required to generate those estimates from the CMBS database. (In the 2000 Rule, the estimates for Freddie Mac and CMBS originations in 1997 appear to have been switched, and the revised estimates make this correction.)

The revised figures for 1999 and 2000 indicate that total conventional originations dropped 8 percent in 1999 from 1998's very strong level and another 13 percent in 2000. However, the HUD New estimate indicates that total conventional originations then jumped 40 percent in 2001 and further increased 15 percent in 2002. Judging from Survey of Mortgage Lending Activity estimates since 1970, the 2002 number is a new record high. For 2002, most of the increased volume is due to increases by HMDA lenders and life insurance companies.

One possible concern is that the significant increase in the HMDA number in 2002 was caused by the FFIEC relaxing its eligibility requirements between 2001 and 2002. This concern turns out to be unfounded. The FFIEC actually raised its eligibility requirements. The level of assets required by FFIEC to be reported to HMDA increased from $31 million in 2001 to $32 million in 2002. In addition, the number of HMDA reporters decreased from 7,771 in 2001 to 7,638 in 2002.

3. An Alternative Method

The HUD New method makes use of all the available sources of data on individual origination sources in attempting to estimate total conventional mortgage originations. However, as discussed in the 2000 Rule and summarized above, unavoidable gaps in coverage make the resulting HUD New figures lower-bound estimates of actual originations rather than best "point" estimates. In addition, even for those loans that are available, certain assumptions must be made to convert the available data into estimates corresponding to the desired definition and time periods.

An alternative to the bottom-up approach of HUD New avoids some of the data problems. The Federal Reserve's Flow of Funds accounts provide the most complete and timely set of estimates of multifamily mortgage credit. The Flow of Funds statistics refer to net changes in credit outstanding rather than gross originations. Specifically, balance sheet estimates of mortgage assets of lenders are used to produce estimated changes in holdings of mortgages over time. An alternative label for the resulting time series is "net change in mortgage debt outstanding."

The historical relationship between gross originations and net change can be used to estimate recent origination volume. Separate information on FHA multifamily activity can be used to convert the total originations to estimates of only conventional originations. The Flow of Funds method that is described in this section will be called "FoF-based."

Flow of Funds estimates of mortgage debt outstanding are based on data from sources of varying accuracy and timeliness. Bank and thrift institution holdings, taken from regulatory filings, are by all accounts highly accurate, as are those from the government sponsored agencies and direct Federal government holdings. The private MBS data and the life insurance company figures, both taken from Wall Street sources, are also thought to be reasonably accurate. Less accurate are the estimates of loans made by private individuals and certain institutions, for which comprehensive data on loans outstanding is provided only once every ten years, through the Residential Finance Survey. Fortunately, the depository institutions, GSEs, and mortgage-backed securities account for the bulk of all holdings of mortgage debt (approximately 72 percent, according to the Flow of Funds estimates for year-end 2001).

The net change in mortgage debt outstanding in any year is the lower bound on originations. This is because the net change is defined as originations less the sum of principal repayments and charge offs. Historically loan originations have exceeded the net change by a considerable margin in both the multifamily and single-family markets. There are several reasons why the relationship of originations to net change differs between the multifamily and single-family sectors, but the basic principles apply to both sectors.

Table D.3 presents the annual estimates from the Flow of Funds. Also shown are the estimates of multifamily conventional originations as published in Table D.10 from the 2000 rule, and FHA originations from HUD administrative records.

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Table D.3

Multifamily Mortgage Lending

Year	(A) Net Change in Mortgage Debt Outstanding	(B) Conventional Mortgage Originations	(C) FHA Originations	(D) Total Originations	D/A	D-A	Memo: Ten-Year Treasury Yield — Annual Average (%)	Memo: Ten-Year Treasury Yield — Ann. Avg. Less Avg. of Previous Five Yrs (% Points)
1990	-1.4	N/A	1	N/A	N/A	N/A	8.6	-0.3
1991	-3.9	23	1	24	-6.2	27.9	7.9	-0.5
1992	-12.3	25	2	27	-2.2	39.3	7.0	-1.4
1993	-4.4	29	3	32	-7.3	36.4	5.9	-2.3
1994	0.5	32	3	35	70.0	34.5	7.1	-0.5
1995	6.4	34	3	37	5.8	30.6	6.6	-0.7
1996	12.4	35	4	39	3.1	26.6	6.4	-0.4
1997	12.2	38	4	42	3.4	29.8	6.4	-0.2
1998	31.5	54	4	58	1.8	26	5.3	-1.2
1999	37.4	*52 (47)*	4	*56* (51)	*1.5* (1.4)	*19* (14)	5.7	-0.7
2000	37.3	*52 (43)*	4	*56* (47)	*1.5* (1.3)	*19* (10)	6.0	0.0
2001	48.3	*67*	5	*71*	*1.5*	23	5.0	-0.9
2002	44.2	*62*	4.5	*66*	*1.5*	22	4.6	-1.1

Sources and Notes:

Italics in Columns B and D indicate estimates not appearing in the 2000 Rule. Numbers in parentheses are estimates from the 2000 Rule.

Columns A through D are in billions of dollars.

Columns A is from Federal Reserve Board Flow of Funds Accounts.

Column B is mid-point of the range in Column 8 of Table D.10 in 2000 Rule Appendix D where the 1999 value is labeled preliminary and the 2000 value is labeled projected.

Column C estimates are from HUD.

Interest rates are from the Federal Reserve Board.

The ratio of mortgage originations to net change should be positively correlated with the proportion of total originations that are refinancings, for which the net change in mortgage debt would be expected to be low relative to that on loans taken out in connection with a property acquisition. (This is the pattern observed in the single-family mortgage market.) Refinancings, in turn, would be expected to be prevalent relative to purchase loans at times when interest rates are low relative to their recent past.

The historical evidence generally supports this expectation regarding the relationship of originations to net lending. As shown in Table D.3, total originations have been highest relative to net change when interest rates have been low relative to their recent past. The ten-year Treasury yield, a common benchmark for pricing multifamily mortgages, has generally trended down since 1990. The early 1990s were all marked by high originations relative to net change, and these were also years in which interest rates were particularly low relative to their trailing five-year averages. In 1996 and 1997, by contrast, originations were less high relative to net change, and these were years in which interest rates were only slightly lower than their five-year trailing averages.

In estimating conventional originations for 1999–2002, the 1998 experience is a useful benchmark. That year, total originations exceeded the net change by about 80 percent, as shown in Table D.3. There was also a big drop in interest rates in 1998 relative to the recent past, providing an incentive for refinancings. As shown in the table, interest rates rose slightly in 1999 and again in 2000, presumably diminishing the incentive to refinance. Nonetheless, the net change in mortgage debt was higher in 1999 and 2000 than it had been in 1998.

Putting all this together, it seems that the appropriate ratio of total originations to net change to apply to 1999 and 2000 would be below that of 1998 and of most other years of the 1990s. Applying a ratio of 1.5 to the net change estimates in 1999 and 2000 results in a total originations estimate of approximately $56 billion. Subtracting the $4 billion in FHA originations results in estimates of $52 billion for conventional originations in each year. A subjective confidence band around this point estimate is at least +/− $2 billion.

Turning to the estimate for 2001, the first thing to note is that net change in mortgage debt jumped to $48 billion from $37 billion of the previous two years. The second thing to note is that interest rates fell by nearly a percentage point in 2001 relative to their past average. For both of these reasons, total originations in 2001 would be expected to have been higher than in 1999 or 2000. How much higher is a subjective judgment, but 1.5 would seem an appropriate multiple to apply to the net change number in 2001. This is the same multiple as in 1999 and 2000, despite the added refinancing incentive in 2001. By the beginning of 2001, there were relatively few properties "at risk" of refinancing. Many presumably had refinanced in one of the preceding years, and lock-out provisions, yield maintenance agreements, and other loan conditions may have kept these properties from coming in for refinancings. Also, there may have been some short-run capacity problems in the multifamily loan origination industry in 2001 that further curtailed volume.

Applying the 1.5 multiple to 2001's net change of $48 billion yields a total originations estimate of $72 billion. Subtracting the $5 billion of FHA business results in a conventional originations estimate of $67 billion, to which a subjective confidence band of at least +/-$2 billion appears warranted.

As seen in Table D.3, the Flow of Funds methodology indicates that total conventional originations decreased 7.5% between 2001 and 2002. In 2002, the net change in mortgage debt decreased slightly to $44 billion. Using the 1.5 multiple for 2002's net change of $44.2 billion yields a total originations estimate of $66 billion. Subtracting $4.5 billion of FHA business results in a conventional originations estimate of $62 billion.

This Flow of Funds estimate is over $5 billion less than the estimate from HUD New. This is surprising given that the HUD New method is supposed to serve as a lower boundary on the size of the multifamily market, while the Flow of Funds method is designed to produce a higher "point" estimate of the actual size of the market.

4. Most Likely Range

In the 2000 Rule, estimates of conventional multifamily loan originations from various sources and methods were evaluated in determining the most likely range of annual originations. Those estimates were summarized in Table D.10 in the 2000 Rule. Some of the estimates from that table are reproduced below, in Table D.4, along with updates and estimates from the Flow of Funds method.

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Table D.4

Estimates of Conventional Multifamily Mortgage Market ($ billions)

	(1) SMLA	(2) SMLA Adjusted	(3) New	(4) New Revised & Adjusted	(5) ACLI+ 1.25*HMDA	(6) Urban Institute	(7) Fannie Mae	(8) Freddie Mac	(9) FoF Based	(10) Misc	(11) Likely Range in 2000	(11) Likely Range now	(12) Multifamily Mix (Pct) Min	(12) Multifamily Mix (Pct) Max
1990	$30.6	$25.9			$51.4					$37.4 (RFS)				
1991	$24.6	$22.7			$11.8						$22-24		16%	17%
1992	$25.2	$23.5			$14.0	$28.7					$24-26		11%	12%
1993	$30.0	$28.9			$17.9	$30.2					$28-30		13%	14%
1994	$31.7	$31.7			$21.4	$33.8	$32.2				$31-33		20%	21%
1995	$37.9	$32.4	$ 24.8	$26.1	$20.4	$38.5	$33.7	$21-27		$36.7 (POMS)	$33-35		20%	21%
1996	$43.7	$33.3	$ 34.5	$34.5	$23.8	$40.6		$24-29			$33-37		17%	19%
1997	$44.6	$35.5	$ 38.2	$38.3	$28.8	$43.9	$35-40	$28-30			$36-40		16%	18%
1998			$ 52.9	$52.9	$38.3	$40.6	$40-45	$40-50			$52-55		13%	14%
1999			$ 44.5	$48.6	$42.2	$48.3	$37-41		$52		$45-48	$50-54	15%	16%
2000			$ 42.0	$42.1	$34.8	$50.6			$52		$42-44	$48-52	16%	17%
2001				$59.0	$48.4				$67			$65-69	13%	14%
2002				$67.7	$61.3				$62			$60-64 and $67.7	9.8% and 10.9%	10.4%

Sources and Notes:
The following entries are from Table D.10 of the 2000 Rule: Columns 1-3,5 (through 1998), 6-8, 10, and "Likely Range in 2000". All of these entries are described and interpreted in the 2000 Rule.
Columns 4,9, and "Likely Range Now" are derived and explained in the text of this Appendix.

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Both HUD New (column #4 in Table D.4) and FoF-based (column #9) indicate a surge in lending activity in 2001. Some corroboration of this jump is provided by other indicators, flawed though they may be. HMDA has well-documented coverage problems with multifamily loans, but it is noteworthy that HMDA-estimated conventional originations stayed in the same general range ($26 to $31 billion) in 1998–2000 before jumping to $36 billion in 2001. The composite of 1.25 times HMDA originations plus life insurance commitments, described in the 2000 Rule and updated here in column #5, also follows this basic path. Similarly, aggregate GSE multifamily purchases and securitizations stayed in the same general level in 1998–2000, before jumping in 2001, although this trend reflects changes in both market size and GSE market share. FHA originations (not shown) also rose substantially in 2001, but this too may indicate more than just market size trends.

Column #11 of Table D.4 gives the likely ranges of originations for each of the years. These are based on the estimates from all sources and interpretations of their strengths and weaknesses. In 1999, the $4 billion upward revision to the HUD New estimate from the preliminary figure reported in the 2000 Rule, together with the higher estimate produced by the FoF-based method, justify an upward revision to the $45–$48 range estimated in the 2000 Rule. The revised range is set at $50–54 billion. In 2000, HUD New (revised and extended version) suggests that originations were somewhat lower than in 1999, but FoF-based has originations holding at $52 billion. Balancing these conflicting indicators, a range of $48–$52 billion is selected for 2000. Finally, all indicators point to a substantial pickup in 2001, and the range that seems to fit best with those indicators is $65–$69 billion.

In 2002, the various methods of estimation give a mixed picture. HUD New indicates a surge in lending activity in 2002, while the flow of funds method shows a decrease in lending activity. Other methods also show divergent trends. The composite of 1.25 times HMDA originations plus life insurance commitments also shows a significant increase between 2001 and 2002. On the other hand, aggregate GSE multifamily purchases and securitizations showed a slight decrease between 2001 and 2002. FHA originations (not shown) also decreased slightly in 2002.

While this is a subjective judgment, 1.5 may not be the appropriate multiple to apply to net mortgage debt outstanding in the flow of funds model in 2002. The difference between the flow of funds estimate and the HUD estimate cannot be reconciled without adjusting the FOF multiple. Given the low interest rates in 2002, and a refinancing boom in the single-family mortgage market, it could be that the multifamily market also had a significant amount of refinancing activity. In such a case, there could be an increase in the size of the multifamily market without a corresponding increase in net mortgage debt outstanding. A higher multiple would need to be applied to the Flow of Funds model to compensate for the increase in multifamily refinancings.

Due to data limitations, the above remains a speculation. The largest increase in multifamily volume came from HMDA reporting lenders. The HMDA data do not allow for the separation of multifamily purchase originations from refinancings. Other data sources need to be explored to determine if an adjustment to the FoF-based model is appropriate.

5. Loan Amount per Unit

In determining the size of the conventional multifamily mortgage market for purposes of the GSE rules, the measure of market size is the annual number of conventionally financed multifamily rental housing units. The number of units is derived by dividing the aggregate annual originations by an estimate of the average loan amount per housing unit financed. For this reason, accuracy in the estimate of loan amount per unit is as important as accuracy in the dollar estimate of aggregate conventional originations. A 10 percent error in either will result in a 10 percent error in the estimate of market size.

The 2000 Rule used estimates of loan amount per unit drawn from various sources. As summarized in Table D.9 of the 2000 Rule and the accompanying text, the estimates for 1993–1998 were taken from the GSEs and for 1999 from CMBS data. "Unpaid Principal Balance" or UPB—a balance sheet measure which for current year loan originations will differ little from the initial loan amount—is used to calculate aggregate originations of loans bought or securitized by the GSEs or pooled into non-GSE mortgage-backed securities. The figures from Table D.9 of the 2000 Rule are reproduced below in Table D.5, along with updated estimates from all three sources for 2000, 2001 and 2002. The estimates that are new since the 2000 Rule appear in italics.

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Table D.5

Multifamily Loan Amount per Unit, 1990-2002

	UPB per unit ($)*	Fannie Mae UPB ($ millions)	Fannie Mae units	Fannie Mae UPB/unit ($)	Freddie Mac UPB ($ millions)	Freddie Mac units	Freddie Mac UPB/unit ($)	CMBS UPB ($ millions)	CMBS units	CMBS UPB/unit ($)	Rent Adjusted UPB/unit ($)
1990	$ 23,847										
1991	$ 24,951										
1992	$ 25,888										
1993	$ 24,300	$ 4,602	186,471	$ 24,682	$ 191	10,794	$ 17,710				
1994	$ 21,156	$ 4,735	221,420	$ 21,383	$ 913	45,538	$ 20,052				
1995	$ 24,825	$ 5,958	235,358	$ 25,316	$ 1,582	68,381	$ 23,138				
1996	$ 25,268	$ 7,037	272,931	$ 25,782	$ 2,350	98,574	$ 23,843				
1997	$ 27,266	$ 6,896	253,065	$ 27,251	$ 2,716	99,469	$ 27,304				
1998	$ 31,041	$ 12,503	393,397	$ 31,782	$ 6,578	221,319	$ 29,723	$ 12,465	406,006	$ 30,702	
1999	$ 30,719	$ 9,393	294,091	$ 31,938	$ 7,621	191,492	$ 39,798	$ 9,238	300,724	$ 30,719	
2000	*$ 32,500*	*$ 10,078*	*289,509*	*$ 34,811*	*$ 6,781*	*163,580*	*$ 41,454*	*$ 6,223*	*184,397*	*$ 33,748*	
2001	*$ 34,000*	*$ 18,688*	*503,909*	*$ 37,086*	*$ 11,837*	*315,370*	*$ 37,534*	*$ 7,647*	*234,948*	*$ 32,548*	*$ 34,000*
2002	$ 37,040	*$ 18,278*	*461,397*	*$ 39,614*	*$ 13,330*	*333,038*	*$ 40,025*	*$ 5,662* **	*152,863* **	*$ 37,040*	*$ 35,000*

Figures in italics for 2000, 2001 and 2002 are new; all other figures are from Table D.9 of the 2000 Rule.
* 1990-1992: Average single-family conventional conforming loan amount/3.57. See 2000 Rule for details.
1993-1998: Weighted average of Fannie Mae and Freddie Mac.
1999: CMBS data.
2000-2001: See text.
** Data for CMBS only covers the first 10 months of 2002.

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Several options are available for developing estimates for 2000, 2001 and 2002. The first is to use the UPB (unpaid principal balance) per unit estimates from the GSEs. These estimates, taken from the Fannie Mae and Freddie Mac annual activity reports to HUD, are as follows, computed as in the 2000 Rule as a unit-weighted average of the unpaid principal balance (UPB) per multifamily unit in Fannie Mae's and Freddie Mac's portfolios:

1997	$27,266
1998	31,041
1999	35,038
2000	37,208
2001	37,258
2002	39,787

The figure for 2002 is approximately 46 percent higher than in 1997. Both Fannie Mae and Freddie Mac's portfolios generate estimates of between $39,000 and $40,000 for 2002.

Several alternative approaches to estimating loan amount per unit are available. The first is to base the estimate on CMBS data, as was done for 1999 in the 2000 Rulemaking. As shown in the last column of Table D.5, the estimates of UPB/unit from this source are somewhat below those of the GSEs and indicate less increase since the late1990s.

In the first 10 months of 2002, CMBS properties showed a UPB/unit of $37,038, a nearly 14 percent jump over the previous year. Although slightly below the UPB/unit for the GSEs, the CMBS numbers are closer to the GSE calculations than in previous years.

Another approach is to move the 1999 estimate of UPB/unit forward by some justifiable index. The 2001 estimates use the change in average rent on multifamily rental units from the American Housing Survey. Because AHS data are not available for 2002, the 2002 estimate uses the consumer price index for rent of primary residence. Both AHS and CPI rent estimates are listed below:

Year	Median	Mean	CPI
1999	$550	$592	177.5
2001	590	647	192.1
2002	N/A	N/A	199.7

There is some variation between the two measures. In the AHS, median rent rose 7.3 percent over this two-year period, and mean rent increased 9.3 percent. Meanwhile, the CPI showed an increase of 8.2 percent. In 2001, using the AHS produces an estimate of $34,000. The CPI yields a smaller estimate for 2001; applying the 8.2 percent increase from the CPI results in a 2001 estimate of $33,200. Since the AHS data are unavailable in 2002, the CPI provides a 2002 estimate of approximately $35,000.

In 2001, the rent-adjusted 1999 estimate was in between the estimates from the CMBS and GSE data, and was a fair estimate of the actual size of the market. In 2002, however, the rent-adjusted number is below both the CMBS and GSE calculations. The rent-adjusted number could be underestimating the 2002 UPB/unit. Either the CMBS or GSE calculations, or an average of the various methods could be used. Section F will report the results of several sensitivity analyses showing the effects of the different multifamily mortgage estimates (HUD New versus Flow-of-Funds) and different per unit amounts ($35,000 or $37,275 which is an average of the various estimates) on the goals-qualifying shares for the year 2002. Under the various estimates, the multifamily mix (defined below) for 2002 ends up around 11 percent.

6. Multifamily Mix During the 1990s

The section uses the information on dollar volume of multifamily originations (Table D.4) and average loan amounts (Table D.5) to estimate the number of multifamily units financed each year as a *percentage share* of the total (both single-family and multifamily) number of dwelling units financed each year; the years covered include 1991 to 2001. This percentage share, called the "multifamily mix", is reported in the last two columns of Table D.4.[13] The "minimum" ("maximum") multifamily mix figure reflects the low (upper) end of the "likely range" of multifamily dollar originations, also reported in Table D.4. Because of the high goals-qualifying shares of multifamily housing, the multifamily mix is an important parameter in HUD's projection model for the overall market; other things equal, a higher multifamily mix (or conversely, a lower share of single-family loans) leads to a higher estimate of goals-qualifying loans in the overall mortgage market.

Based on the "likely range" of annual conventional multifamily origination volume, multifamily units have represented 15.1 percent (the average of the "minimum" figures) to 16.3 percent (the average of the "maximum" figures) of units financed each year between 1991 and 2002. Considering the mid-points of the "likely range", the multifamily mix averaged 15.7 percent during this period. Notice that multifamily mix is lower during years of heavy refinancing when single-family originations dominate the mortgage market; the multifamily mix was only 13–14 percent during 1993, 1998, and 2001, and approximately 11 percent during 2002.[14] As discussed in Sections F–H, the record single-family originations ($3.3 trillion) during 2003 likely resulted in a lower multifamily mix than any of the years between 1991 and 2002. Sensitivity analyses are conducted to show the effects of multifamily mixes less than the previous lows of 11 percent in 1992 and 2002.

The multifamily share of the conforming conventional market (or "multifamily mix") is utilized below as part of HUD's analysis of the share of units financed each year meeting each of the housing goals. Following the 2000 Rule, the analysis will focus on multifamily mixes of 15 percent and 16.5 percent, which seems reasonable given the 1991–2002 estimates reported in Table D.4. While at the low end of the 1992–2002 averages for the "likely range", a 15 percent mix more readily accommodates any uncertainty about the data and the estimation process. An alternative multifamily mix assumption of 13.5 percent is also considered, as well as even lower ones in order to fully consider the effects of heavy refinancing environments such as 2001–03.

D. Single-Family Owner and Rental Mortgage Market Shares

1. Available Data

As explained later, HUD's market model will also use projections of mortgage originations on single-family (1–4 unit) properties. Current mortgage origination data combine mortgage originations for the three different types of single-family properties: owner-occupied, one-unit properties (SF–O); 2–4 unit rental properties (SF 2–4); and 1–4 unit rental properties owned by investors (SF–Investor). The fact that the goal percentages are much higher for the two rental categories argues strongly for disaggregating single-family mortgage originations by property type. This section discusses available data for estimating the relative size of the single-family rental mortgage market.

The Residential Finance Survey (RFS) and HMDA are the data sources for estimating the relative size of the single-family rental market. The RFS, provides mortgage origination estimates for each of the three single-family property types but it is quite dated, as it includes mortgages originated between 1987 and 1991. (An updated version of the RFS based on the 2000 Census will not be available until the spring of 2004). HMDA divides newly-originated single-family mortgages into two property types: [15]

(1) Owner-occupied originations, which include both SF–O and SF 2–4.

(2) Non-owner-occupied mortgage originations, which include SF Investor.

The percentage distributions of mortgages from these data sources are provided in Table D.6a. (Table D.6b will be discussed below.) Because HMDA combines the first two categories (SF–O and SF 2–4), the comparisons between the data bases must necessarily focus on the SF investor category. According to 2000 (2001) HMDA data, investors account for 9.4 (9.9 percent) percent of home purchase loans and 7.6 percent (5.9 percent) of refinance loans.[16]

[13] 1990 is excluded from this calculation because of the unusually high multifamily mix that year. Also, the estimated multifamily mix from the HUD New Method is also provided for 2002 since it was greater than the estimate from the Flow of Funds method.

[14] The projection model for 2002 showed the following multifamily mixes for 2002: 11.5 percent for the HUD New multifamily estimate ($67.7 billion) if the average loan amount is $35,000 and 10.9 percent if the average loan amount is $37,275; 11.0 percent for the top end ($64 billion) of the Flow of Funds multifamily range ($60–64 billion) if the average loan amount is $35,000 and 10.4 percent if the average loan amount is $37,275; 10.7 percent for the mid-point ($62 billion) of the Flow of Funds multifamily range if the average loan amount is $35,000 and 10.1 percent if the average loan amount is $37,275; and 10.4 percent for the low end ($60 billion) of the Flow of Funds multifamily range if the average loan amount is $35,000 and 9.8 percent if the average loan amount is $37,275.

[15] The data in Table D.6a ignore HMDA loans with "non-applicable" for owner type.

[16] Due to the higher share of refinance mortgages during 2001, the overall single-family-owner

Assuming a 35 percent refinance rate per HUD's projection model, the 2000 (2001) HMDA data are consistent with an investor share of 8.8 (8.5) percent.[17] The RFS estimate of 17.3 percent is approximately twice the HMDA estimates. In their past comments, the GSEs have argued that the HMDA-reported SF investor share should be used by HUD. In its 1995 and 2000 rules, HUD's baseline model assumed a 10 percent share for the SF investor group—only slightly higher than the HMDA-based estimates; alternative models assuming 8 percent and 12 percent were also considered. As discussed below, HUD's baseline projection of 10 percent is probably quite conservative; however, given the uncertainty around the data, it is difficult to draw firm conclusions about the size of the single-family investor market, which necessitates the sensitivity analysis that HUD conducts. The release this spring of the updated RFS should clarify this issue.

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percentage reported by HMDA for 2001 (92.7 percent) is larger than that reported for 2000 (91.3 percent).

[17] HMDA data for 2002 would yield a slightly higher investor share; the derived investor share assuming a 35 percent refinance rate would be 9.6 percent if 2002 HMDA data were used.

Table D.6a

Percentage Distribution of Single-Family-Owner and Rental Mortgages

	2000 (2001) HMDA (Percent) Purchase		2000 (2001) HMDA (Percent) Refinance		Projected (Assume 35% Refinance Rate)		1987-91[1] RFS	HUD's 1995 and 2000 Rules
SF-O	90.6	(90.1)	92.4	(94.1)	91.2	(91.5)	80.4	88.0
SF 2-4	(Included above)						2.3	2.0
SF Investor	9.4	(9.9)	7.6	(5.9)	8.8	(8.5)	17.3	10.0
Total	100.0	(100.0)	100.0	(100.0)	100.0	(100.0)	100.0	100.0

Note: All data are for metropolitan areas. The refinance rate of 35 percent is assumed in HUD's baseline model described in Section E.

Table D.6b

Percentage Distribution of Newly-Mortgaged Single-Family-Owner and Rental Units

	2000 (2001) HMDA With 35% Refinance Assumption		1997-91 RFS	HUD's 1995 and 2000 Rules	Blackley/Follain Alternative
SF-O	84.5	(84.8)	73.8	83.0	80.6
SF-2-4 Owner[1]	1.9	(1.9)	2.1	1.9	1.9
SF-2-4 Renter	2.4	(2.4)	2.7	2.4	2.3
SF Investor	11.2	(10.9)	21.4	12.7	15.2
Total	100.0	(100.0)	100.0	100.0	100.0
SF-Rental	13.6	(13.3)	24.1	15.1	17.5

[1] All data are for metropolitan areas. Notice that the SF 2-4 category has been divided into its owner and renter subcomponents. This is easily done based on the assumption of 2.25 units per SF 2-4 mortgage For each mortgage, one unit represents the owner occupant and 1.25 additional units represent renter occupants. The owner-occupant of the 2-4 property is included in the SF-O category in this appendix. This is necessary because different data sources are used to estimate the owner's income and the affordability of the rental units. The income of owners of 2-4 properties are included in the borrower income data reported by HMDA. The AHS and POMS will be used to estimate the affordability of the rental units.

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2. Analysis of Investor Market Share

Blackley and Follain. During the 1995 rule-making, HUD asked the Urban Institute to analyze the differences between the RFS and HMDA investor shares and determine which was the more reasonable. The Urban Institute's analysis of this issue is contained in reports by Dixie Blackley and James Follain.[18] Blackley and Follain provide reasons why HMDA should be adjusted upward as well as reasons why the RFS should be adjusted downward. They find that HMDA may understate the investor share of single-family mortgages because of "hidden investors" who falsely claim that a property is owner-occupied in order to more easily obtain mortgage financing. RFS may overstate the investor share of the market because units that are temporarily rented while the owner seeks another buyer may be counted as rental units in the RFS, even though rental status of such units may only be temporary. The RFS's investor share should be adjusted downward in part because the RFS assigns all vacant properties to the rental group, but some of these are likely intended for the owner market, especially among one-unit properties. Blackley and Follain's analysis of this issue suggests lowering the investor share from 17.3 percent to about 14–15 percent.

Finally, Blackley and Follain note that a conservative estimate of the SF investor share is advisable because of the difficulty of measuring the magnitudes of the various effects that they analyzed. In their 1996 paper, they conclude that 12 percent is a reasonable estimate of the investor share of single-family mortgage originations.[19] Blackley and Follain caution that uncertainty exists around this estimate because of inadequate data.

3. Single-Family Market in Terms of Unit Shares

The market share estimates for the housing goals need to be expressed as percentages of *units* rather than as percentages of mortgages. Thus, it is necessary to compare unit-based distributions of the single-family mortgage market under the alternative estimates discussed so far. The mortgage-based distributions given in Table D.6a were adjusted in two ways. First, the owner-occupied HMDA data were disaggregated between SF–O and SF 2–4 mortgages by assuming that SF 2–4 mortgages account for 2.0 percent of all single-family mortgages; according to RFS data, SF 2–4 mortgages represent 2.3 percent of all single-family mortgages so the 2.0 percent assumption may be slightly conservative. Second, the resulting mortgage-based distributions were shifted to unit-based distributions by applying the following unit-per-mortgage assumptions: 2.25 units per SF 2–4 property and 1.35 units per SF investor property. Both figures were derived from the 1991 RFS.[20]

Based on these calculations, the percentage distribution of newly-mortgaged single-family dwelling *units* was derived for each of the various estimates of the investor share of single-family mortgages (discussed earlier and reported in Table D.6a). The results are presented in Table D.6b. Three points should be made about these data. *First,* notice that the "SF–Rental" row highlights the share of the single-family mortgage market accounted for by all rental units.

Second, notice that the rental categories represent a larger share of the unit-based market than they did of the mortgage-based market reported earlier. This, of course, follows directly from applying the loan-per-unit expansion factors.

Third, notice that the rental share under HMDA's unit-based distribution is again about one-half of the rental share under the RFS's distribution. The rental share in HUD's 1995 and 2000 Rules and this year's proposed rule is slightly larger than that reported by HMDA. The rental share in the "Blackley-Follain" alternative is slightly above HUD's estimate. Rental units account for 15.1 percent of all newly financed single-family units under HUD's baseline model, compared with 13.7 (13.1) percent under a model based on 2000 (2001) HMDA data.

4. Conclusions

This section has reviewed data and analyses related to determining the rental share of the single-family mortgage market. There are two main conclusions:

- While there is uncertainty concerning the relative size of this market, the projections made by HUD in 1995 and 2000 appear reasonable and, therefore, will serve as the baseline assumption in the HUD's market share model for this year's Proposed Rule.
- HMDA likely underestimates the single-family rental mortgage market. Thus, this part of the HMDA data are not considered reliable enough to use in computing the market shares for the housing goals. Various sensitivity analyses of the market shares for single-family rental properties are conducted in Sections F, G, and H. These sensitivity analyses will include the GSEs' recommended model that assumes investors account for 8 percent of all single-family mortgages. These sensitivity analyses will show the effects on the overall market estimates of the different projections about the size of the single-family rental market.

The upcoming RFS based on the year 2000 Census will help clarify issues related to the investor share of the single-family mortgage market. At that time, HUD will reconsider its estimates of the investor share of the mortgage market.

E. HUD's Market Share Model

This section integrates findings from the previous two sections about the size of the multifamily mortgage market and the relative distribution of single-family owner and rental mortgages into a single model of the mortgage market. The section provides the basic equations for HUD's market share model and identifies the remaining parameters that must be estimated.

The output of this section is a unit-based distribution for the four property types discussed in Section B.[21] Sections F–H will apply goal percentages to this property distribution in order to determine the size of the mortgage market for each of the three housing goals.

1. Basic Equations for Determining Units Financed in the Mortgage Market

The model first estimates the number of dwelling units financed by conventional conforming mortgage originations for each of the four property types. It then determines each property type's share of the total number of dwelling units financed.

a. Single-Family Units

This section estimates the number of single-family units that will be financed in the conventional conforming market, where single-family units (SF–UNITS) are defined as:

SF–UNITS = SF–O + SF 2–4 + SF–INVESTOR

First, the dollar volume of conventional conforming single-family mortgages (CCSFM$) is derived as follows:

(1) CCSFM$ = CONV% * CONF% * SFORIG$

Where:

CONV% = conventional mortgage originations as a percent of total mortgage originations; estimated to be 88%.[22]

CONF% = conforming mortgage originations (measured in dollars) as a percent of conventional single-family originations; forecasted to be 80% by industry.

SFORIG$ = dollar volume of single-family one-to-four unit mortgages; $1,700 billion is used here as a starting assumption to reflect market conditions during the years 2005–2008.[23] While

[18] Dixie M. Blackley and James R. Follain, "A Critique of the Methodology Used to Determine Affordable Housing Goals for the Government Sponsored Housing Enterprises," report prepared for Office of Policy Development and Research, Department of Housing and Urban Development, October 1995; and "HUD's Market Share Methodology and its Housing Goals for the Government Sponsored Enterprises," unpublished paper, March 1996.

[19] Blackley and Follain (1996), p. 20.

[20] The unit-per-mortgage data from the 1991 RFS match closely the GSE purchase data for 2001. Blackley and Follain show that an adjustment for vacant investor properties would raise the average units per mortgage to 1.4; however, this increase is so small that it has little effect on the overall market estimates.

[21] The property distribution reported in Table D.1 is an example of the output of the market share model. Thus, this section completes Step 1 of the three-step procedure outlined above in Section B.

[22] According to estimates by the Mortgage Bankers Association of America (MBAA), the conventional share of the 1–4 family market was between 86 and 88 percent of the market from 1993 to 1999, with a one-time low of 81 percent in 1994. Calculated from "1–4 Family Mortgage Originations" tables (Table 1—Industry and Table 2—Conventional Loans) from "MBAA Mortgage and Market Data," at *www.MBAAa.org/marketkdata/* as of July 13, 2000. More recent unpublished estimates by MBAA are slightly higher.

[23] Single-family mortgage originations of $1,700 billion are similar to Freddie Mac's projection of $1,748 billion for 2005 and Fannie Mae's projection of $1,675 billion for 2005. As discussed later, single-family originations could differ from $1,700 billion during the 2005–2008 period that the goals will be in effect. As recent experience shows,

Continued

alternative assumptions will be examined, it must be emphasized that the important concept for deriving the goal-qualifying market shares is the relative importance of single-family versus multifamily mortgage originations (the "multifamily mix" discussed in Section C) rather than the total dollar volume of single-family originations considered in isolation.

Substituting these values into (1) yields an estimate for the conventional conforming market (CCSFM$) of $1,197 billion.

Second, the number of conventional conforming single-family mortgages (CCSFM#) is derived as follows:

(2) CCSFM# = (CCSFM$ * (1–REFI)/PSFLOAN$) + (CCSFM$ * REFI)/RSFLOAN$)

Where:

REFI = the refinance rate, assumed to be 35 percent for the baseline.[24]

PSFLOAN$ = the average conventional conforming purchase mortgage amount for single-family properties; estimated to be $146,000.[25]

RSFLOAN$ = the average conventional conforming refinance mortgage amount for single-family properties; estimated to be $131,000.[26]

Substituting these values into (2) yields an estimate of 8.5 million mortgages.

Third, the total number of single-family mortgages is divided among the three single-family property types. Using the 88/2/10 percentage distribution for single-family mortgages (see Section D), the following results are obtained:

(3a) SF–OM# = 0.88 * CCSFM# = number of owner-occupied, one-unit mortgages = 7.5 million.

(3b) SF–2–4M# = 0.02 * CCSFM# = number of owner-occupied, two-to-four unit mortgages = 0.17 million.

(3c) SF–INVM# = 0.10 * CCSFM# = number of one-to-four unit investor mortgages = 0.85 million.

Fourth, the number of dwelling units financed for the three single-family property types is derived as follows:

(4a) SF–O = SF–OM# + SF–2–4M# = number of owner-occupied dwelling units financed = 7.7 million.

(4b) SF 2–4 = 1.25 * SF–2–4M# = number of rental units in 2–4 properties where a owner occupies one of the units = 0.2 million.[27]

(4c) SF–INVESTOR = 1.35 * SF–INVM# = number of single-family investor dwelling units financed = 1.1 million.

Fifth, summing equations 4a–4c gives the projected number of newly-mortgaged single-family units (SF–UNITS):

(5) SF–UNITS = SF–O + SF 2–4 + SF–INVESTOR = 9.0 million

b. Multifamily Units

The number of multifamily dwelling units (MF–UNITS) financed by conventional conforming multifamily originations is calculated by the following series of equations:

(5a) TOTAL = SF–UNITS + MF–UNITS

(5b) MF–UNITS = MF–MIX * TOTAL = MF–MIX * (SF–UNITS + MF–UNITS) = [MF–MIX/(1—MF–MIX)] * SF–UNITS

Where:

MF–MIX = the "multifamily mix", or the percentage of all newly-mortgaged dwelling units that are multifamily; as discussed in Section C, alternative estimates of the multifamily market will be included in the analysis. As explained in Section C above, the baseline model assumes a multifamily mix of 15 percent; results are also presented in the basic market tables of Sections F–H for a higher (16.5 percent) and a lower (13.5 percent) multifamily mix. In addition, further sensitivity analyses are reported in those sections for even lower multifamily mixes that could occur during periods of heavy single-family refinancing activity.

Assuming a multifamily mix of 15 percent and solving (5b) yields the following:

(5c) MF–UNITS = [0.15/0.85] * SF–UNITS = 0.176 * SF–UNITS = 1.6 million.

c. Total Units Financed

The total number of dwelling units financed by the conventional conforming mortgage market (TOTAL) can be expressed in three useful ways:

(6a) TOTAL = SF–UNITS + MF–UNITS = 10.6 million (or more precisely, 10,632,145 units)

(6b) TOTAL = SF–O + SF 2–4 + SF–INVESTOR + MF–UNITS

(6c) TOTAL = SF–O + SF–RENTAL + MF–UNITS

Where:

SF–RENTAL equals SF–2–4 plus SF–INVESTOR

2. Dwelling Unit Distributions by Property Type

The next step is to express the number of dwelling units financed for each property type as a percentage of the total number of units financed by conventional conforming mortgage originations.[28]

The projections used above in equations (1)–(6) produce the following distributions of financed units by property type:

	% Share
SF–O	72.2
SF 2–4	2.0
SF INVESTOR	10.8
MF–UNITS	15.0
Total	100.0
or	
SF–O	72.2
SF–RENTER	12.8
MF–UNITS	15.0
Total	100.0

Sections C and D discussed alternative projections for the mix of multifamily originations and the investor share of single-family mortgages. Following the 2000 Rule, this appendix will focus on three multifamily mixes (13.5 percent, 15.0 percent, and 16.5 percent) but there will also be sensitivity analysis of other multifamily mix assumptions. Under a 16.5 percent multifamily mix, the newly-mortgaged unit distribution would be 70.9 percent for Single-Family Owner, 12.6 percent for Single-Family Renter, and 16.5 percent for Multifamily-Units. The analysis in sections F-H will focus on goals-qualifying market shares for this property distribution as well as the one presented above for the more conservative multifamily mix of 15 percent.

The appendix will assume the following for the investor share of single-family mortgages—8 percent, 10 percent, and 12 percent. The middle value (10 percent investor share) is used in the above calculations and will be considered the

market projections often change. For example, the MBAA projected $1,246 billion for 2003, while their projection for 2003 rose to $1,774 billion in January 2003; of course, actual 2003 mortgage originations were almost double the latter amount. (See *http://www.MBAAa.org/marketdata/forecasts* for January 2003 Mortgage Finance Forecasts.) In its January 22, 2004 forecast, the MBAA projected mortgage originations of $1.9 trillion in 2004 and approximately $1.7 trillion in 2005 and 2006. Section F will report the effects on the market estimates of alternative estimates of single-family mortgage originations.

[24] The model requires an estimated refinance rate because purchase and refinance loans can have different shares of goals-qualifying units. In 2003, the refinance rate was over 60 percent. In its January 22, 2004 forecast, the MBAA projects 34 percent for 2004 and 22 percent for 2005. Freddie Mac projects a 36 percent refinance rate for 2004 and a 29 percent rate for 2005, and Fannie Mae projects a 48 percent refinance rate for 2004 and 24 percent for 2005. The baseline model uses a higher refinance rate of 35 percent because conforming conventional loans tend to refinance at a higher rate than the overall market. Sensitivity analyses for alternative refinance rates are presented in Sections F–H.

[25] The average 2002 purchase loan amount is estimated at $135,060 for owner occupied units using 2002 HMDA average loan amounts for single-family home purchase loans in metropolitan areas. A small adjustment is made to this figure to account for a small number of two-to-four and investor properties (see Section D above). This produces an average purchase loan size of $133,458 for 2002 which is then inflated 3 percent a year for three years and then rounded to arrive at an estimated $146,000 average loan size for home purchase loans in 2005.

[26] The average refinance loan amount is estimated by averaging the relationship between HMDA average purchase and refinance loan amounts for 1999 and 2000, which were non-refinance environments. Applying this average of 90 percent (refinance loan amount/purchase loan amount) to the $146,000 average loan amount for purchase loans gives a rounded estimate of $131,000 for average refinance loan amounts. When refinance environments are used, $146,000 average loan amounts are used for both purchase and refinance loans. This relationship is consistent with the observed relationship in past refinance years such as 1998, 2001, and 2002.

[27] Based on the RFS, there is an average of 2.25 housing units per mortgage for 2–4 properties. 1.25 is used here because one (*i.e.*, the owner occupant) of the 2.25 units is allocated to the SF–O category. The RFS is also the source of the 1.35 used in (4c).

[28] The share of the mortgage market accounted for by owner occupants is (SF–O)/TOTAL; the share of the market accounted for by all single-family rental units is SF–RENTAL/TOTAL; and so on.

"baseline" projection throughout the appendix. However, HUD recognizes the uncertainty of projecting origination volume in markets such as single-family investor properties; therefore, the analysis in Sections F–H will also consider market assumptions other than the baseline assumptions.

Table D.7 reports the unit-based distributions produced by HUD's market share model for different combinations of these projections. The effects of the different projections can best be seen by examining the owner category which varies by 6.6 percentage points, from a low of 68.9 percent (multifamily mix of 16.5 percent coupled with an investor mortgage share of 12 percent) to a high of 75.5 percent (multifamily mix of 13.5 percent coupled with an investor mortgage share of 8 percent). The owner share under the baseline projection (15 percent mix and 10 percent investor) is 72.2 percent.

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Table D.7

Distribution of Financed Dwelling Units by Property Type for Different Projections of Multifamily and Single-Family Investor Originations

Investor Share Percentage of Single-Family Mortgage Market	Mulitfamily Mix (Percent) 13.5%	15%	16.5%
12 Percent			
Single-Family Owner-Occupied	71.4 %	70.1 %	68.9 %
Single-Family Rental	15.1	14.9	14.6
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0
10 Percent			
Single-Family Owner-Occupied	73.5 %	72.2 %	70.9 %
Single-Family Rental	13.0	12.8	12.6
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0
8 Percent			
Single-Family Owner-Occupied	75.5 %	74.3 %	73.0 %
Single-Family Rental	11.0	10.7	10.5
Multifamily	13.5	15.0	16.5
Total	100.0	100.0	100.0

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Comparison with the RFS. The Residential Finance Survey is the only mortgage data source that provides unit-based property distributions directly comparable to those reported in Table D.7. Based on RFS data for 1987 to 1991, HUD estimated that, of total dwelling units in properties financed by recently acquired conventional conforming mortgages, 56.5 percent were owner-occupied units, 17.9 percent were single-family rental units, and 25.6 percent were multifamily rental units. Thus, the RFS presents a much lower owner share than does HUD's model. This difference is due mainly to the relatively high level of multifamily originations (relative to single-family originations) during the mid- to late-1980s, which is the period covered by the RFS. As noted earlier, the RFS based on the year 2000 Census should clarify issues related to the rental segment of the mortgage market when it becomes available in the spring of this year (2004).

F. Size of the Conventional Conforming Mortgage Market Serving Low- and Moderate-Income Families

This section estimates the size of the low- and moderate-income market by applying low- and moderate-income percentages to the property shares given in Table D.7. This section essentially accomplishes Steps 2 and 3 of the three-step procedure discussed in Section B.2.

Technical issues and data adjustments related to the low- and moderate-income percentages for owners and renters are discussed in the first two subsections. Then, estimates of the size of the low- and moderate-income market are presented along with several sensitivity analyses. Based on these analyses, HUD concludes that 51–57 percent is a reasonable estimate of the mortgage market's low- and moderate-income share for the four years (2005–2008) when the new goals will be in effect.

1. Low- and Moderate-Income Percentage for Single-Family-Owner Mortgages

a. HMDA Data

The most important determinant of the low- and moderate-income share of the mortgage market is the income distribution of single-family borrowers. HMDA reports annual income data for families who live in metropolitan areas and purchase a home or refinance their existing mortgage.[29] The data cover conventional mortgages below the conforming loan limit, which was $300,700 in 2002. Table D.8 gives the percentage of mortgages originated for low- and moderate-income families for the years 1992–2002. Data are presented for home purchase, refinance, and all single-family-owner loans. The discussion below will often focus on home purchase loans because they typically account for the majority of all single-family-owner mortgages.[30] For each year, a low- and moderate-income percentage is also reported for the conforming market without B&C loans.

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[29] HMDA data are expressed in terms of number of loans rather than number of units. In addition, HMDA data do not distinguish between owner-occupied one-unit properties and owner-occupied 2–4 properties. This is not a particular problem for this section's analysis of owner incomes.

[30] Sensitivity analyses will focus on how the results change during a heavy refinancing environment.

Table D.8

Single-Family-Owner Mortgage Market in Metropolitan Areas by Borrower Income: 1992-2002 HMDA Data

	Home Purchase		Refinance		Total	
	Conforming Market	Market W/O B&C loans	Conforming Market	Market W/O B&C loans	Conforming Market	Market W/O B&C loans
Very-Low-Income Share						
1992	8.7 %	8.7 %	4.5 %	4.4 %	5.8 %	5.8 %
1993	10.8	10.8	5.8	5.7	7.3	7.2
1994	11.9	11.9	11.0	10.6	11.5	11.3
1995	12.0	12.0	12.3	11.7	12.1	11.9
1996	12.7	12.7	13.0	12.2	12.8	12.5
1997	13.0	13.0	14.5	13.4	13.7	13.2
1998	13.3	13.2	11.3	10.4	12.1	11.4
1999	15.0	14.7	16.2	14.8	15.6	14.8
2000	14.7	14.4	19.0	17.6	16.3	15.6
2001	13.6	13.5	12.3	11.7	12.7	12.3
2002	14.1	14.0	12.5	12.0	12.9	12.6
Low- and-Moderate-Income Share						
1992	34.4 %	34.4 %	25.2 %	25.2 %	28.2 %	28.1 %
1993	38.9	38.9	29.3	29.3	32.2	32.1
1994	41.8	41.8	39.9	39.3	41.0	40.7
1995	41.4	41.4	41.1	40.1	41.3	40.9
1996	42.2	42.2	42.7	41.6	42.4	41.9
1997	42.5	42.5	45.0	43.4	43.7	42.9
1998	43.0	42.8	39.7	38.3	40.9	39.9
1999	45.2	44.8	47.2	45.3	46.3	45.1
2000	44.8	44.4	51.6	49.6	47.4	46.3
2001	43.2	42.9	41.8	40.9	42.3	41.6
2002	45.3	45.2	42.3	41.5	43.2	42.6

Source: HMDA data for metropolitan areas. See text for methods of excluding B&C loans from the market. Very-low-income includes borrowers with an income less than or equal to 60 percent of the area median income (AMI). Low- and moderate-income includes less than or equal to AMI.

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Table D.8 also reports similar data for very-low-income families (that is, families with incomes less than 60 percent of area median income). As discussed in Section H, very-low-income families are the main component of the special affordable mortgage market.

Two trends in the income data should be mentioned—one related to the growth in the market's funding of low- and moderate-income families during the 1990s (and particularly the growth since 1998 which was the last year analyzed in HUD's 2000 GSE Rule); and the other related to changes in the borrower income distributions for refinance and home purchase mortgages. Throughout this appendix, "low- and moderate-income" will often be referred to as "low-mod".

Recent Trends in the Market Share for Lower Income Borrowers. First, focus on the percentages in Table D.8 for the total (both home purchase and refinance) conforming market. After averaging about 30 percent during 1992–93, the percentage of borrowers with less than area median income jumped to 41.0 percent in 1994, and remained above 40 percent through 2002. Over the eight year period, 1994 to 2001, the low-mod share of the total market averaged 43.2 percent (or 42.4 percent if B&C loans are excluded from the market totals).[31] The share of the market accounted for by very-low-income borrowers followed a similar trend, increasing from 6–7 percent in 1992–93 to about 12 percent in 1994 and averaging 13.3 percent during the 1994-to-2002 period (or 12.8 percent if B&C loans are excluded).

Next, consider the percentages for home purchase loans. The share of the home loan market accounted for by less-than-median-income borrowers increased from 34.4 percent in 1992 to 45.3 percent in 2002. Within the 1994-to-2002 period, the low-mod share of the home purchase market averaged 44.6 percent between 1999 and 2002, compared with 42.2 percent between 1994 and 1998. Similarly, the very-low-income share of the home purchase market was also higher during the 1999-to-2002 period than during the 1994-to-1998 period (14.4 percent versus 12.6 percent). Note that within the more recent period, the low-mod share for home purchase loans was particularly high during 1999 (45.2 percent) and 2000 (44.8 percent) before falling slightly in 2001 (43.2 percent), only to rebound again in 2002 (45.3 percent). As shown in Table D.8, the low-mod shares do not change much when B&C home loans are excluded from the market definition; this is because B&C loans are mainly refinance loans.

It appears that the affordable lending market is even stronger today than when HUD wrote the 2000 Rule, which covered market data through 1998. The very-low-income and low-mod percentages were higher during 1999 to 2002 than they were during the earlier period. In addition, when HUD wrote the 2000 Rule, there had been five years (1994–98) of solid affordable lending for lower-income borrowers. Now, with four additional years of data for 1999–2002, there have been nine years of strong affordable lending.

Of course, it is recognized that lending patterns could change with sharp changes in interest rates and the economy. However, the fact that lending to low-income families has remained at a high level for nine years demonstrates that the market has changed in fundamental ways from the mortgage market of the early 1990s. The numerous innovative products and outreach programs that the industry has developed to attract lower-income families into the homeownership and mortgage markets appear to be working and there is no reason to believe that they will not continue to assist in closing troubling homeownership gaps that exist today. As explained in Appendix A, the demand for homeownership on the part of non-traditional borrowers, minorities, and immigrants should help to maintain activity in the affordable portion of the mortgage market. Thus, while economic recession or higher interest rates would likely reduce the low- and moderate-income share of mortgage originations, there is evidence that the low-mod market might not return to the low levels of the early 1990s. There is also evidence that the affordable lending market increased slightly since 1998, although it is recognized that this could be due to the recent period of historically low interest rates.

Refinance Mortgages. In the 2000 Rule, HUD's market projection model assumed that low-mod borrowers represented a smaller share of refinance mortgages than they do of home purchase mortgages. However, as shown in Table D.8, the income characteristics of borrowers refinancing mortgages seem to depend on the overall level of refinancing in the market. During the refinancing wave of 1992 and 1993, refinancing borrowers had much higher incomes than borrowers purchasing homes. For example, during 1993 low- and moderate-income borrowers accounted for 29.3 percent of refinance mortgages, compared to 38.9 percent of home purchase borrowers. While this same pattern was exhibited during the two recent refinancing periods (1998 and 2001–2002), the differentials were much smaller—during 2001–2002 (1998), low-mod borrowers accounted for 42.1 (39.7) percent of refinance loans, compared with 44.3 (43.0) percent of home purchase loans. However, the refinance effect was still evident, as can be seen by the almost seven percentage drop in the low-mod percentage for refinance loans between 2000 (a low refinance year) and 2001 (a high refinance year).

On the other hand, for recent years characterized by a low level of refinancing, the low-mod share of refinance mortgages has been about the same or even greater than that of home purchase mortgages. As shown in Table D.8, there was little difference in the very-low-income and low-mod shares of refinance and home purchase loans during 1995 and 1996. In 1997, 1999, and 2000, the two lower-income shares (*i.e.*, very-low-income and low-mod shares) of refinance mortgages were significantly higher than the lower-income shares of home purchase loans. To a certain extent, this pattern was influenced by the growth of subprime loans, which are mainly refinance loans. If B&C loans are excluded from the market definition, the home purchase and refinance percentages are approximately the same in 1997 and 1999, as well as in 1995 and 1996. (See Table D.8.) Even after excluding all subprime loans from the market definition in 1997 and 1999, the very-low-income and low-mod shares for refinance loans are only slightly less (about one percentage point) than those for home purchase loans.

The year 2000 stands out because of the extremely high lower-income shares for refinance loans. In that year, the low-mod (very-low-income) share of refinance loans was 6.8 (4.3) percentage points higher than the low-mod (very-low-income) share of home purchase loans; this differential is reduced to 5.2 (3.2) percent if B&C loans are excluded from the market definition (see Table D.8). The differential for 2000 is reduced further to 2.8 (1.5) percent if all subprime loans (both A-minus and B&C) are excluded from the market definition (not reported). While the projection model (explained below) for years 2005–08 will input low-mod percentages for the entire conforming market, the model will exclude the effects of B&C loans. Sensitivity analyses will also be conducted showing the effects on the overall market estimates of excluding all subprime loans as well as other loan categories such as manufactured housing loans.

The projection model will initially assume that refinancing is 35 percent of the single-family mortgage market; this will be followed by projection models that reflect heavy refinance environments. Given the volatility of refinance rates from year to year, it is important to conduct sensitivity tests using different refinance rates.

b. Manufactured Housing Loans

Because manufactured housing loans are such an important source of affordable housing, they are included in the mortgage market definition in this appendix—or at least that portion of the manufactured housing market located in metropolitan areas is included, as HMDA doesn't adequately cover non-metropolitan areas. The GSEs have questioned HUD's including these loans in its market estimates; therefore, following the same procedure used in the 2000 Rule, this Appendix will report the effects of excluding manufactured home loans from the market estimates. As explained later, the effect of manufactured housing on HUD's metropolitan area market estimate for each of the three housing goals is approximately one percentage point or less.

As discussed in Appendix A, the manufactured housing market increased rapidly during the 1990s, as units placed in service increased from 174,000 in 1991 to 374,000 in 1999. However, due to various problems in the industry such as lax underwriting and repossessions, volume has declined in recent years, falling to 192,000 in 2001 and to 172,000 in 2002. Still, the affordability of manufactured homes for lower-income families is demonstrated by their average price of $48,800 in 2001, a fraction of the median price for new ($175,000) and existing ($147,800) homes.

[31] The annual averages of the goals-qualifying mortgages reported in this appendix are unweighted averages; for analyses using weighted average see Appendix A.

Many households live in manufactured housing because they simply cannot afford site-built homes, for which the construction costs per square foot are much higher.

Although manufactured home loans cannot be identified in the HMDA data, Randy Scheessele at HUD identified 21 lenders that primarily originated manufactured home loans during 2001 and likely account for most of these loans in the HMDA data for metropolitan areas.[32] HMDA data on home loans originated by these lenders indicate that:[33]

• A very high percentage of these loans—75 percent in 2001—would qualify for the Low- and Moderate-Income Goal,

• A substantial percentage of these loans—42 percent in 2001—would qualify for the Special Affordable Goal, and

• Almost half of these loans—47 percent in 2001—would qualify for the Underserved Areas Goal.[34]

Thus an enhanced presence in this market by the GSEs would benefit many lower-income families. It would also contribute to their presence in underserved rural areas, especially in the South.

2. Low- and Moderate-Income Percentage for Renter Mortgages

Following the 2000 Rule, measures of the rent affordability of the single-family rental and the multifamily rental markets are obtained from the American Housing Survey (AHS) and the Property Owners and Managers Survey (POMS). As explained below, the AHS provides rent information for the stock of rental properties while the POMS provides rent information for flow of mortgages financing that stock. As discussed below, the AHS and POMS data provide very similar estimates of the low- and moderate-income share of the rental market.

a. American Housing Survey Data

The American Housing Survey does not include data on mortgages for rental properties; rather, it includes data on the characteristics of the existing rental housing stock and recently completed rental properties. Current data on the income of prospective or actual tenants has also not been readily available for rental properties. Where such income information is not available, the 1992 GSE Act provides that the rent of a unit can be used to determine the affordability of that unit and whether it qualifies for the Low- and Moderate-Income Goal. A unit qualifies for the Low- and Moderate-Income Goal if the rent does not exceed 30 percent of the local area median income (with appropriate adjustments for family size as measured by the number of bedrooms). Thus, the GSEs' performance under the housing goals is measured in terms of the affordability of the rental dwelling units that are financed by mortgages that the GSEs purchase; the income of the occupants of these rental units is not considered in the calculation of goal performance. For this reason, it is appropriate to base estimates of market size on rent affordability data rather than on renter income data.

A rental unit is considered to be "affordable" to low- and moderate-income families, and thus qualifies for the Low- and Moderate-Income Goal, if that unit's rent is equal to or less than 30 percent of area median income. Table D.14 of Appendix D in HUD's 2000 Rule reported AHS data on the affordability of the rental housing stock for the survey years between 1985 and 1997. The 1997 AHS showed that for 1–4 unit unsubsidized single-family rental properties, 94 percent of all units and of units constructed in the preceding three years had gross rent (contract rent plus the cost of all utilities) less than or equal to 30 percent of area median income. For multifamily unsubsidized rental properties, the corresponding figure was 92 percent. The AHS data for the other survey years were similar to the 1997 data.

b. Property Owners and Managers Survey (POMS)

As discussed in the 2000 GSE Rule, there were concerns about using AHS data on rents from the outstanding rental stock to proxy rents for newly mortgaged rental units. HUD investigated that issue further using the POMS.

POMS Methodology. The affordability of multifamily and single-family rental housing backing mortgages originated in 1993–1995 was calculated using internal Census Bureau files from the American Housing Survey-National Sample (AHS) from 1995 and the Property Owners and Managers Survey from 1995–1996. The POMS survey was conducted on the same units included in the AHS survey, and provides supplemental information such as the origination year of the mortgage loan, if any, recorded against the property included in the AHS survey. Monthly housing cost data (including rent and utilities), number of bedrooms, and metropolitan area (MSA) location data were obtained from the AHS file.

In cases where units in the AHS were not occupied, the AHS typically provides rents, either by obtaining this information from property owners or through the use of imputation techniques. Estimated monthly housing costs on vacant units were therefore calculated as the sum of AHS rent and utility costs estimated using utility allowances published by HUD as part of its regulation of the GSEs. Observations where neither monthly housing cost nor monthly rent was available were omitted, as were observations where MSA could not be determined. Units with no cash rent and subsidized housing units were also omitted. Because of the shortage of observations with 1995 originations, POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995. POMS weights were then applied to estimate population statistics. Affordability calculations were made using 1993–95 area median incomes calculated by HUD.

POMS Results. The rent affordability estimates from POMS of the affordability of newly-mortgaged rental properties are quite consistent with the AHS data on the affordability of the rental stock (discussed above). Ninety-six (96) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to low- and moderate-income families, and 56 percent were affordable to very-low-income families. The corresponding percentages for newly-mortgaged multifamily properties are 96 percent and 51 percent, respectively. Thus, these percentages for newly-mortgaged properties from the POMS are similar to those from the AHS for the rental stock. As discussed in the next section, the baseline projection from HUD's market share model assumes that 90 percent of newly-mortgaged, single-family rental and multifamily units are affordable to low- and moderate-income families.[35]

3. Size of the Low- and Moderate-Income Mortgage Market

This section provides estimates of the size of the low- and moderate-income mortgage market. Subsection 3.a provides some necessary background by comparing HUD's estimate made during the 2000 rule-making process with actual experience between 1999 and 2001. Subsection 3.b presents new estimates of the low-mod market while Subsection 3.c reports the sensitivity of the new estimates to changes in assumptions about economic and mortgage market conditions.

a. Actual Market Performance Between 1995 and 2002

Before reporting market projections for the new goals-setting period (2005–08), this section discusses actual market experience for 1995 to 2002, as shown in Table D.9.[36] The 1995 to 1998 market estimates in Table D.9 were reported by HUD in its 2000 Rule while the 1999–2002 estimates are new. The 1999–2002 estimates allow a comparison between HUD's projections and actual market experience. This discussion of the 1995-to-2002 market considers all three housing goals, since the explanations for the differences between the projected and actual market shares are common across the three goals. B&C loans are not included in the market estimates reported in Table D.9. The discussion of Table D.9 will first focus on the market estimates for 1995–1997 and 1999–2000, which, because of their relatively low levels of refinancing, will be referred to as "home purchase environments". The discussion will then examine the market

[32] See Randall M. Scheesele, *1998 HMDA Highlights, op. cit.* and "HUD Subprime and Manufactured Home Lender List" at *http://huduseer.org/datasets/manu.html.*

[33] Since most HMDA data are for loans in metropolitan areas and a substantial share of manufactured homes are located outside metropolitan areas, HMDA data may not accurately state the goals-qualifying shares for loans on manufactured homes in all areas.

[34] While many fewer manufactured homes loans were identified in the 2002 HMDA data, the loans showed similar goals-qualifying shares: low-mod (78.3 percent), special affordable (45.6 percent), and underserved areas (47.5 percent).

[35] In 2002, 75 percent of GSE purchases of single-family rental units and 89 percent of their purchases of multifamily units qualified under the Low- and Moderate-Income Goal, excluding the effects of missing data.

[36] The goals-qualifying shares reported in Table D.9 for 1995–2002 are, of course, estimates themselves; even though information is available from HMDA and other data sources for most of the important model parameters, there are some areas where information is limited, as discussed throughout this appendix.

estimates for the heavy refinance years of 1998, 2001, and 2002. After that, HUD's methods for adjusting the 1995–2001 market data to exclude B&C loans and to incorporate the more expansive definition of Underserved Areas in non-metropolitan areas will be explained.

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Table D.9

Goals-Qualifying Market Shares (Without B&C Loans)
1995-2002

	1995	1996	1997	1998	1999	2000	2001	2002
1. Low-Mod Goal	57.3 %	57.3 %	57.5 %	53.8 %	58.2 %	59.1 %	54.9 %	54.1 %
2. Special Affordable Goal	28.9	28.7	28.8	25.8	29.2	30.0	26.5	25.8
3. Underserved Area Goal (1990-Based)	33.9	33.4	33.9	31.0	33.9	35.3	32.6	32.0

Notes: See the text (a) for the method for excluding B&C loans from the market, and (b) for the explanation for increasing the metropolitan-area-based market share to incorporate underserved areas in non-metropolitan areas. This analysis is based on 1990 census geography for underserved areas. See Section G.4 for analysis of switching to 2000 census geography.

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HUD's market projections in the 2000 Rule were 50–55 percent for the Low- and Moderate-Income Goal, 23–26 percent for the Special Affordable Goal, and 29–32 percent for the Underserved Areas Goal. Thus, the upper bound figures for the market share ranges in the 2000 Rule were lower than actual experience during 1999 and 2000, as well as for the earlier 1995–97 period—for the low-mod estimate, 55 percent versus 57–59 percent; for the special affordable estimate, 26 versus 28–30 percent, and for the underserved areas estimate, 32 percent versus 33–35 percent.

There are three main reasons for the differential between HUD's earlier estimates (made during 2000 based on HMDA data through 1998) and the higher goals-qualifying market shares of recent years. *First*, historically low interest rates and strong economic expansion allowed lower-income families to enter the homeownership and mortgage market during the mid-to-late 1990s. Affordable home purchase lending continued during the past four years, at an even higher rate than earlier, particularly for the two borrower-income goals (low-mod and special affordable). The average low-mod percentage for home purchase loans during 1999–2002 was 44.6 percent, compared with 42.2 percent during 1995–98. Similarly, the average special affordable percentage for home purchase loans during 1999–2002 was 16.7 percent, compared with 15.1 percent during 1995–98. Thus, the home lending market for lower-income borrowers continued to grow. HUD's earlier estimates anticipated smaller shares of new mortgages being originated for lower-income families.

Second, HUD's projection model in the 2000 Rule assumed that refinance loans would have lower goals-qualifying percentages than home purchase loans; this assumption was based on the average home-purchase-refinance differential between 1992 and 1998. As discussed above, this has not been the case during "home purchase" years such as 1995–97 and 1999–2000. Thus, the projection model underestimates actual market experience when the goals-qualifying shares of refinance loans turn out to be equal or greater than the goals-qualifying shares of home purchase loans.[37] This issue will be addressed further in the sections that present the new market estimates.

Third, the financing of multifamily properties continued at strong levels during 1999 and 2000. HUD's baseline model in the 2000 Rule assumed a multifamily share of 15 percent, which was lower than the approximately 16–17 percent multifamily share during 1999 and 2000.[38] As discussed throughout this appendix, the multifamily mix fell during the heavy refinance years.

Refinance Years. The goals-qualifying percentages for the heavy refinance years (1998, 2001 and 2002) are lower than those for the other years. For example, the low-mod market share was 54 percent in 1998 and 2002 and 55 percent in 2001—both estimates within HUD's earlier market share range of 50–55 percent.[39] The special affordable market share during 1998, 2001, and 2002 was 26 percent—which places it at the top end of HUD's earlier market range of 23–26 percent. The goals-qualifying percentages during 1998, 2001, and 2002 are, of course, lower than those for the "home purchase" years of 1995–97 and 1999–2000. For example, the special affordable market share of approximately 26 percent in 2001 and 2002 was 3–4 percentage points lower than the corresponding share in 1999 and 2000. There are three main reasons for this. First, the goals-qualifying shares for single-family refinance loans fall during heavy refinance years, as middle and upper income borrowers dominate that market. On the other hand, in low refinancing years, the goals-qualifying shares of refinance loans can equal or be greater than the goals-qualifying shares of home purchase loans. Second, and related, is the fact that subprime lending, which is characterized by relatively high goals-qualifying shares, accounts for a smaller portion of the single-family mortgage market during heavy refinance years. Although they were at a record dollar level ($213 billion) during 2002, subprime originations accounted for only 8.6 percent of all single-family mortgages originated that year, compared with about 13 percent during 1999 and 2000. Finally, the high volume of single-family mortgages in a heavy refinance year reduces the share of multifamily rental units. For example, the multifamily share of all financed units was less than 14 percent in 1998, 2001, and 2002,[40] compared to multifamily shares of 19 percent during 1995–97 and 16–17 percent during 1999–2000. Of course, this shift toward single-family loans reduces the goals-qualifying shares of the overall market.

B&C Mortgages. As discussed in Appendix A, the market for subprime mortgages has experienced rapid growth over the past 5–6 years, rising from an estimated $65 billion in 1995 to $174 billion in 2001 and $213 billion in 2002. Table 9 provides goals-qualifying market shares that exclude the B&C portion of the subprime market; or conversely, that include the A-minus portion of the subprime market. This section explains how these "adjusted" market shares are calculated from "unadjusted" market shares that include B&C loans, using the year 1999 as an example.

Industry sources estimate that the subprime market totaled $160 billion in 1999, or 12.5 percent of all mortgages ($1,285 billion) originated that year.[41] In terms of credit risk, this $160 billion includes a wide range of mortgage types. "A-minus" loans, which represent at least half of the subprime market, make up the least risky category.[42] As discussed in Appendix A, the GSEs are involved in this market both through specific program offerings and through purchases of securities backed by subprime loans (including B&C loans as well as A-minus loans). The B&C loans experience much higher delinquency rates than A-minus loans.[43]

The procedure for excluding B&C mortgages from estimated "unadjusted" market shares for goals-qualifying loans in

[37] The 1995–2002 goals qualifying percentages for single-family mortgages are based on HMDA data for all (both home purchase and refinance) mortgages. Thus, the implicit refinance rate is that reported by HMDA for conventional conforming mortgages.

[38] The accuracy of a single-family portion of HUD's model can be tested using HMDA data. The number of single-family-owner loans reported to HMDA for the years 1999–2002 can be compared with the corresponding number predicted by HUD's model. Single-family-owner loans reported to HMDA during 1999 were 87 percent of the number of loans predicted by HUD's model; comparable percentages for 2000, 2001, and 2002 were 84 percent, 89 percent, and 80 percent, respectively. Studies of the coverage of HMDA data through 1996 conclude that HMDA covers approximately 85 percent of the conventional conforming market, which suggests that HUD's model produces reasonable estimates of single-family-owner loans. For analysis of HMDA coverage, see Randall M. Scheesele, *HMDA Coverage of the Mortgage Market*, *op. cit.*

[39] As discussed in Section C.6 of this appendix, there is some uncertainty about the multifamily mix for the year 2002. The goals-qualifying shares reported in Table D.9 assume $67.7 billion (the HUD New estimate) and an average loan amount of $37,275; this produces a multifamily mix of 10.9 percent. Section C.6 discussed several other multifamily market and average loan amount estimates sfor 2002, each with a specific multifamily mixes. The low-mod, special affordable, and underserved areas shares for the other multifamily mixes discussed in Section C.6 are as follows: 11.5 percent (54.4, 26.0, 32.25), 11.3 percent (54.3, 25.9, 32.1), 11.0 percent (54.2, 25.8, 32.0), 10.7 percent (54.0, 25.7, 31.9), 10.4 percent (53.9, 25.6, 31.8), and 10.1 percent (53.8, 25.5, 31.8).

[40] Although data are not available yet, the multifamily share for 2003 will be lower than the approximately 11 percent in 2002. Senstivity analyses with lower multifamily mixes are provided below.

[41] Estimates of the subprime market for other recent years are as follows (dollar and market share): 1995 ($65 billion, 10 percent); 1996 ($96.5 billion, 12.3 percent); 1997 ($125 billion, 15 percent); 1998 ($150 billion, 10 percent; 1999 ($160 billion, 12.5 percent); 2001 ($173 billion, 8.5 percent); 2002 ($213 billion, 8.6 percent). The uncertainty about what these various estimates include should be emphasized; for example, they may include second mortgages and home equity loans as well as first mortgages, which are the focus of this analysis. The source for these estimates is *Inside Mortgage Finance* (various years).

[42] The one-half assumption for A-minus loans is conservative because it probably underestimates (overestimates) the share of A-minus (B&C) loans. According to data obtained by the Mortgage Information Corporation (see next footnote), 57 percent of all subprime loans were labeled A-minus (as of September 30, 2000). According to Inside *B&C Lending*, which is published by Inside Mortgage Finance, the A-minus share of the subprime market was 61.6 percent in 2000, 70.7 percent in 2001 (see March 11, 2002 issue), 75 percent in 2002 (see the September 15, 2003 issue), and 82 percent during the first nine months of 2003 (see the December 8, 2003 issue).

[43] The Mortgage Information Corporation (MIC) reports the following serious delinquency rates (either 90 days past due or in foreclosure) by type of subprime loan: 3.36 percent for A-minus; 6.67 percent for B; 9.22 percent for C; and 21.03 percent for D. The D category accounted for only 2 percent of subprime loans and of course, is included in the "B&C" category referred to in this appendix. By comparison, MIC reports a seriously delinquent rate of 3.63 percent for FHA loans. See MIC, *The Market Pulse*, Winter 2001, page 6. Also see "Subprime Mortgage Delinquencies Inch Higher, Prepayments Slow During Final Months of 1998", *Inside MBS & ABS: Inside MBS & ABS*, March 12, pages 8–11, where it is reported that fixed-rate A-minus loans have delinquency rates similar to high-LTV (over 95 percent) conventional conforming loans.

1999 combined information from several sources. First, the $160 billion estimate for the subprime market was multiplied by 79.4 percent to arrive at an estimate of $127 billion for subprime loans less than the year 1999 conforming loan limit of $240,000; the 79.4 percent estimate for the conforming market was based on HMDA data for mortgages originated by subprime lenders. The $127 billion was reduced by one-half to arrive at an estimate of $63.5 billion for the conforming B&C market; with an average loan amount of $78,801(obtained from HMDA data, as discussed below), the $63.5 billion represented approximately 806,081 B&C loans originated during 1999 under the conforming loan limit.

HMDA data was used to provide an estimate of the portion of these 806,081 B&C loans that would qualify for each of the housing goals. HMDA data does not identify subprime loans, much less divide them into their A-minus and B&C components. As explained in Appendix A, Randall Scheessele in HUD's Office of Policy Development and Research has identified almost 200 HMDA reporters that primarily originate subprime loans. The goals-qualifying percentages of the loans originated by these subprime lenders in 1999 were as follows: 63.0 percent qualified for the Low- and Moderate-Income Goal, 32.5 percent for the Special Affordable Goal, and 47.0 percent for the Underserved Areas Goal.[44] Applying the goals-qualifying percentages to the estimated B&C market total of 806,081 gives the following estimates of B&C loans that qualified for each of the housing goals in 1999: Low- and Moderate Income (507,831), Special Affordable (261,976), and Underserved Areas (378,858).

Adjusting HUD's model to exclude the B&C market involves subtracting the above four figures' one for the overall B&C market and three for B&C loans that qualify for each of the three housing goals " from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's model estimates that 10,638,797 single-family and multifamily units were financed during 1999; of these, 6,229,569 (58.6 percent) qualified for the Low- and Moderate-Income Goal, 3,133,701 (29.5 percent) for the Special Affordable Goal, and 3,711,271 (34.9 percent) for the Underserved Areas Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 9,983,276, of which 5,721,738 (58.2 percent) qualified for the Low- and Moderate-Income Goal, 2,871,725 (29.2 percent) for the Special Affordable Goal, and 3,332,413 (33.9 percent) for the Underserved Areas Goal.

As seen, the low-mod market share estimate exclusive of B&C loans (58.2 percent) is practically the same as the original market estimate (58.6 percent), as is also the special affordable market estimate (29.5 percent versus 29.2 percent). This occurs because the B&C loans that were dropped from the analysis had similar low-mod and special affordable percentages as the overall (both single-family and multifamily) market. For example, the low-mod share of B&C loans was projected to be 63.0 percent and HUD's market model projected the overall low-mod share to be 58.6 percent. Thus, dropping B&C loans from the market totals does not change the overall low-mod share of the market.

The situation is different for the Underserved Areas Goal. Underserved areas account for 47.0 percent of the B&C loans, which is a higher percentage than the underserved area share of the overall market (34.9 percent). Thus, dropping the B&C loans leads to a reduction in the underserved areas market share of 1.0 percentage points, from 34.9 percent to 33.9 percent.

Dropping B&C loans from HUD's model changes the mix between rental and owner units in the final market estimate. Based on assumptions about the size of the owner and rental markets for 1999, HUD's model calculates that single-family-owner units accounted for 71.4 percent of total units financed during 1999. Dropping the B&C owner loans, as described above, reduces the owner percentage of the market by 2.3 percentage points to 69.1 percent. Thus, another way of explaining why the goals-qualifying market shares are not affected so much by dropping B&C loans is that the rental share of the overall market increases as the B&C owner units are dropped from the market. Since rental units have very high goals-qualifying percentages, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans. In fact, this rental mix effect would come into play with any reduction in owner units from HUD's model.

Dropping all subprime loans (both A-minus and B&C) from the market definition would lead to similar results for the Low-Mod and Special Affordable Goals " little change in the market estimates for the reasons given above (the low-mod estimate falls to 57.8 percent and the special affordable share falls to 28.9 percent). The market estimate for the Underserved Areas Goal would fall an additional 1.2 percentage points to 32.7 percent (or 2.2 percentage points lower than the overall estimate of 34.9 percent).

As discussed in the 2000 Rule, there are caveats that should be mentioned concerning the above adjustments for the B&C market for 1999. The adjustment for B&C loans depends on several estimates relating to the 1999 mortgage market, derived from various sources. Different estimates of the size of the B&C market in 1999 or the goals-qualifying shares of the B&C market could lead to different estimates of the goals-qualifying shares for the overall market. The goals-qualifying shares of the B&C market were based on HMDA data for selected lenders that primarily originate subprime loans; since these lenders are likely originating both A-minus and B&C loans, the goals-qualifying percentages used here may not be accurately measuring the goals-qualifying percentages for only B&C loans. The above technique of dropping B&C loans also assumes that the coverage of B&C and non-B&C loans in HMDA's metropolitan area data is the same; however, it is likely that HMDA coverage of non-B&C loans is higher than its coverage of B&C loans.[45] Despite these caveats, it also appears that reasonably different estimates of the various market parameters would not likely change, in any significant way, the above estimates of the effects of excluding B&C loans in calculating the goals-qualifying shares of the market. As discussed below, HUD provides a range of estimates for the goals-qualifying market shares to account for uncertainty related to the various parameters included in its projection model for the mortgage market.

Adjustment for Non-Metropolitan Areas. HUD first estimated the underserved area percentage for 1999–2002 based on single-family-owner parameters for metropolitan areas. It was necessary to adjust these metropolitan-based market shares upward to reflect the fact that underserved counties account for a much larger portion of non-metropolitan areas than underserved census tracts do of metropolitan areas. The adjustment averaged about 1.5 percentage points; the method for deriving the upward adjustment is explained in Section G.3 below.

Manufactured Housing Loans. HUD includes the effects of manufactured housing loans (at least those financing properties in metropolitan areas) in its market estimates. However, sensitivity analyses are conducted to determine the effects of excluding these loans. Excluding these loans from the market definition would reduce the 1995–2001 estimates of the three goals-qualifying market shares by approximately one percentage point. Assuming a home purchase environment (1995–97 and 1999–2000) and a constant mix of owner and rental properties, excluding manufactured housing loans (as well as loans less than $15,000) would reduce the goals-qualifying shares reported in Table D.9 roughly as follows: Low- and Moderate-Income Goal by 1.2 percentage points, Special Affordable Goal by 1.0 percentage points, and Underserved Areas Goal by 0.8 percentage point. (The method for calculating these reductions is explained in Section F.3b below.) Dropping manufactured housing from the market totals would increase the rental share of the

[44] The goals-qualifying percentages for subprime lenders are much higher than the percentages (46.3 percent, 18.3 percent, and 28.2 percent, respectively) for the overall single-family conventional conforming market in 1999. For further analysis of subprime lenders, see Randall M. Scheessele, *1998 HMDA Highlights, op. cit.*

[45] Dropping B&C loans in the manner described in the text results in the goals-qualifying percentages for the non-B&C market being underestimated since HMDA coverage of B&C loans is less than that of non-B&C loans and since B&C loans have higher goals-qualifying shares than non-B&C loans. For instance, the low-mod shares of the market reported in Table D.9 underestimate (to an unknown extent) the low-mod shares of the market inclusive of B&C loans; so reducing the low-mod owner shares by dropping B&C loans in the manner described in the text would provide an underestimate of the low-mod share of the non-B&C owner market. A study of 1997 HMDA data in Durham County, North Carolina by the Coalition for Responsible Lending (CRL) found that loans by mortgage and finance companies are often not reported to HMDA. For a summary of this study, see "Renewed Attack on Predatory Subprime Lenders" in *Fair Lending/CRA Compass,* June 9, 1999.

mortgage market, which would tend to increase the goals-qualifying shares and thus partially offset the reductions reported above. In addition, the estimated reductions in goals-qualifying shares due to excluding manufactured housing are even lower during the heavy refinance years such as 1998 and 2001. It should also be mentioned that manufactured housing in non-metropolitan areas is not included in HUD's analysis due to lack of data; including that segment of the market would increase the goals-qualifying shares of the overall market. Thus, the analyses of manufactured housing reported above and throughout this proposed Rule pertain only to manufactured housing loans in metropolitan areas, as measured by loans originated by the 21 manufactured housing lenders identified by HUD.

b. Estimates of the Low- and Moderate-Income Market

This section provides HUD's estimates for the size of the low- and moderate-income mortgage market that will serve as a proxy for the four-year period (2005–2008) when the new housing goals will be in effect. Three alternative sets of projections about property shares and rental property low- and moderate-income percentages are given in Table D.10. Case 1 projections represent the baseline and intermediate case; it assumes that investors account for 10 percent of the single-family mortgage market. Case 2 assumes a lower investor share (8 percent) based on HMDA data and slightly more conservative low- and moderate-income percentages for single-family rental and multifamily properties (85 percent). Case 3 assumes a higher investor share (12 percent) consistent with Follain and Blackley's suggestions.

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Table D.10

Alternative Assumptions for Single-Family Rental and Multifamily Mortgage Shares

	Case 1	Case 2	Case 3
1. Single-Family Mortgage Shares			
Single-Family Owner-Occupied	88.0%	90.0%	85.6%
Single-Family 2-4	2.0%	2.0%	2.4%
Single-Family 1-4 Investor	10.0%	8.0%	12.0%
2. Units Per Single-Family Mortgage			
Single-Family 2-4	2.25	2.25	2.25
Single-Family 1-4 Investor	1.35	1.35	1.40
3. Percentage Affordable at Area Median Income (AMI)			
Single-Family Rental	90.0%	85.0%	95.0%
Multifamily	90.0%	85.0%	95.0%
4. Percentage Underserved (1990-Based)			
Single-Family Rental	42.5%	40.0%	45.0%
Multifamily	48.0%	46.0%	48.0%
5. Percent Affordable at 60% of AMI			
Single-Family Rental	50.0%	47.0%	53.0%
Multifamily	47.0%	44.0%	50.0%
6. Percentage Low-Income in Low-Income Areas:			
Single-Family Rental	8.0%	6.0%	8.0%
Multifamily	11.0%	10.0%	12.0%

Note: The underserved area shares in # 4 are based on 1990 census tracts. See text for discussion of "2000-Based" underserved area shares based on 2000 census tracts.

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Because single-family-owner units account for about 70 percent of all newly mortgaged dwelling units, the low- and moderate-income percentage for owners is the most important determinant of the total market estimate. Thus, Table D.11 provides market estimates for different low-mod percentages for the owner market as well as for different multifamily mix percentages—15.0 percent bracketed by 13.5 percent and 16.5 percent, which are the same multifamily mixes assumed in the 2000 Rule. The low-mod market estimates in Table D.11 exclude B&C loans, in the same manner as discussed earlier for the 1995–2001 market estimates. This is explained further below.

Table D.11

Low- and Moderate-Income Market Estimates Sensitivity Analysis

Case 1 with Different Percentages for Single-Family Owner-Occupied's with Income Less than AMI:		Multifamily Mix (Percent) 13.5%	15%	16.5%
Single-Family: [a]	47%	58.4 %	59.0 %	59.6 %
	46%	57.6	58.2	58.8
	45%	56.8	57.5	58.1
	44%	56.1	56.7	57.3
	43%	55.3	55.9	56.6
	42%	54.5	55.2	55.8
	41%	53.7	54.4	55.1
	40%	52.9	53.6	54.3
	39%	52.2	52.9	53.6
	38%	51.4	52.1	52.8
	37%	50.6	51.3	52.0
	36%	49.8	50.6	51.3
	35%	49.0	49.8	50.5
	34%	48.3	49.0	49.8
Single-Family:	43% with:			
	Case 1 (above)	55.3 %	55.9 %	56.6 %
	Case 2	53.9	54.4	55.0
	Case 3	57.1	57.8	58.5
Single-Family:	40% with:			
	Case 1 (above)	52.9 %	53.6 %	54.3 %
	Case 2	51.5	52.1	52.8
	Case 3	54.8	55.5	56.2
Single-Family:	36% with:			
	Case 1 (above)	49.8 %	50.6 %	51.3 %
	Case 2	48.4	49.1	49.7
	Case 3	51.7	52.5	53.3

[a] See text for interpretation of single-family-owner percentages. AMI is area median income.

Table D.11 assumes a refinance rate of 35 percent, which means that the table reflects home purchase or low-refinancing environments. After presenting these results, market estimates reflecting heavy refinance environments will be presented. Because of the increase in single-family mortgages, the multifamily share of the mortgage market typically falls during a heavy refinance environment; therefore, several sensitivity analyses using lower multifamily mixes are examined below.

In the 2000 Rule, HUD assumed that the low-mod share of refinance loans was three percentage points lower than the low-mod share of borrowers purchasing a home. However, as discussed earlier, the low-mod share of refinance loans has equaled or been greater than the low-mod share of home purchase loans during recent home purchase environments such as 1995–97 or 1999–2000; thus, the assumption of a lower low-mod shares for refinance loans is initially dropped for this analysis but will be reintroduced during the sensitivity analysis and during the discussion of heavy refinance environments.

There are two ways to view the single-family-owner low-mod percentages reported in the first column of Table D.11. A *first approach* would be to view them as representing low-mod percentages of only the home purchase market. For example, a low-mod percentage for home purchase loans of 43 percent (as it was say in 1997)—combined with the assumption of an equal low-mod share for refinance loans (*i.e.*, also 43 percent) and with the other model assumptions (such as a multifamily mix of 15 percent)—produces an estimate of 55.9 percent for the low-mod share of the overall (owner and rental) market, excluding B&C loans. Thus, the reader can view Table D.11 as showing the overall low-mod market estimate once the reader specifies his or her views about the low-mod share of the single-family home purchase market (given the other model assumptions). In this case, if the reader believes that the low-mod share of refinance loans should be lower than that for home purchase loans, the reader simply has to multiply the differential amount by 0.35 (which is the refinance share of single-family-owner loans) and 0.722 (which is the single-family-owner share of all dwelling units in the baseline model that assumes a 15 percent multifamily mix). For example, applying the assumption in the 2000 Rule that the low-mod share is three percentage points lower for refinance loans would reduce the overall low-mod share of the market by 0.8 percentage points (3.0 times 0.35 times 0.722). In this manner, the reader can easily adjust the market estimates reported in Table D.11 to incorporate his or her own views about differences in the low-mod share of home purchase and refinance loans.

A *second approach* would be to view the low-mod percentages (in the first column of Table D.11) as representing low-mod shares for the overall single-family-owner market, including both home purchase and refinance loans. This approach does not specify separate low-mod percentages for home purchase and refinance loans, but rather focuses on the overall single-family-owner environments. Thus, it allows for mortgage market environments where the low-mod share of refinance loans is greater than the low-mod share for home purchase loans. For example, a low-mod percentage for single-family-owner loans of 47 percent would reflect the year 2000 environment, which had a low-mod home purchase percentage of 45 percent combined with a higher low-mod refinance percentage of 52 percent. Of course, the 47 percent low-mod share for the overall single-family-owner market could be consistent with other combinations of low-mod shares for home purchase and refinance loans. In this case, a 47 percent assumption for the overall single-family-owner market produces an estimate of 59.0 percent for the low-mod share of the overall (owner and rental) market, excluding B&C loans.

While both approaches will be discussed below, most of the discussion will focus on the first approach. It should be noted that several low-mod percentages of the owner market are given in Table D.11 to account for different perceptions of that market. Essentially, HUD's approach throughout this appendix is to provide several sensitivity analyses to illustrate the effects of different views about the goals-qualifying share of the single-family-owner market. This approach recognizes that there is some uncertainty in the data and that there can be different viewpoints about the various market definitions and other model parameters.

Market Estimates. As shown in Table D.11, the market estimate is: 57–58 percent if the owner percentage is 45 percent (home purchase share for 1999, 2000, and 2002); 55–57 percent if the owner percentage is 43 percent (home purchase share for 1998 and 2001); and 54–55 percent if the owner percentage is 42 percent (home purchase average from 1995–97). If the low- and moderate income percentage for home purchase loans fell to 38 percent—or five percentage points from its 1995–2001 average level of 43 percent—then the overall market estimate would be about 52 percent. Thus, 52 percent is consistent with a rather significant decline in the low-mod share of the single-family home purchase market. If the low-mod percentage for home purchase loans fell further to 35 percent (or 8 percentage points below its 1995–2002 average of 43 percent), the overall market estimate would still be approximately 50 percent. Under the baseline projection, the home purchase percentage can fall as low as 34 percent—about four-fifths of the 1995–2002 average—and the low- and moderate-income market share would still be 49–50 percent.

The market estimates reported in Table D.11 for Case 2 and Case 3 bracket those for Case 1 (the baseline). The smaller single-family rental market and lower low- and moderate-income percentages for rental properties result in the Case 2 estimates being about one and a half percentage points below the Case 1 estimates. Conversely, the higher percentages under Case 3 result in estimates of the low-mod market approximately two percentage points higher than the Case 1 estimates. As discussed in Section D, the baseline Case 1 is a reasonable approach for estimating the market shares.

Multifamily Mix. The volume of multifamily activity is also an important determinant of the size of the low- and moderate-income market. HUD is aware of the uncertainty surrounding projections of the multifamily market and consequently recognizes the need to conduct sensitivity analyses to determine the effects on the overall market estimate of different assumptions about the size of that market. As discussed in Section C of this appendix, the average multifamily share between 1991 and 2002 was approximately 16 percent, so 15 percent represents a slightly more conservative baseline. In addition, in single-family home purchase (or low refinancing) environments, the multifamily mix has typically been above 16 percent. Therefore, when considering single-family home purchase environments, it is probably more appropriate to focus on the top two multifamily mixes (15 percent and 16.5 percent) in Table D.11. Still, given the uncertainty surrounding the size of the multifamily market, it is useful to consider the effects of lower multifamily mix assumptions, even in a home purchase environment. Assuming a 13.5 percent multifamily mix reduces the overall low-mod market estimates by 0.6–0.7 percentage points compared with a 15 percent mix, and by 1.2–1.4 percentage points compared with a 16.5 percent mix. For example, when the low-mod share of the home purchase market is at 43 percent, the low-mod share of the overall market is 55.3 percent assuming a 13.5 percent multifamily mix, compared with 55.9 (56.6) percent assuming a 15 (16.5) percent multifamily mix. The next section examines the effects of multifamily mixes lower than 13.5 percent.

Heavy Refinancing Environments. As shown earlier in Table D.11, the low-mod share of the overall market declines when refinances dominate the market. Compared with low-mod market shares of 57–59 percent during recent home purchase environments (1995–97 and 1999–2000), the low-mod share declined to 54–55 percent during 1998, 2001, and 2002—three years where refinancing dominated the single-family-owner mortgage market. As explained earlier, this decline in the low-mod market share during heavy refinancing periods is due to (a) a decline in the low-mod share of single-family refinance mortgages as middle- and upper-income borrowers dominate the refinance market; (b) a decline in the relative importance of the subprime market; and (c) a decline in the share of multifamily mortgages. For example, during 2001, the refinance share of low-mod loans fell to 41.8 percentage points (from about 49 percent during 1999 and 2000); the subprime share of the single-family market fell to 8.5 percent (from about 13 percent during 1999 and 2000); and the multifamily share of the market fell to 13.4 percent (from about 16 percent during 1999 and 2000). Similarly during 2002, the low-mod share of refinance loans was 42.3 percent, the subprime share of the market was 8.6 percent, and the multifamily mix was approximately 11 percent.

Several assumptions were changed to incorporate a refinance environment into the projection model for 2005–08. The refinance share of single-family mortgages was increased to 65 percent, or almost double the 35 percent refinance rate assumed in the projection model for a "home purchase" environment. The market share for subprime loans was assumed to be 8.5 percent and the multifamily mix, 13.5 percent. The low-mod share for refinance loans was assumed to be 39 percent, or four percentage points below the assumed low-mod share of home purchase loans (which was set at the 1998 and 2002 level of 43 percent). Under these assumptions, the overall low-mod market share (excluding B&C loans) was projected to be 53.4 percent—or about 1–2 percentage points below the market shares estimated for 1998, 2001, and 2002. If the multifamily mix is reduced further to 12 (10) percent, the market projection falls to 52.7 (51.8) percent. If the single-family low-mod percentages are reduced to 41 percent (home purchase) and 37 percent (refinance), and the multifamily mix is 12 (10) percent, the overall low-mod market share falls 51.1 (50.2) percent. Since refinance environments are characterized by low interest rates, it is unlikely that the low-mod share of the home purchase market would fall below 41 percent, given that it has averaged 43 percent over the past eight years.

To further examine this issue in the context of an actual refinance environment, the various parameters (*e.g.*, low-mod share of home purchase and refinance loans for owner and rental properties, the subprime share of the market, etc.) for the year 2002 were used except that the multifamily mix was lowered from the actual level in 2002. During 2002, there was a three percentage point differential between the low-mod share of home purchase loans (45.3 percent) and refinance loans (42.3 percent). As reported earlier, the low-mod share of the 2002 market was estimated to be 54.4 percent assuming a multifamily mix of 11.5 percent, and 10.9 percent assuming a multifamily mix of 10.9 percent. The multifamily mix for a year such as 2003, characterized by single-family originations of $3.3 trillion, will certainly be lower than the 11 percent multifamily mix of 2002, characterized by $2.5 trillion in single-family originations. Thus, this sensitivity analysis reduces the multifamily mix for the 2002 refinance environment. The low-mod shares vary with the multifamily mix as follows: (53.8 percent low-mod share, 10 percent multifamily mix); (53.3 percent, 9 percent); (52.9 percent, 8 percent); 52.5 percent, 7 percent); and (52.1 percent, 6 percent). Thus, under the actual 2002 assumptions, the low-mod share drops by about one-half percentage point for each one percentage point reduction in the multifamily mix.[46] The low-share remains above 52 percent even if the multifamily mix falls to 6 percent.[47]

The various market estimates presented in Table D.11 for a home purchase environment and reported above for a refinance environment are not all equally likely. Most of them equal or exceed 52 percent. In the home purchase environment, estimates below 52 percent would require the low-mod share of the single-family-owner market for home purchase loans to drop to 36–37 percent, which would be 6–7 percentage points below the average. Dropping below 52 percent would be more likely in a heavy refinance environment, as the actual estimated market shares during 1998, 2001, and 2002 were in the 54–55 percent range. However, sensitivity analyses of a refinance environment showed that a 52 percent low-mod market share was consistent with market assumptions more adverse than the heavy refinance years of 1998, 2001, and 2002.

B&C Loans. There are two possible approaches for adjusting for the effects of B&C loans in the projection model. *First*, readers could choose a single-family low-mod percentage (that is, one of the percentages in the first column in Table D.11) that they believe is adjusted for B&C loans and then obtain a rough estimate of the overall market estimate from the second to fourth columns corresponding to different multifamily mixes. For instance, if one believes the appropriate single-family-owner percentage adjusted for B&C loans (or adjusted for any other market sectors that the reader thinks appropriate) is 39 percent, then the low-mod market estimate is 52.7 percent assuming a multifamily mix of 15 percent. While intuitively appealing, such an approach would provide inaccurate results, as explained next.

Second, readers could choose a single-family-owner percentage directly from HMDA data that is unadjusted for B&C loans and then rely on HUD's methodology (described below) for excluding the effects of B&C loans. This is the approach taken in Table D.11. The advantage of the second approach is that HUD's methodology makes the appropriate adjustments to the various property shares (*i.e.*, the owner versus rental percentages) that result from excluding single-family B&C loans from the analysis. According to HUD's methodology, dropping B&C loans would reduce the various low-mod market estimates by less than half of a percentage point. This minor effect is due to (a) the fact that the low-mod share of B&C loans is similar to that of the overall market; and (b) the offsetting effects of the increase in the rental market share when single-family B&C loans are dropped from the market totals.

As noted above, if one assumes the single-family-owner percentages in the first column of Table D.11 are unadjusted for B&C loans, then the overall low-mod market estimates must be adjusted to exclude these loans. B&C loans were deducted in HUD's projection model using the same procedure described earlier for the 1995–2002 market estimation models. The effects of deducting the B&C loans from the projection model can be illustrated using an example of a low-mod percentage of 43 percent for single-family owner loans. Again, as explained earlier, this 43 percent figure could reflect a mortgage market environment where home purchase and refinance loans had similar low-mod percentages (*i.e.*, 43 percent) or a mortgage market environment where home purchase and refinance loans had different low-mod market percentages that together resulted in a 43 percent average for the single-family-owner market.

As Table D.11 shows, a 43 percent low-mod share for owner mortgages translates into an overall low-mod market share of 55.9 percent. It is assumed that the subprime market accounts for 12 percent of all mortgages originated, which would be $204 billion based on $1,700 billion for the mortgage market. This $204 billion estimate for the subprime market is reduced by 20 percent to arrive at $163.2 billion for subprime loans that will be less than the conforming loan limit. This figure is reduced by one-half to arrive at $81.6 billion for the conforming B&C market; with an average loan amount of $129,899; the $81.6 billion represents 628,180 B&C loans projected to be originated under the conforming loan limit.

Following the procedure discussed in Section F.3a, the low-mod share of the market exclusive of B&C loans is estimated to be 55.9 percent (see Table D.11), which is only slightly lower than the original (unadjusted) estimate of 56.1 percent.[48] As noted earlier, this occurs because the B&C loans that were dropped from the analysis had similar low-mod percentages as the overall (both single-family and multifamily) market (58.6 percent for excluded B&C loans versus 56.1 percent for the overall, unadjusted market estimate). The impact of dropping B&C loans is larger when the overall market share for low-mod loans is smaller. If the low-mod share for single-family owners is assumed to be 38 percent, dropping B&C loans would reduce the low-mod market share by 0.4 percentage points, from 52.5 percent to the 52.1 percent reported in Table D.11. Still, dropping B&C loans from the market totals does not change the overall low-mod share of the market appreciably.

Dropping B&C loans from HUD's projection model changes the mix between rental and owner units in the final market estimate;

[46] This analysis assumes the 2002 refinance rate of 62 percent; if the refinance rate is increased to 65–68 percent (current predictions for 2003), then the overall low-mod market percentages in this sentence would decline by about 0.1 percentage point. If there were a four (five) percentage point difference between the low-mod shares of home purchase and refinance loans, rather than a three percentage point difference as in 2002, then the overall low-mod market percentages in this sentence would decline by about 0.5 (1.0) percentage point.

[47] For a given multifamily mix, the low-mod shares of the market are higher under the simulations based on the 2002 environment, as compared with the simulations reported in the above paragraph based on the projection model. The reason for this is that the low-mod shares for the various property types were higher during 2002 than those assumed in the projection model.

[48] 1999–2002 HMDA data for subprime lenders were used to provide an estimate of 58.6 percent for the portion of the B&C market that would qualify as low- and moderate-income. Applying the 58.6 percentage to the estimated B&C market total of 628,180 gives an estimate of 367,957 B&C loans that would qualify for the Low- and Moderate-Income Goal. Adjusting HUD's model to exclude the B&C market involves subtracting the 628,180 B&C loans and the 367,957 B&C low-mod loans from the corresponding figures estimated by HUD for the total single-family and multifamily market inclusive of B&C loans. HUD's projection model estimates that 10,632,145 single-family and multifamily units will be financed and of these, 5,962,527 (56.1 percent) will qualify for the Low- and Moderate-Income Goal. Deducting the B&C market estimates produces the following adjusted market estimates: a total market of 10,003,964 of which 5,594,570 (55.9 percent) will qualify for the Low- and Moderate-Income Goal.

rental units accounted for 29.6 percent of total units after dropping B&C loans compared with 27.8 percent before dropping B&C loans. Since practically all rental units qualify for the low-mod goal, their increased importance in the market partially offsets the negative effects on the goals-qualifying shares of any reductions in B&C owner loans.

A similar analysis can be used to demonstrate the effects of deducting the remaining, A-minus portion of the subprime market from the market estimates. Of course, deducting A-minus loans as well as B&C loans is equivalent to deducting all subprime loans from the market. In the example given above (43 percent low-mod percentage for owners), deducting all subprime loans would further reduce the overall low-mod market estimate to 55.7 percent. Thus, the unadjusted low-mod market estimate is 56.1 percent, the estimate adjusted for B&C loans is 55.9 percent (reported in Table D.11), and the estimate adjusted for all subprime loans is 55.7 percent.

Section F.3.a discussed several caveats concerning the analysis of subprime loans. It is not clear what types of loans (*e.g.*, first versus second mortgages) are included in the subprime market estimates. There is only limited data on the borrower characteristics of subprime loans and the extent to which these loans are included in HMDA is not clear. Still, the above analysis demonstrates that the projection model can incorporate the effects of dropping B&C loans (or even all subprime loans) from the final market estimates.

Manufactured Housing Loans. Excluding manufactured housing loans (as well as small loans less than $15,000) reduces the overall market estimates reported in Table D.11 by one-percentage point. This is estimated as follows. First, excluding these loans reduces the unadjusted low-mod percentage for single-family-owner mortgages in metropolitan areas by about 1.8 percentage points, based on analysis of recent home purchase environments (1995–97 and 1999 and 2000). Multiplying this 1.8 percentage point differential by the property share (0.722) of single-family-owner units yields 1.3 percentage points, which serves as a proxy for the reduction in the overall low-mod market share due to dropping manufactured home loans from the market analysis. The actual reduction will be somewhat less because dropping manufactured home loans will increase the share of rental units, which increases the overall low-mod market share, thus partially offsetting the 1.3 percent reduction. The net effect is probably a reduction of about one percentage point.

The above analysis of the effects of dropping different categories of loans from the market suggest that 52–58 percent is a reasonable range of estimates for the low- and moderate-income market. This range covers markets without B&C and allows for market environments that would be much less affordable than recent market conditions. The next section presents additional analyses related to market volatility and affordability conditions. After that, a one-percentage point downward adjustment is made to the 52–58 percent market range to reflect the anticipated effects of re-benchmarking metropolitan area incomes based on 2000 Census data and incorporating the new OMB definitions for metropolitan areas.

c. Economic Conditions, Market Estimates, and the Feasibility of the Low- and Moderate-Income Housing Goal

During the 2000 rule-making, there was a concern that the market share estimates and the housing goals failed to recognize the volatility of housing markets and the existence of macroeconomic cycles. There was particular concern that the market shares and housing goals were based on a period of economic expansion accompanied by record low interest rates and high housing affordability. This section discusses these issues, noting that the Secretary can consider shifts in economic conditions when evaluating the performance of the GSEs on the goals, and noting further that the market share estimates can be examined in terms of less favorable market conditions than have existed during the 1993 to 2002 period.

Volatility of Market. Changing economic conditions can affect the validity of HUD's market estimates as well as the feasibility of the GSEs' accomplishing the housing goals. The volatile nature of the mortgage market in the past few years suggest a degree of uncertainty around projections of the origination market. Large swings in refinancing, consumers switching between adjustable-rate mortgages and fixed-rate mortgages, and increased first-time homebuyer activity due to record low interest rates, have all characterized the mortgage market during the nineties. These conditions are beyond the control of the GSEs but they would affect their performance on the housing goals. A mortgage market dominated by heavy refinancing on the part of middle-income homeowners would reduce the GSEs' ability to reach a specific target on the Low- and Moderate-Income Goal, for example. A jump in interest rates would reduce the availability of very-low-income mortgages for the GSEs to purchase. But on the other hand, the next few years may be favorable to achieving the goals because of the high refinancing activity in 2001, 2002, and 2003. A period of low-to-moderate interest rates would sustain affordability levels without causing the rush to refinance seen earlier in 1998 and 2001–2003. A high percentage of potential refinancers have already done so, and are less likely to do so again. However, these same predictions were made after the 1998 refinance wave, which indicates the uncertainty of making predictions about the mortgage market.

HUD conducted numerous sensitivity analyses of the market shares, several of which were described in Section F.3b above. The starting point of HUD's estimates is the projected $1,700 billion in single-family originations. Increasing the single-family mortgage origination forecast while holding the multifamily origination forecast constant is equivalent to reducing the multifamily mix. Increasing the single-family projection by $200 billion, from $1,700 billion to $1,900 billion, would reduce the market share for the Low- and Moderate-Income Goal by approximately 0.6 percentage point, assuming the other baseline assumptions remain unchanged. A $400 billion increase would reduce the low-mod projected market share by one percentage point. These reductions in the low-mod share of the mortgage market share occur because the multifamily mix is reduced from 15 percent to 13.6 percent to 12.5 percent. As explained in Section E, the absolute volume of single-family originations (such as the $1,700 billion) is not as important as the relative shares of single-family and multifamily rental units.

Recent years have been characterized by record affordability conditions due to low interest rates and economic expansion. Thus, HUD also examined potential changes in the market shares under very different macroeconomic environments, including periods of recession, high interest rates, and heavy refinancing (accompanied by low interest rates). A recessionary environment would likely be characterized by a reduction in single-family activity (or an increase in the multifamily share of the market) and a reduction in the low-mod shares of the single-family-owner market. The low- and moderate-income share of the home purchase market was reduced to 34 percent, or 10.6 percentage points lower than its 1999–2002 average share. Under these rather severe conditions, the overall market share for the Low- and Moderate-Income Goal would decline to 49.0 (49.8) percent, assuming a multifamily mix of 15.0 (16.5) percent. If the low-mod share of the owner market were reduced more modestly to 37 percent, the low-mod share for the overall market would fall to 51.3 percent assuming a multifamily mix of 15.0 percent. (See Table D.11.)

As explained above, several heavy refinance environments were simulated. As a way of examining more extreme refinance environments than 2002, the effects of reducing the multifamily mix for the 2002 refinance environment were examined. The low-mod shares varied with the multifamily mix from 53.8 percent low-mod share with a 10 percent multifamily mix to 52.1 percent with a 6 percent multifamily mix. Under the actual 2002 market assumptions, the low-mod share drops by about one-half percentage point for each one percentage point reduction in the multifamily mix.[49]

[49] This analysis assumes the 2002 refinance rate of 62 percent; if the refinance rate is increased to 65–68 percent (current predictions for 2003), then the overall low-mod market percentages in this sentence would decline by about 0.1 percentage point. If there were a four (five) percentage point difference between the low-mod shares of home purchase and refinance loans, rather than a three percentage point difference as in 2002, then the overall low-mod market percentages in this sentence would decline by about 0.5 (1.0) perecentage point. In addition, due to the uncertainty surrounding estimates of the investor share of the single-family mortgage market (see Section D), the analysis assumes a constant 10 percent share for investors; if the investor share is reduced to 8 percent during a refinance environment, the estimated low-mod share of the market would fall about one percentage point. This figure is obtained by multiplying the low-mod percentage differential between owner and investor mortgages (about 47 percent) by the resulting decimal point increase in the share of owner units (.021 as shown in Table D.7).

Affordability Conditions and Market Estimates. As discussed in Appendix A, record low interest rates, a more diverse socioeconomic group of households seeking homeownership, and affordability initiatives of the private sector have encouraged first-time buyers and low-income borrowers to enter the market since the mid-1990s. A significant increase in interest rates over recent levels would reduce the presence of low-income families in the mortgage market and the availability of low-income mortgages for purchase by the GSEs. As discussed above, the 52–58 percent range for the low-mod market share covers economic and market affordability conditions much less favorable than recent conditions of low interest rates and economic expansion. The low-mod share of the single-family home purchase market could fall to 38 percent, which is 5.2 percentage points lower than its 1995–2002 average level of 43.2 percent, before the baseline market share for the Low- and Moderate-Income Goal would below 52 percent.

Feasibility Determination. As stated in the 2000 Rule, HUD is well aware of the volatility of mortgage markets and the possible impacts on the GSEs' ability to meet the housing goals. FHEFSSA allows for changing market conditions.[50] If HUD has set a goal for a given year and market conditions change dramatically during or prior to the year, making it infeasible for the GSE to attain the goal, HUD must determine "whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible." This provision of FHEFSSA clearly allows for a finding by HUD that a goal was not feasible due to market conditions, and no subsequent actions would be taken. As HUD noted in both the 1995 and 2000 GSE Rules, it does not set the housing goals so that they can be met even under the worst of circumstances. Rather, as explained above, HUD has conducted numerous sensitivity analyses for economic and market affordability environments much more adverse than has existed in recent years. If macroeconomic conditions change even more dramatically, the levels of the goals can be revised to reflect the changed conditions. FHEFSSA and HUD recognize that conditions could change in ways that require revised expectations.

d. New 2000 Census Data and New OMB Metropolitan Area Definitions

Going forward, HUD will be re-benchmarking its median incomes for metropolitan areas and non-metropolitan counties based on 2000 Census median incomes, and will be incorporating the effects of the new OMB metropolitan area definitions. HUD projected the effects of these two changes on the low- and moderate-income shares of the single-family-owner market for the years 1999–2002. Under the historical data, the average low-mod share of the conventional conforming market was 44.6 percent for home purchase loans (unweighted average of 1999–2002 percentages in Table D.8); the corresponding average with the projected data was 43.4 percent, yielding a differential of 1.2 percentage points. For home purchase loans in the conventional conforming market, the projected low-mod percentages for each year between 1999 and 2002 were as follows (with the historical data from Table D.8 in parentheses): 44.4 (45.2) percent for 1999; 44.2 (44.8) percent for 2000; 41.8 (43.2) percent for 2001; and 43.3 (45.3) percent for 2002. The differentials between the projected and historical data are larger in 2001 (1.4 percentage points) and 2002 (2.0 percentage points) than in 1999 (0.8 percentage point) and 2000 (0.6 percentage point). For total (both home purchase and refinance) loans, the average low-mod share of the conventional conforming market based on historical data was 44.8 percent (unweighted average of 1999–2002 percentages in Table D.8); the corresponding average with the projected data was 43.6 percent, again yielding a differential of 1.2 percentage points, with the same pattern exhibited for the annual differentials.[51] It appears that the low-mod share for single-family-owners in the conventional conforming market will be at least one percentage point less due to the re-benchmarking of area median incomes and the new OMB definitions of metropolitan areas.

For the other two property types (single-family rental and multifamily), comparisons between projected and historical low-mod percentages were made using the GSEs' data. For single-family rental mortgages, the unweighted average of Fannie Mae's (Freddie Mac's) low-mod percentage for the years 1999 to 2002 was 87.8 (88.1) percent using the projected data, compared with 87.7 (88.1) percent using the historical data. For multifamily mortgages, the unweighted average of Fannie Mae's (Freddie Mac's) low-mod percentage for the years 1999 to 2002 was 92.1 (90.3) percent using the projected data, compared with 92.9 (92.6) percent using the historical data. These comparisons suggest little difference between the projected and historical low-mod shares for rental properties. HUD also projected the overall low-mod goal percentage for each GSE. For the overall low-mod goal (considering all three property types), the unweighted average of Fannie Mae's (Freddie Mac's) low-mod percentage for the years 1999 to 2002 was 48.5 (47.1) percent using the projected data, compared with 49.1 (47.9) percent using the historical data. Compared with the historical data, the projected data reduces Fannie Mae's average low-mod percentage by 0.6 percentage points, and Freddie Mac's by 0.8 percentage point.

Based on the above analysis, it appears the low-mod share of the conventional conforming market is about one percentage point less when based on projected data, as compared with historical data. Thus, it seems appropriate to drop the 52–58 percent market range to 51–57 percent.

e. Conclusions About the Size of Low- and Moderate-Income Market

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 51–57 percent is a reasonable range of estimates of the mortgage market's low- and moderate-income share for the year 2005 and beyond. This range covers much more adverse economic and market affordability conditions than have existed recently, allows for different assumptions about the multifamily market, and excludes the effects of B&C loans. HUD recognizes that shifts in economic conditions and refinancing could increase or decrease the size of the low- and moderate-income market during that period.

G. Size of the Conventional Conforming Market Serving Central Cities, Rural Areas, and Other Underserved Areas

The following discussion presents estimates of the size of the conventional conforming market for the Central City, Rural Areas, and other Underserved Areas Goal; this housing goal will also be referred to as the Underserved Areas Goal. The first three sections, which analyze historical data going back to the early 1990's, necessarily used 1990 Census geography to define underserved census tracts and underserved counties. The first two sections focus on underserved census tracts in metropolitan areas, as Section 1 presents underserved area percentages for different property types while Section 2 presents market estimates for metropolitan areas. Section 3 discusses B&C loans and rural areas. But as explained in Appendix B, HUD will be defining underserved areas based on 2000 Census geography beginning in 2005, the first year covered by this proposed rule. Therefore, Section 4 repeats much of the analyses in Sections 1–3 but in terms of 2000 Census geography, rather than 1990 Census geography.

1. Underserved Areas Goal Shares by Property Type

For purposes of the Underserved Areas Goal, underserved areas in metropolitan areas are defined as census tracts with:

(a) Tract median income at or below 90 percent of the MSA median income; or

(b) A minority composition equal to 30 percent or more and a tract median income no more than 120 percent of MSA median income.

Owner Mortgages. The first set of numbers in Table D.12 are the percentages of single-family-owner mortgages that financed properties located in underserved census tracts of metropolitan areas between 1992 and 2002. There are several interesting patterns in these data. During 1999 and 2000, 28–30 percent of mortgages (both home purchase and refinance loans) financed properties located in these areas; this percentage fell to 25.7 percent in 2001 and 25.2 percent in 2002, figures that were slightly below the average (26.8 percent) between 1994 and 1998. In 1992 and 1993,

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[50] Section 1336(b)(3)(A).

[51] Between 1999 and 2002, the average single-family-owner differential between the historical and projected low-mod percentages was 1.1 percentage point for Fannie Mae and 1.3 percentage point for Freddie Mac.

the underserved areas share of single-family-owner mortgages was only 20 percent.

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Table D.12

Underserved Area Share of Mortgage Market In Metropolitan Areas: 1992-2002 HMDA Data

	Purchase		Refinance		Total	
Single-Family-Owner	Conforming Market	Market W/O B&C Loans	Conforming Market	Market W/O B&C Loans	Conforming Market	Market W/O B&C Loans
1992	22.2 %	22.2 %	20.1 %	20.0 %	20.8 %	20.7 %
1993	21.9	21.9	19.5	19.4	20.2	20.1
1994	24.4	24.3	27.5	26.9	25.8	25.5
1995	25.5	25.4	29.3	28.3	26.9	26.4
1996	25.0	24.9	28.7	27.4	26.7	26.0
1997	25.2	24.9	30.8	28.9	27.8	26.7
1998	24.6	24.2	24.9	23.4	24.8	23.7
1999	25.8	25.2	30.4	28.5	28.2	26.9
2000	27.1	26.4	35.2	33.2	30.3	28.9
2001	25.8	25.2	25.6	24.7	25.7	24.9
2002	27.2	26.4	24.4	23.5	25.2	24.3
Non-Owner						
1992					42.4	
1993	39.3		41.1		40.4	
1994	39.6		46.7		43.0	
1995	40.1		50.1		43.7	
1996	39.7		48.8		43.5	
1997	40.5		51.2		45.0	
1998	40.3		46.5		43.6	
1999	41.6		51.2		46.1	
2000	42.6		56.8		47.4	
2001	41.3		46.8		44.2	
2002	42.1		45.8		44.2	
Multifamily[1]						
1992					50.2	
1993					47.1	
1994					51.0	
1995					47.8	
1996					48.5	
1997					48.0	
1998					47.0	
1999					49.7	
2000					51.6	
2001					52.7	
2002					55.0	

Source: HMDA data for metropolitan areas. See text for definition of underserved areas and for the method for excluding B&C loans from the market.

[1] A purchase/refinance breakdown is not available for multifamily.

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In most years, refinance loans are more likely than home purchase loans to finance properties located in underserved census tracts. Between 1994 and 2002, 28.5 percent of refinance loans were for properties in underserved areas, compared to 25.6 percent of home purchase loans. This refinance-home-purchase differential is mostly due to the influence of subprime loans. Excluding B&C (all subprime) loans and considering the same time period, 27.2 (25.6) percent of refinance loans were for properties in underserved areas, compared to 25.2 (24.8) percent of home purchase loans. In the year (2000) with the largest differential, excluding B&C (all subprime) loans reduced the refinance-home-purchase differential from 8.1 percent to 6.8 (4.9) percent; in this case, a significant differential remained after excluding B&C (subprime) loans. In the heavy refinance years of 1998, 2001, and 2002, underserved areas accounted for 25–27 percent of both home purchase and refinance loans.

The underserved areas share for home purchase loans has been in the 25–26 range since 1995, except for 2000 and 2002 when it increased to slightly over 27 percent. Considering all (both home purchase and refinance) loans during recent "home purchase" environments, the underserved areas share was a high 28–30 percent during 1999–2000, compared with a 27.1 percent average between 1995 and 1997; excluding B&C and other (*i.e.*, A-minus) subprime loans places 1999 on par with the earlier years, with only the year 2000 showing a higher level of underserved area lending than occurred during 1995–97. These data indicate that the single-family-owner market in underserved areas has remained strong since the 2000 Rule was written. While it is recognized that economic and housing affordability conditions could change and reduce the size of the underserved areas market, it appears that the underserved market has certainly maintained itself at a high level over the past four years.

Renter Mortgages. The second and third sets of numbers in Table D.12 are the underserved area percentages for single-family rental mortgages and multifamily mortgages, respectively. Based on HMDA data for single-family, non-owner-occupied (investor) loans, the underserved area share of newly-mortgaged single-family rental units has been in the almost 45 percent range over the past nine years. HMDA data also show that about half of newly-mortgaged multifamily rental units are located in underserved areas.

2. Market Estimates for Underserved Areas in Metropolitan Areas

In the 2000 GSE Rule, HUD estimated that the market share for underserved areas would be between 29 and 32 percent. This estimate turned out to be below market experience, as underserved areas accounted for approximately 32–35 percent of all mortgages originated in metropolitan areas between 1999 and 2002 (see Table D.9). One reason for the underestimation of 1999–2002 experience was that the underserved areas share of the single-family-owner market continued to increase during this period of low interest rates. Table D.13 reports HUD's new estimates of the market share for underserved areas based on the projection model discussed earlier.[52] The estimates in Table D.13 exclude the effects of B&C loans.

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[52] Table D.13 presents estimates for the same combinations of projections used to analyze the Low- and Moderate-Income Goal. Table D.10 in Section F.3 defines Cases 1, 2, and 3; Case 1 (the baseline) projects a 42.5 percent share for single-family rentals and a 48 percent share for multifamily properties while the more conservative Case 2 projects 40 percent and 46 percent, respectively.

Table D.13

Underserved Area Market Estimates
Sensitivity Analysis

Case 1 with Different Underserved Areas Percentages for Single-Family Owner-Occupied's:		Multifamily Mix (Percent)		
		13.5%	15%	16.5%
Single-Family Owner: [a]	30%	34.7 %	35.0 %	35.2 %
	29%	33.9	34.2	34.5
	28%	33.1	33.4	33.7
	27%	32.4	32.7	33.0
	26%	31.6	31.9	32.2
	25%	30.8	31.1	31.5
	24%	30.0	30.4	30.7
	23%	29.2	29.6	30.0
	22%	28.4	28.8	29.2
	21%	27.7	28.1	28.5
	20%	26.9	27.3	27.7
	19%	26.1	26.5	27.0
	18%	25.3	25.8	26.2
Single-Family Owner:	25% with:			
	Case 1 (above)	30.8 %	31.1 %	31.5 %
	Case 2	30.2	30.5	30.8
	Case 3	31.3	31.6	32.0
Single-Family Owner:	22% with:			
	Case 1 (above)	28.4 %	28.8 %	29.2 %
	Case 2	27.8	28.2	28.5
	Case 3	29.0	29.3	29.7

See text for definitions of underserved areas and for the interpretation of single-family-owner percentages. The underserved area data are based on 1990 geography.

[a] These percentages are assumed to be the overall (both home purchase and refinance) percentages of single-family owner mortgages in underserved census tracts.

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The percentage of single-family-owner mortgages financing properties in underserved areas is the most important determinant of the overall market share for this goal. Therefore, Table D.13 reports market shares for different single-family-owner percentages ranging from 30 percent (2000 level) to 20 percent (1993 level) to 18 percent. If the single-family-owner percentage for underserved areas is at its 1994–2002 HMDA average of 27 percent, the market share estimate is 32–33 percent. The overall market share for underserved areas peaks at 35 percent when the single-family-owner percentage is at its 2000 level of 30 percent. Most of the estimated market shares for the owner percentages that are slightly below recent experience are in the 30 percent range.

Unlike the Low- and Moderate-Income Goal, the market estimates differ only slightly as one moves from Case 1 to Case 3 and from a 13.5 percent mix to 16.5 percent mix. For example, reducing the assumed multifamily mix from 16.5 percent to 13.5 percent reduces the overall market projection for underserved areas by only about 0.6 percentage points. This is because the underserved area differentials between owner and rental properties are not as large as the low- and moderate-income differentials reported earlier.

Additional sensitivity analyses were conducted to reflect the volatility of the economy and mortgage market. Recession and high interest rate scenarios assumed a significant drop in the underserved area percentage for single-family-owner mortgages. The single-family-owner percentage can go as low as 24 percent—which is 3 percentage points lower than the 1994–2002 average of 27 percent—and the estimated market share for underserved areas remains over 30 percent. In a more severe case, the overall underserved market share would be 28 percent if the single-family-owner share fell to 21 percent (its 1992 level), which is 8–9 percentage points lower than its 1999–2000 levels. The heavy refinance scenarios discussed for the low-mod market were also projected for the underserved areas market. With a 65 percent refinance rate and an assumed 24 percent underserved area percentage for owner mortgages, the projection model produced overall market estimates that ranged from 32.6 percent (multifamily mix of 13.5 percent) to 31.7 percent (multifamily mix of 9 percent). Lowering the multifamily mix in the heavy refinance model characterized by year 2002 assumptions produced the following range of estimates for the overall underserved areas market: 32.1 percent (multifamily mix of 11.0 percent) to 31.2 percent (multifamily mix of 8 percent) to 30.7 percent (multifamily mix of 6 percent).[53] In the refinance scenarios, the underserved areas market share was typically at or slightly above 30 percent, which is similar to its market share during 1998 (31.0 percent) but somewhat less than its market share during 2001 (32.6 percent) and 2002 (32.0 percent).

3. Adjustments: B&C Loans, the Rural Underserved Areas Market, and Manufactured Housing Loans

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The underserved area percentage for B&C loans is 44.5 percent, which is much higher than the projected percentage for the overall market (which peaks at 35 percent as indicated in Table D.13). Thus, dropping B&C loans will reduce the overall market estimates. Consider the case of a single-family-owner percentage of 27 percent, which yields an overall market estimate for underserved areas of 33.4 percent, including B&C loans. When B&C loans are excluded from the projection model, the underserved areas market share falls by 0.7 percentage points to 32.7 percent, which is the figure reported in Table D.13.

Non-metropolitan Areas. Underserved rural areas are non-metropolitan counties with:

(a) County median income at or below 95 percent of the greater of statewide non-metropolitan median income or nationwide non-metropolitan income; or

(b) A minority composition equal to 30 percent or more and a county median income no more that 120 percent of statewide non-metropolitan median income.

HMDA's limited coverage of mortgage data in non-metropolitan counties makes it impossible to estimate the size of the mortgage market in rural areas. However, all indicators suggest that underserved counties in non-metropolitan areas comprise a larger share of the non-metropolitan mortgage market than the underserved census tracts in metropolitan areas comprise of the metropolitan mortgage market. For instance, underserved counties within rural areas include 54 percent of non-metropolitan homeowners; on the other hand, underserved census tracts in metropolitan areas account for only 34 percent of metropolitan homeowners.

During 1999–2001, 36–39 percent of the GSEs' total purchases in non-metropolitan areas were in underserved counties while 25–30 percent of their purchases in metropolitan areas were in underserved census tracts. These figures suggest the market share for underserved counties in rural areas is higher than the market share for underserved census tracts in metropolitan areas. Thus, using a metropolitan estimate to proxy the overall market for this goal, including rural areas, is conservative. Between 1999 and 2001, the non-metropolitan portion of the Underserved Areas Goal has contributed 1.1 to 1.4 (0.7 to 1.3) percentage points to Freddie Mac's (Fannie Mae's) performance, compared with a goals-counting system that only included metropolitan areas.

The limited HMDA data available for non-metropolitan counties also suggest that the underserved areas market estimate would be higher if complete data for non-metropolitan counties were available. According to HMDA, underserved counties accounted for 41–45 percent (or 42.7 percent) of all mortgages originated in non-metropolitan areas between 1999 and 2002. By contrast, underserved census tracts accounted for approximately 24–33 percent (or 27.4 percent) of all mortgages originated in metropolitan areas between 1999 and 2002.[54] Assuming that non-metropolitan areas account for 13 percent of all single-family-owner mortgages and estimating that the single-family-owner market for accounts for 72 percent of newly-mortgaged dwelling units, then the non-metropolitan underserved area differential of approximately 15 percent would raise the overall market estimate by 1.4 percentage point—15 percentage points *times* 0.13 (non-metropolitan area mortgage market share) *times* 0.72 (single-family owner mortgage market share). Based on this calculation, if the 15 point differential reflected actual market conditions, then the underserved areas market share estimated using metropolitan area data should be increased by 1.4 percentage points to account for the effects of underserved counties in non-metropolitan areas.[55] A more conservative adjustment of 1.25 percentage points was made in Table D.13 for the projection model.[56]

Manufactured Housing Loans. Excluding manufactured housing loans (as well as small loans less than $15,000) reduces the overall underserved area market estimates reported in Table D.13 by less than one percentage point. This is estimated as follows. First, excluding these loans reduces the unadjusted underserved areas percentage for single-family-owner mortgages in metropolitan areas by about 1.2 percentage points, based on analysis of recent home purchase environments (1995–97 and 1999 and 2000). Multiplying this 1.2 percentage point differential by the property share of single-family-owner units (72.2 percent) yields 0.8 percentage points, which serves as a proxy for the reduction in the overall underserved area market share due to dropping manufactured home loans from the market analysis. The actual reduction will be somewhat less because dropping

[53] During 2002, the underserved areas share was 27.2 percent for home purchase loans and 24.4 percent for refinance loans, yielding a differential of 2.8 percentage points. Increasing the differential to 4 percentage points (by reducing the underserved area share of refinance loans to 23.2 percent) would reduce the overall underserved areas market percentages reported in the text by about 0.6 percentage point.

[54] These data do not include loans originated by lenders that specialize in manufactured housing loans, as well as estimated B&C loans. The averages in this and the preceding sentence are annual unweighted averages.

[55] Mortgage Interest Rate Survey (MIRS) data reported by the Federal Housing Finance Board separate conventional home purchase loans by their metropolitan and non-metropolitan location. The average non-metropolitan share between 1999 and 2002 was about 13 percent.

[56] For the 1999–2002 data in Table D.9, the non-metropolitan adjustment was calculated by multiplying the actual single-family-owner property share during a particular year *by* that year's underserved area share for non-metropolitan areas *by* the average metropolitan/non-metropolitan differential of 15 percent (see text). The average differential of 15 percent was used because the annual differentials exhibited rather wide variation, and given issues about HMDA's coverage of non-metropolitan areas, the average differential was used. An adjustment of 1.5 percentage points was used for the earlier years, 1995 to 1998.

manufactured home loans will increase the share of rental units, which increases the overall underserved areas market share, thus partially offsetting the 0.8 percent reduction. The net effect is probably a reduction of about three-quarters of a percentage point.

The estimates presented in Table D.13 suggest that 30–35 percent would be a reasonable range for the market estimate for underserved areas based on the projection model described earlier and assuming 1990 Census geography. This range incorporates market affordability conditions that are more adverse than have existed recently and it excludes B&C loans from the market estimates. As discussed next, switching from 1990 to 2000 Census geography increases this market range by five percentage points to 35–40 percent.

4. 2000-Based Underserved Area Market Shares

The above analysis has concluded that 30–35 percent would be a reasonable market range for the Geographically Targeted Goal based on past origination activity in underserved areas and on scenarios that cover a variety of economic and mortgage market conditions. That analysis, which included historical data going back to the early 1990s, necessarily used 1990 Census geography to define underserved census tracts. As explained in Appendix B, HUD will be defining underserved areas based on 2000 Census geography beginning in 2005, the first year covered by this proposed rule. Appendix B also explains that the number of census tracts in metropolitan areas covered by HUD's underserved area definition will increase from 21,587 tracts (based on 1990 Census) to 26,959 tracts (based on 2000 Census and OMB's respecification of metropolitan areas). This increase in the number of tracts defined as underserved means that the market estimate for the Geographically Targeted Goal will be higher than the 30–35 percent estimate presented above. Thus, this section provides a new range of market estimates for underserved areas defined in terms of 2000 Census data. The 1990-based analysis that produced the 30–35 percent range serves as the starting point for an upward adjustment in the market range.

For the years 1999 to 2002, Table D.14 reports the underserved areas share of the mortgage market for single-family-owner, investor (non-owner), and multifamily properties, with comparisons between 1990-based and 2000-based measures of underserved areas. HMDA data, which is the source of the mortgage data, were reported in terms of 1990 census tracts. For the years 1999 to 2002, HUD used various apportionment techniques to re-allocate 1990-based HMDA mortgage data into census tracts as defined by the 2000 Census. The 1990-based underserved area market shares reported in Table D.14 are the same data reported earlier in Table D.12, while the 2000-based underserved area market shares result from re-allocating 1999–2002 HMDA data into 2000 Census geography. In addition, the data are defined in terms of the new OMB metropolitan area definitions.

Table D.14

Underserved Area Share of Mortgage Market in Metropolitan Areas:
1999-2002 HMDA Data
1990 Geography Versus 2000 Geography

	Purchase						Refinance						Total					
	Conforming Market			Market W/O B&C Loans			Conforming Market			Market W/O B&C Loans			Conforming Market			Market W/O B&C Loans		
Single-Family -Owner	2000-Based	1990-Based	Difference	2000-Based	1990-Based	Difference	2000-Based	1990-Based	Difference	2000-Based	1990-Based	Difference	2000-Based	1990-Based	Difference	2000-Based	1990-Based	Difference
1999	31.4	25.8	5.6	30.7	25.2	5.5	36.0	30.4	5.6	34.0	28.5	5.5	33.8	28.2	5.6	32.4	26.9	5.5
2000	33.0	27.1	5.9	32.2	26.4	5.8	40.9	35.2	5.7	38.8	33.2	5.6	36.1	30.3	5.8	34.6	28.9	5.7
2001	31.6	25.8	5.8	30.9	25.2	5.7	31.0	25.6	5.4	30.0	24.7	5.3	31.2	25.7	5.5	30.3	24.9	5.4
2002	33.3	27.2	6.1	32.3	26.4	5.9	29.8	24.4	5.4	28.7	23.5	5.2	30.8	25.2	5.6	29.8	24.3	5.5
1999-2002	32.3	26.5	5.8	31.5	25.8	5.7	32.3	26.8	5.5	30.9	25.6	5.3	32.3	26.7	5.6	31.1	25.7	5.4
Non-Owner																		
1999	46.7	41.6	5.1				56.4	51.2	5.2				51.2	46.1	5.1			
2000	48.0	42.6	5.4				61.4	56.8	4.6				52.5	47.4	5.1			
2001	47.1	41.3	5.8				52.0	46.8	5.2				49.7	44.2	5.5			
2002	48.1	42.1	6.0				51.2	45.8	5.4				49.8	44.2	5.6			
1999-2002	47.5						53.6						50.5					
Multifamily[1]																		
1999													57.8	49.7	8.1			
2000													58.8	51.6	7.2			
2001													60.7	52.7	8.0			
2002													61.8	55.0	6.8			
1999-2002													60.0					

Source: HMDA data for metropolitan aeas. See text for definition of underserved areas and for the method for excluding B&C loans from the market. The 1999-2002 averages are loan-based weighted averages. The "1990-Based" underserved area shares are based on 1990 census tracts while the "2000-Based" underserved area shares are based on 2000 census tracts, and new OMB metropolitan area definitions.

[1] A purchase/refinance breakdown is not available for multifamily.

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First, consider the market shares for single-family-owner properties in the top portion of Table D.14. In 2002, the underserved area percentage for home purchase loans increases from 27.2 percent (1990-based) to 33.3 percent (2000-based), an increase of 6.1 percentage points; the corresponding percentages for refinance loans were 24.4 percent (1990-based) and 29.8 percent (2000-based), or an increase of 5.4 percentage points. Considering total owner loans (*i.e.*, both home purchase and refinance owner loans), the average of the "Differences" reported in Table D.14 is 5.6 percentage points for the conforming market. Between 1999 and 2001, 32.3 percent of mortgage originations were originated in underserved areas based on 2000 geography, compared with 26.7 percent based on 1990 geography—yielding an overall differential of 5.6 percentage points.

Next, consider the underserved area market shares reported for single-family rental (or non-owner) and multifamily properties in the middle and bottom portions of Table D.14. In 2002, the underserved area percentage for home purchase non-owner loans increases from 42.1 percent (1990-based) to 48.1 percent (2000-based), an increase of 6.0 percentage points; the corresponding percentages for refinance loans were 45.8 percent (1990-based) and 51.2 percent (2000-based), or an increase of 5.4 percentage points. Considering total single-family rental loans (*i.e.*, home purchase and refinance loans), the 1999–02 average of the "Differences" reported in Table D.14 is 5.3 percentage points for the single-family rental market. The multifamily differentials are slightly higher at approximately 7–8 percentage points. Between 1999 and 2002, 59.8 percent of multifamily originations (on a dollar basis) were originated in underserved areas based on 2000 geography, compared with 52.3 percent based on 1990 geography.

The underserved areas shares based on 2000 Census geography were estimated for the last four years, 1999 to 2002; the following estimates were obtained: 39.0 percent (1999), 40.4 percent (2000), 37.7 percent (2001), and 37.2 percent (2002). These 2000-based market estimates are slightly over five percentage points higher than the 1990-based market estimates for underserved areas reported in Table D.9: 5.1 percent (1999), 5.2 percent (2000), 5.1 percent (2001), 5.1 percent (2002), and 5.1 percent (2002).[57] This analysis suggests that a reasonable range for the overall market share for underserved areas based on 2000 geography might be 35–40 percent, which is obtained by simply adding five percentage points to the 30–35 percent range estimated earlier based on 1990-based geography. As discussed next, a 35–40 percent range is indeed an appropriate estimate of the underserved area market based on 2000 geography.

Table D.15 reports the results of the projection model assuming 2000 geography. Since Table D.15 has the same interpretation as Table D.13, there is no need to provide a detailed discussion of it.[58] If the single-family-owner percentage for underserved areas is at its 1999–2002 HMDA average of 33 percent, the market share estimate is 39 percent. The overall market share for underserved areas peaks at approximately 41 percent when the single-family-owner percentage is at its 2000 level of 36 percent. Most of the estimated market shares for the owner percentages that are within four percentage points of recent experience (*i.e.*, the 29–33 percent range) are in the 36–39 percent range.

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[57] The differentials reported in Table D.14 for the three individual property types tend to be greater than 5.5 percentage points, which raises the question of why the overall differential is only 5.1 percentage points. As explained later, the upward adjustment to account for underserved areas in non-metropolitan areas is about 0.65 percentage point less using the 2000-based Census data than it was using the 1990-based Census data.

[58] In addition to adjusting the various single-family-owner parameters upward, the following 2000-based assumptions were made with respect to the underserved areas shares of single-family rental properties: 52.0% for Case 1, 50.0% for Case 2, and 54.0% for Case 3. If these percentages were based only on the HMDA data reported in Table D.14, they would have been 48.0% for Case 1, 46.0% for Case 2, and 50.0% for Case 3. However, in conducting this 2000-based analysis, HUD also computed the single-family rental shares for the GSEs in terms of both the number of mortgages (consistent with the HMDA data in Table D.14) and the number of single-family rental units financed (the concept used in the housing goals calculation). That analysis showed that the unit-based underserved area percentage was approximately six percentage points higher than the number-of-mortgage-based underserved area percentage. To reflect this differential, HUD adjusted the percentages in Cases 1–3 by an additional four percentage points. With respect to multifamily properties, the following assumptions were made with respect to underserved areas shares: 58.0% for Case 1, 56.0% for Case 2, and 59.0% for Case 3. If these percentages were based only on the HMDA data reported in Table D.14, they would have been 55.0% for Case 1, 53.0% for Case 2, and 55.0% for Case 3. HUD computed the multifamily underserved area shares for the GSEs in terms of mortgage dollars (consistent with the HMDA data Table D.14) and the number of multifamily rental units financed (the concept used in the housing goals calculation). That analysis showed that the unit-based underserved area percentage was also approximately six percentage points higher than the mortgage-dollar-based underserved area percentage; thus HUD adjusted the percentages upward.

Table D.15

Underserved Area Market Estimates For Sensitivity Analysis 2000 Census Geography

Case 1 with Different Underserved Areas Percentages for Single-Family Owner-Occupied's:		Multifamily Mix (Percent) 13.5%	15%	16.5%
Single-Family Owner-Occupied: [a]	36%	41.1 %	41.4 %	41.7 %
	35%	40.3	40.6	41.0
	34%	39.5	39.9	40.2
	33%	38.7	39.1	39.5
	32%	37.9	38.3	38.7
	31%	37.2	37.6	37.9
	30%	36.4.	36.8	37.2
	29%	35.6	36.0	36.4
	28%	34.8	35.3	35.7
	27%	34.0	34.0	34.9
	26%	33.2	33.7	34.2
Single-Family Owner-Occupied:	31% with:			
	Case 1 (above)	37.2 %	37.6 %	37.9 %
	Case 2	36.2	36.5	36.9
	Case 3	38.3	38.7	39.1
Single-Family Owner-Occupied:	28% with:			
	Case 1 (above)	34.8 %	35.3 %	35.7 %
	Case 2	33.7	34.1	34.6
	Case 3	36.0	36.5	36.9

[a] These percentages are assumed to be the overall (both home purchase and refinance) percentages of single-family owner mortgages in underserved census tracts.

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Following the 1990-based analysis in Section G.2, additional sensitivity analyses were conducted to reflect the volatility of the economy and mortgage market. Recession and high interest rate scenarios assumed a significant drop in the underserved area percentage for single-family-owner mortgages. The single-family-owner percentage can go as low as 29 percent—which is 3 percentage points lower than the 1994–2002 average of 32 percent and 4 percentage points lower than the 1999–2002 average of 33 percent—and the estimated market share for underserved areas remains about 36 percent. In a more severe case, the overall underserved market share would be 33–34 percent if the single-family-owner share fell to 26 percent (its 1992 level), which is 7 percentage points lower than its 1999–2002 average. In the heavy refinance scenarios (with their lower multifamily mixes), the underserved areas market share was typically around 36–37 percent.

Non-metropolitan Areas. As explained in Section G.3, in order to account for the much larger coverage of underserved areas in non-metropolitan areas, 1.25 percent was added to the market share based on metropolitan area data, in order to arrive at a nationwide estimate of the market share for underserved areas. According to HMDA, underserved counties accounted for 42.7 percent of single-family-owner mortgages originated in non-metropolitan areas during the 1999-to-2002 period, based on 1990 geography. With 2000 geography and the new tract-based definition of underserved areas in non-metropolitan areas, the market share falls by 2.3 percentage points to 39.6 percent. This 2000-based underserved areas percentage of 39.6 percent for non-metropolitan areas is about eight percentage points less than the comparable percentage for metropolitan areas.[59] This eight-point differential is lower than the 15-point differential used in the earlier 1990-based Census analysis. Assuming that non-metropolitan areas account for 13 percent of all single-family-owner mortgages and estimating that the single-family-owner market accounts for 72 percent of newly-mortgaged dwelling units, then the non-metropolitan underserved area differential of 8 percent would raise the overall market estimate by 0.75 percentage point—8 percentage points *times* 0.13 (non-metropolitan area mortgage market share) *times* 0.72 (single-family owner mortgage market share). Based on this calculation, if the 8 point differential reflected actual market conditions, then the underserved areas market share estimated using metropolitan area data should be increased by 0.75 percentage point to account for the effects of underserved counties in non-metropolitan areas, based on 2000 geography. A more conservative adjustment of 0.65 percentage points was made in Table D.15, which reports the results of the projection model.

Section G.3 reported that excluding manufactured housing loans (as well as small loans less than $15,000) reduced the overall underserved area market estimates based on 1990 geography by less than one percentage point. Excluding manufactured housing loans leads to a similar reduction for the market estimates based on 2000 geography.

The estimates presented in Table D.15 suggest that 35–40 percent is a reasonable range for the market estimate for underserved areas based on the projection model described earlier. This range incorporates market affordability conditions that are more adverse than have existed recently and it excludes B&C loans from the market estimates.

5. Conclusions

Based on the above findings as well as numerous sensitivity analyses, HUD concludes that 35–40 percent is a reasonable estimate of mortgage market originations that would qualify toward achievement of the Geographically Targeted Goal if purchased by a GSE. The 35–40 percent range is higher than the market range in the 2000 Rule mainly because it is based on 2000 Census geography which includes more underserved census tracts than 1990 Census geography. HUD recognizes that shifts in economic and housing market conditions could affect the size of this market; however, the market estimate allows for the possibility that adverse economic conditions can make housing less affordable than it has been in the last few years. In addition, the market estimate incorporates a range of assumptions about the size of the multifamily market and excludes B&C loans.

H. Size of the Conventional Conforming Market for the Special Affordable Housing Goal

This section presents estimates of the conventional conforming mortgage market for the Special Affordable Housing Goal. The special affordable market consists of owner and rental dwelling units which are occupied by, or affordable to: (a) Very-low-income families; *or* (b) low-income families in low-income census tracts; *or* (c) low-income families in multifamily projects that meet minimum income thresholds patterned on the low-income housing tax credit (LIHTC).[60] HUD estimates that the special affordable market is 24–28 percent of the conventional conforming market.

HUD is proposing to establish each GSE's special affordable multifamily subgoal as 1.0 percent of its average annual dollar volume of total (single-family and multifamily) mortgage purchases over the 2000–2002 period. In dollar terms, the Department's proposal is $5.49 billion per year in special affordable multifamily purchases for Fannie Mae, and $3.92 billion for Freddie Mac. The multifamily special affordable goal, as well as the special affordable home purchase subgoal, are discussed further in Appendix C.

Section F described HUD's methodology for estimating the size of the low- and moderate-income market. Essentially the same methodology is employed here except that the focus is on the very-low-income market (0–60 percent of Area Median Income) and that portion of the low-income market (60–80 percent of Area Median Income) that is located in low-income census tracts. Data are not available to estimate the number of renters with incomes between 60 and 80 percent of Area Median Income who live in projects that meet the tax credit thresholds. Thus, this part of the Special Affordable Housing Goal is not included in the market estimate.

1. Special Affordable Shares by Property Type

The basic approach involves estimating for each property type the share of dwelling units financed by mortgages that are occupied by very-low-income families or by low-income families living in low-income areas. HUD combined mortgage information from HMDA, the American Housing Survey, and the Property Owners and Managers Survey in order to estimate these special affordable shares.

a. Special Affordable Owner Percentages

HMDA data for the percentage of single-family-owners that qualify for the Special Affordable Goal are reported in Table D.16. That table also reports data for the two components of the Special Affordable Goal—very-low-income borrowers and low-income borrowers living in low-income census tracts. Focusing first on home purchase loans, HMDA data show that the special affordable share of the market has followed a pattern similar to that discussed earlier for the low- and moderate-income loans. The percentage of special affordable borrowers increased significantly between 1992 and 1994, from 10.4 percent of the conforming market to 12.6 percent in 1993, and then to 14.1 percent in 1994. Between 1995 and 1998, the special affordable market was in the 14–16 percent range, averaging 15.1 percent. Over the past four years (1999–2002), the special affordable share of the home purchase loans has averaged 16.7 percent.

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[59] Between 1999 and 2002, 2000-based underserved census tracts accounted for 31.4 percent (unweighted annual average) of all mortgages in metropolitan areas. This 1999–02 average percentage for metropolitan areas is lower that the 33.0 percent reported in previous paragraphs. To be comparable with the non-metropolitan data, these metropolitan area data do not include loans originated by lenders that specialize in manufactured housing loans and B&C loans; excluding these loans lowers the underserved areas share.

[60] There are two LIHTC thresholds: at least 20 percent of the units are affordable at 50 percent of AMI or at least 40 percent of the units are affordable at 60 percent of AMI.

Table D.16

Special Affordable Share of Single-Family-Owner Mortgage Market: 1992-2002 HMDA Data

	Home Purchase		Refinance		Total	
	Conforming Market	Market W/O B&C Loans	Conforming Market	Market W/O B&C Loans	Conforming Market	Market W/O B&C Loans
1. Very-Low-Income						
1992	8.7 %	8.7 %	4.5 %	4.4 %	5.8 %	5.8 %
1993	10.8	10.8	5.8	5.7	7.3	7.2
1994	11.9	11.9	11.0	10.6	11.5	11.3
1995	12.0	12.0	12.3	11.7	12.1	11.9
1996	12.7	12.7	13.0	12.2	12.8	12.5
1997	13.0	13.0	14.5	13.4	13.7	13.2
1998	13.3	13.2	11.3	10.4	12.1	11.4
1999	15.0	14.7	16.2	14.8	15.6	14.8
2000	14.7	14.4	19.0	17.6	16.3	15.6
2001	13.6	13.5	12.3	11.7	12.7	12.3
2002	14.1	14.0	12.5	12.0	12.9	12.6
2. Low Income in Low Income Areas						
1992	1.7 %	1.7 %	1.1 %	1.1 %	1.3 %	1.3 %
1993	1.8	1.8	1.2	1.2	1.4	1.4
1994	2.2	2.2	2.3	2.2	2.3	2.2
1995	2.4	2.4	2.7	2.5	2.5	2.4
1996	2.3	2.3	2.6	2.4	2.4	2.3
1997	2.3	2.3	3.0	2.7	2.6	2.5
1998	2.2	2.2	2.2	1.9	2.2	2.0
1999	2.3	2.3	3.0	2.7	2.7	2.5
2000	2.5	2.4	3.7	3.3	2.9	2.7
2001	2.2	2.2	2.2	2.1	2.2	2.1
2002	2.3	2.3	2.1	2.0	2.2	2.0
3. Special Affordable (1 plus 2)						
1992	10.4 %	10.4 %	5.5 %	5.5 %	7.1 %	7.1 %
1993	12.6	12.6	7.0	6.9	8.6	8.6
1994	14.1	14.1	13.2	12.8	13.7	13.5
1995	14.4	14.4	14.9	14.2	14.6	14.3
1996	15.0	15.0	15.6	14.6	15.3	14.8
1997	15.3	15.2	17.6	16.1	16.4	15.6
1998	15.5	15.4	13.5	12.3	14.2	13.5
1999	17.3	17.0	19.2	17.5	18.3	17.3
2000	17.1	16.8	22.7	20.9	19.3	18.3
2001	15.8	15.6	14.6	13.8	15.0	14.5
2002	16.4	16.3	14.6	14.0	15.1	14.6

Source: HMDA data in metropolitan areas. See text for the method for excluding B&C loans from the market.

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Considering all (home purchase and refinance) loans during recent "home purchase" environments, the special affordable share averaged 18.8 percent during 1999–2000, over three percentage points more than the 15.4 percent average between 1995 and 1997. Excluding B&C (all subprime) loans from the analysis reduces this differential only slightly to 2.7 (2.4) percentage points. As mentioned earlier, lending patterns could change with sharp changes in the economy, but the fact that there have been several years of strong affordable lending suggests that the special affordable market has changed in fundamental ways from the mortgage market of the early 1990s. In fact, there appears to have been a slight increase in this market recently, at least during 1999 and 2000.

Except for the three years of heavy refinancing (1998, 2001, and 2002), the special affordable share of the refinance market has recently been higher than the special affordable share of the home purchase market—a pattern discussed in Section F for low-mod and very-low-income loans. During 1999 (2000), for example, the special affordable share of the refinance market was 19.2 (22.7) percent, compared with 17.3 (17.1) percent for the home loan market. The higher special affordable percentages for refinance loans are reduced or even eliminated if subprime loans are excluded from the analysis. As shown in Table D.16, excluding B&C loans from the data practically eliminates the refinance-home-purchase differential for 1999 and reduces the differential for 2000 to 4.1 percentage points (from 5.6 percentage points). Going further and excluding A-minus loans from the year 2000 data would reduce the differential to 2.1 percentage points. HUD's projection model excludes B&C loans and sensitivity analyses will show the effects on the overall special affordable market of excluding all single-family subprime loans.

b. Very-Low-Income Rental Percentages

Table D.14 in Appendix D of the 2000 Rule reported the percentages of the single-family rental and multifamily stock affordable to very-low-income families. According to the AHS, 59 percent of single-family units and 53 percent of multifamily units were affordable to very-low-income families in 1997. The corresponding average values for the AHS's six surveys between 1985 and 1997 were 58 percent and 47 percent, respectively. As discussed earlier in Section F, an important issue concerns whether rent data based on the existing rental stock from the AHS can be used to proxy rents of newly mortgaged rental units. HUD's analysis of POMS data during the 2000 rule-making process suggested that it could—estimates from POMS of the rent affordability of newly-mortgaged rental properties are quite consistent with the AHS data on the affordability of the rental stock. Fifty-six (56) percent of single-family rental properties with new mortgages between 1993 and 1995 were affordable to very-low-income families, as was 51 percent of newly-mortgaged multifamily properties. These percentages for newly-mortgaged properties from the POMS are similar to those reported above from the AHS for the rental stock. The baseline projection from HUD's market share model assumes that 50 percent of newly-mortgaged, single-family rental units, and 47 percent of multifamily units, are affordable to very-low-income families.

c. Low-Income Renters in Low-Income Areas

HMDA does not provide data on low-income renters living in low-income census tracts. As a substitute, HUD used the POMS and AHS data. As explained in the 2000 GSE Rule, the share of single-family and multifamily rental units affordable to low-income renters at 60–80 percent of area median income (AMI) and located in low-income tracts was calculated using the internal Census Bureau AHS and POMS data files.[61] The POMS data showed that 8.3 percent of the 1995, single-family rental stock, and 9.3 percent of single-family rental units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and were located in low-income census tracts. The POMS data also showed that 12.4 percent of the 1995 multifamily stock, and 13.5 percent of the multifamily units receiving financing between 1993 and 1995, were affordable at the 60–80 percent level and located in low-income census tracts.[62] The baseline analysis below assumes that 8 percent of the single-family rental units and 11.0 percent of multifamily units are affordable at 60–80 percent of AMI and located in low-income areas.[63]

2. Size of the Special Affordable Market

During the 2000 rule making, HUD estimated a market share for the Special Affordable Goal of 23–26 percent. This estimate was below market experience, as the special affordable market accounted for 26–30 percent of all housing units financed between 1999 and 2002, as well as 26–29 percent of units financed between 1995 and 1998 (see Table D.9). This underestimation was mainly due to the assumption in the projection model that the special affordable share of refinance loans was lower than the special affordable share of home purchase loans; and the fact that the special affordable share of the single-family-owner market increased recently (see above discussion). This section produces new estimates of the special affordable market.

The size of the special affordable market depends in large part on the size of the multifamily market and on the special affordable percentages of both owners and renters. Table D.10 gives new market estimates for different combinations of these factors. As before, Case 2 is slightly more conservative than the baseline projections (Case 1) mentioned above. For instance, Case 2 assumes that only 6 percent of rental units are affordable to low-income renters living in low-income areas.

Table D.17 assumes a refinance rate of 35 percent, which means that the table reflects home purchase or low-refinancing environments. After presenting these results, market estimates reflecting a heavy refinance environment will be presented. In the 2000 GSE Rule, HUD assumed that the special affordable share of refinance loans was 1.4 percentage points lower than the special affordable share of borrowers purchasing a home. However, as discussed earlier, the special affordable share of refinance loans equaled or was greater than the special affordable share of home purchase loans during home purchase environments such as 1995–97 or 1999–2000; thus, the assumption of a lower special affordable shares for refinance loans is initially dropped from the analysis but will be reintroduced during the sensitivity analysis and the discussion of heavy refinancing environments.

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[61] Affordability was calculated as discussed earlier in Section F, using AHS monthly housing cost, monthly rent, number of bedrooms, and MSA location fields. Low-income tracts were identified using the income characteristics of census tracts from the 1990 Census of Population, and the census tract field on the AHS file was used to assign units in the AHS survey to low-income tracts and other tracts. POMS data on year of mortgage origination were utilized to restrict the sample to properties mortgaged during 1993–1995.

[62] During the 1995 rule-making process, HUD examined the rental housing stock located in low-income zones of 41 metropolitan areas surveyed as part of the AHS between 1989 and 1993. While the low-income zones did not exactly coincide with low-income tracts, they were the only proxy readily available to HUD at that time. Slightly over 13 percent of single-family rental units were both affordable at the 60–80 percent of AMI level and located in low-income zones; almost 16 percent of multifamily units fell into this category.

[63] Therefore, combining the assumed very-low-income percentage of 50 percent (47 percent) for single-family rental (multifamily) units with the assumed low-income-in-low-income-area percentage of 8 percent (11 percent) for single-family rental (multifamily) units yields the special affordable percentage of 58 percent (58 percent) for single-family rental (multifamily) units. This is the baseline Case 1 in Table D.10.

Table D.17

Special Affordable Market Estimates
Sensitivity Analysis

	Multifamily Mix (Percent)		
	13.5%	15%	16.5%
Case 1 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 50%, Multifmaily= 47%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 11% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share: [*]			
19.0%	29.4 %	30.0 %	30.5 %
18.0%	28.7	29.2	29.7
17.0%	27.9	28.4	29.0
16.0%	27.1	27.7	28.2
15.0%	26.3	26.9	27.5
14.0%	25.5	26.1	26.7
13.0%	24.8	25.4	26.0
12.0%	24.0	24.6	25.2
11.0%	23.2	23.8	24.5
10.0%	22.4	23.1	23.7
9.0%	21.6	22.3	23.0
Case 2 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentages= 47%, Multifamily= 44%			
(b) Low-Income in Low-Income Areas= 6% for Single-Family Rental and 10% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
16.0%	25.8 %	26.3 %	26.9 %
15.0%	25.0	25.6	26.1
14.0%	24.3	24.8	25.4
13.0%	23.5	24.0	24.6
12.0%	22.7	23.3	23.9
11.0%	21.9	22.5	23.1
10.0%	21.1	21.7	22.4
Case 3 With:			
(a) Rent Affordable at 60% AMI: Single-Family Rent Percentage= 53%, Multifamily= 50%			
(b) Low-Income in Low-Income Areas= 8% for Single-Family Rental and 12% for Multifamily			
(c) Single-Family Owner-Occupied's Special Affordable Share:			
16.0%	28.4 %	29.0 %	29.7 %
15.0%	27.6	28.3	28.9
14.0%	26.9	27.5	28.2
13.0%	26.1	26.8	27.4
12.0%	25.3	26.0	26.7
11.0%	24.6	25.2	25.9
10.0%	23.8	24.5	25.2

[*] See text for interpretation of single-family-owner percentages.

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As shown in Table D.17, the market estimates are: 28–29 percent if the owner percentage is 17 percent (home purchase share for 1999 and 2000); 27–28 percent if the owner percentage is 16 percent (home purchase share for 1998, 2001, and 2002); and 26–27 percent if the owner percentage is 15 percent (home purchase average from 1995–97). If the special affordable percentage for home purchase loans fell to 12 percent " or by four percentage points below its 1995–2002 average level of 16 percent " then the overall market estimate would be about 25 percent. Thus, 25 percent is consistent with a rather significant decline in the special affordable share of the single-family home purchase market. A 25 percent market estimate allows for the possibility that adverse economic and housing affordability conditions could keep special affordable families out of the housing market. On the other hand, if the special affordable home purchase percentage stays at its recent levels (15–17 percent), the market estimate is in the 27–29 percent range.

Heavy Refinancing Environments. The special affordable share of the overall market declines when refinances dominate the market. Section F.3b, which presents the low-mod market estimates, explained the assumptions for incorporating a refinance environment into the basic projection model for 2005–08. Briefly, they are: (1) the refinance share of single-family mortgages was increased to 65 percent (from 35 percent); the market share for subprime loans reduced to 8.5 percent (from 12 percent); and the multifamily mix was initially assumed to be 13.5 percent (instead of 15 percent or 16.5 percent, which characterize a home purchase environment). The special affordable share for refinance loans was assumed to be 13 percent, or two percentage points below the assumed special affordable share of home purchase loans (which was set at 15 percent, slightly below the 1998, 2001, and 2002 level of 16 percent). Under these assumptions, the special affordable market share (excluding B&C loans) was projected to be 25.4 percent. If the multifamily mix is reduced further to 11 (9) percent, the market projection falls to 24.4 (23.6) percent. If the single-family special affordable percentages are reduced to 14 percent (home purchase) and 12 percent (refinance), and the multifamily mix is 11 (9) percent, the overall low-mod market share falls 23.6 (22.8) percent. As noted in the discussion of the low-mod market, refinance environments are characterized by low interest rates; therefore, it is unlikely that the special affordable share of the home purchase market would fall below 14 percent during heavy refinance environments, given that it has averaged almost 16 percent over the past seven years. In addition to these projections, a refinance environment characterized by the year 2002 market was used to examine how the special affordable market changed under heavy refinancing conditions. Lowering the multifamily mix in the heavy refinance model characterized by year 2002 assumptions produced the following range of estimates for the overall special affordable market: 25.8 percent (multifamily mix of 11.0 percent) to 24.7 percent (multifamily mix of 8 percent) to 23.9 percent (multifamily mix of 6 percent).[64]

The various market estimates presented in Table D.17 for a home purchase environment and reported above for a refinance environment are not all equally likely. Most of them equal or exceed 25 percent. In the home purchase environment, estimates below 25 percent would require the special affordable share for home purchase loans to drop to 12–13 percent which would be 3–4 percentage points lower than the 1995–2002 average for the special affordable share of the home purchase market. Dropping below 25 percent would be more likely in a heavy refinance environment, as the actual estimated market shares during 1998, 2001, and 2002 were approximately 26 percent. However, sensitivity analyses of a refinance environment showed that a 24 percent special affordable market share was consistent with market assumptions significantly more adverse than the heavy refinance years of 1998, 2001, and 2002.

Additional Sensitivity Analyses. Additional sensitivity analyses were conducted around the results reported in Table D.17, which reflects a home purchase environment. Assuming that the special affordable share of the home loan market is 16 percent, reducing the multifamily mix from its baseline of 15 percent to 13.5 (12) percent would reduce the overall special affordable market share from 27.7 percent to 27.1 (26.4) percent. In this case, increasing the multifamily mix from 15 percent to 16.5 percent would increase the special affordable market share from 27.7 percent to 28.2 percent.

As shown in Table D.17, the market estimates under the more conservative Case 2 projections are one to one-and-a-half percentage points below those under the Case 1 projections. This is due mainly to Case 2's lower share of single-family investor mortgages (8 percent versus 10 percent in Case 1) and its lower affordability and low-income-area percentages for rental housing (*e.g.*, 53 percent for single-family rental units in Case 2 versus 58 percent in Case 1).

Recent years have been characterized by record low interest rates and strong housing affordability conditions. Therefore, it was important for HUD to examine potential changes in the market shares under more adverse market affordability environments than have existed recently, as well as under heavy refinance environments. A heavy refinance environment has already been discussed so this section focuses on recession and high-interest-rate scenarios. In the recession scenario defined earlier in the low-mod analysis (see Section F.3a), the special affordable share of the home purchase market was reduced to 12 (10) percent, or 4 (6) percentage points lower than its 1995–2002 average share of 16 percent. Under these rather severe conditions, the overall market share for the Special Affordable Goal would decline to 25.1 (23.6) percent, assuming a multifamily mix of 16.5 percent. A significant increase in interest rates would also make it more difficult for lower income families to afford homeownership and qualify for mortgages, thus reducing the special affordable share of the market. But as noted above, the special affordable share of the home purchase market could fall to 10 percent " almost forty percent below its seven-year average of 16 percent " before the market share for the Special Affordable Goal would fall below 24 percent.

B&C Loans. The procedure for dropping B&C loans from the projections is the same as described in Section F.3.b for the Low- and Moderate-Income Goal. The special affordable percentage for B&C loans is 28.0 percent, which is similar to the projected percentages for the overall market given in Table D.17. Thus, dropping B&C loans (as well as all subprime loans) does not appreciably reduce the overall market estimates. Consider the case of a single-family-owner percentage of 15 percent, which yields an overall market estimate for Special Affordable Goal of 27.0 percent if B&C loans are included in the analysis. Dropping B&C loans from the projection model reduces the special affordable market share by 0.1 percentage points to 26.9, as reported in Table D.15. Dropping all subprime loans (A-minus as well as B&C) would reduce the special affordable market projection to 26.8 percent.

Manufactured Housing Loans. Excluding manufactured housing loans (as well as small loans less than $15,000) reduces the overall market estimates reported in Table D.17 by about one percentage point or less. This is estimated as follows. First, excluding these loans reduces the unadjusted special affordable percentage for single-family-owner mortgages in metropolitan areas by about 1.5 percentage points, based on analysis of recent home purchase environments (1995–97 and 1999 and 2000). Multiplying this 1.5 percentage point differential by the property share of single-family-owner units (72.2 percent) yields 1.1 percentage points, which serves as a proxy for the reduction in the overall special affordable market share due to dropping manufactured home loans from the market analysis. The actual reduction will be somewhat less because dropping manufactured home loans will increase the share of rental units, which increases the overall special affordable market share, thus partially offsetting the 1.1 percent reduction. The net effect is probably a reduction of slightly less than one percentage point.

Tax Credit Definition. Data are not available to measure the increase in market share associated with including low-income units located in multifamily buildings that meet threshold standards for the low-income housing tax credit. Currently, the effect on GSE performance under the Special Affordable Housing Goal is rather small. For instance, adding the tax credit condition increased Fannie Mae's performance as follows: 0.42 percentage point in 1999 (from 17.20 to 17.62 percent); 0.59 percentage point in 2000 (from 18.64 to 19.23 percent); and

[64] During 2002, the special affordable share was 15.8 percent for home purchase loans and 14.6 percent for refinance loans, yielding a differential of 1.2 percentage points. Increasing the differential to 2 percentage points (by reducing the special affordable share of refinance loans to 13.8 percent) would reduce the overall special affordable market percentages reported in the text by about 0.4 percentage point.

0.43 percent point in 2001 (from 19.29 to 19.72 percent). The increases for Freddie Mac have been lower (ranging from 0.24 to 0.38 percentage point during the same period).

New 2000-Based Census Geography and New OMB Metropolitan Area Definitions. Going forward, HUD will be re-benchmarking its median incomes for metropolitan areas and non-metropolitan counties based on 2000 Census incomes, will be defining low-income census tracts (which are included in the definition of special affordable) in terms of the 2000 Census geography, and will be incorporating the effects of the new OMB metropolitan area definitions. HUD projected the effects of these three changes on the special affordable shares of the market for the years 1999–2002. Under the historical data, the average special affordable share of the conventional conforming market was 16.7 (16.9) percent for home purchase (total) loans (see Table D.16); the corresponding average with the projected data was 16.6 (16.9) percent. For home purchase loans in the conventional conforming market, the projected special affordable percentages for each year between 1999 and 2002 were as follows (with the historical data from Table D.16 in parentheses): 17.5 (17.3) percent for 1999; 17.4 (17.1) percent for 2000; 15.6 (15.8) percent for 2001; and 15.8 (16.4) percent for 2002. While the projected percentages are lower in 2001 (0.2 percentage point) and 2002 (0.6 percentage point), they are higher in 1999 (0.2 percentage point) and 2000 (0.3 percentage point). Given these small differences there is no need to changes the market estimates discussed above.[65]

3. Conclusions

Sensitivity analyses were conducted for the market shares of each property type, for the very-low-income shares of each property type, and for various assumptions in the market projection model. These analyses suggest that 24–28 percent is a reasonable estimate of the size of the conventional conforming market for the Special Affordable Housing Goal. This estimate excludes B&C loans and allows for the possibility that homeownership will not remain as affordable as it has over the past five years. In addition, the estimate covers a range of projections about the size of the multifamily market.

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[65] For the other two property types (single-family rental and multifamily), comparisons between projected and historical special affordable percentages were made using the GSEs' data. For single-family rental mortgages, the unweighted average of Fannie Mae's (Freddie Mac's) special affordable percentage for the years 1999 to 2002 was 50.2 (51.4) percent using the projected data, compared with 48.0 (49.4) percent using the historical data. For multifamily mortgages, the unweighted average of Fannie Mae's (Freddie Mac's) special affordable percentage for the years 1999 to 2002 was 50.4 (45.1) percent using the projected data, compared with 53.6 (49.4) percent using the historical data. These comparisons suggest little difference between the projected and historical special affordable shares for rental properties. HUD also projected the overall special affordable percentage for each GSE. For the overall special affordable goal (considering all three property types), the unweighted average of Fannie Mae's (Freddie Mac's) special affordable percentage for the years 1999 to 2002 was 20.0 (18.9) percent using the projected data, compared with 20.0 (18.9) percent using the historical data. There is little difference in the GSEs' average special affordable performance between the projected and historical data.

Federal Register

Monday,
May 3, 2004

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 25
Design Standards for Fuselage Doors on Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2003–14193; Amdt. No. 25–114]

RIN 2120–AH34

Design Standards for Fuselage Doors on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) amends the design standards for fuselage doors, hatches, and exits on transport category airplanes. This action improves door integrity by providing design criteria that ensure doors remain secure under all circumstances that service experience has shown can happen. Adopting this amendment also relieves a certification burden on industry by removing regulatory differences between the airworthiness standards and related guidance material of the United States and Europe.

DATES: This amendment becomes effective June 2, 2004.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Federal Aviation Administration, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136; fax 425–227–1320; e-mail *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy from the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Be sure to identify the amendment number or docket number of this rulemaking.

You can search the electronic form of all comments in any of our dockets by the individual filing the comment (or signing the comment, if filed for an association, business, labor union, for example). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *9-AWA-SBREFA@faa.gov*.

Background

This final rule responds to notice of proposed rulemaking (NPRM) No. 03–01, published in the **Federal Register** on January 14, 2003 (68 FR 1932).

In NPRM No. 03–01, the FAA proposed to revise and reorganize the existing rules in Title 14, Code of Federal Regulations (CFR), part 25, to provide:

- Clarification of the existing design requirements for doors.
- Definitive criteria for door design requirements covered in the existing rules by general text.
- Additional fail-safe requirements and detailed door design requirements, based on the recommendations of the National Transportation Safety Board (NTSB) and the Air Transport Association (ATA), and on current industry practice.

In the NPRM you will find a history of the problems and discussions of the safety considerations supporting our course of action. You will also find a discussion of the current requirements and why they do not adequately address the problem. We also refer to the recommendations of the Aviation Rulemaking Advisory Committee (ARAC) that we relied on in developing the proposed rule. The NPRM also discusses alternatives we considered and the reasons for rejecting the ones we did not adopt.

The background material in the NPRM also contains the basis and rationale for these requirements and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule as if contained here. That is, any future discussions on the intent of the requirements may refer to the background in the NPRM as though it was in the final rule itself. It is therefore not necessary to repeat the background in this document.

Definitions

The following definitions will aid the reader in understanding the final rule:

- A *latch* is a movable mechanical element that, when engaged, prevents the door from opening.
- A *lock* is a mechanical element that monitors the latch position and, when engaged, prevents the latch from becoming disengaged.
- *Latched* means the latches are fully engaged with their structural counterparts and held in position by the latch operating mechanism.
- *Locked* means the locks are fully engaged.
- *Latching mechanism* includes the latch operating mechanism and the latches.
- *Locking mechanism* includes the lock operating mechanism and the locks.
- *Closed* means the door has been placed within the doorframe in such a position that the latches can be operated to the "latched" condition.
- *Fully closed* means the door is placed within the doorframe in the position that it will occupy when the latches are in the latched condition.

NTSB Safety Recommendations

After its investigation of airplane accidents associated with fuselage doors opening during flight, the NTSB issued several safety recommendations concerning doors on transport category airplanes. In the NPRM, we discuss those recommendations and the FAA's response.

After the conclusion of the harmonization activity that led to this final rule, the FAA received another safety recommendation, A–02–020, from the NTSB. The NTSB recommended the FAA, "Require all newly certificated transport category airplanes [to] have a system for each emergency exit door to relieve pressure so that they can only be opened on the ground after a safe differential pressure level is attained." In the NPRM, we specifically sought comments on this recommendation. Although no one commented on this issue, we believe there should be some means to address the potential for unsafe opening of a door on the ground. The specific action proposed in the safety recommendation is not necessarily the only approach to this concern. We have not yet determined whether a regulatory action is appropriate, or what form that regulatory action might take. Because the issue is important, we will add discussion to Advisory Circular (AC) 25.783–1, "Fuselage Doors, Hatches, and Exits," addressing the need to consider safety of occupants opening exits when there is differential pressure remaining on the airplane. This will identify the issue and permit manufacturers to address it in the most effective manner for their specific design.

History

In the United States, 14 CFR part 25 contains the airworthiness standards for type certification of transport category airplanes. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards.

In Europe, Joint Aviation Requirements (JAR)-25 contains the airworthiness standards for type certification of transport category airplanes. The Joint Aviation Authorities (JAA) of Europe developed these standards, which are based on part 25, to provide a common set of airworthiness standards within the European aviation community. Thirty-seven European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. type certificated to JAR–25 standards for export to Europe.

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These additional costs, however, often do not bring about an increase in safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also preserve the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards.

After beginning the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make noticeable progress towards fulfilling the harmonization goal. The FAA identified the ARAC as an ideal vehicle for helping to resolve harmonization issues, and in 1992 the FAA tasked ARAC to undertake the entire harmonization effort.

Despite the work that ARAC has undertaken to address harmonization, there remain many regulatory differences between part 25 and JAR–25. The current harmonization process is costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong need to finish the harmonization program as quickly as possible to relieve the drain on their resources and finally to establish one acceptable set of standards.

Representatives of the FAA and JAA proposed an accelerated process to reach harmonization, the "Fast Track Harmonization Program." The FAA introduced the Fast Track Harmonization Program on November 26, 1999 (64 FR 66522). This rulemaking is a "fast-track" project.

You can find further details on ARAC, its role in harmonization rulemaking activity, and the Fast Track Harmonization Program in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Related Activity

The new European Aviation Safety Authority (EASA) was established and formally came into being on September 28, 2003. The JAA worked with the European Commission (EC) to develop a plan to ensure a smooth transition from the JAA to the EASA. As part of the transition, the EASA will absorb all functions and activities of the JAA, including its efforts to harmonize the JAA regulations with those of the U.S. These JAR standards have already been incorporated into the EASA "Certification Specifications for Large Aeroplanes" (CS–25) in similar, if not identical, language. The EASA CS–25 became effective October 17, 2003.

Related Advisory Circular

The FAA plans to revise AC 25.783–1 to provide guidance for showing compliance with structural and functional safety standards for doors and their operating systems. When we issue the AC, we will publish a notice in the **Federal Register**.

Discussion of Comments

Eight commenters responded to the NPRM. The commenters include three private citizens, two foreign airworthiness authorities, an industry association representing the interests of several groups in the aviation industry, an association representing the interests of pilots in the U.S and Canada, and an airplane manufacturer. All commenters generally support the proposed rule. Comments, including suggested changes, are discussed below.

Comment: An individual with cabin door design experience suggests that limiting the requirement to address intentional opening to airplanes with more than 19 passenger seats would improve safety. The commenter bases his position on the premise that airplanes with 19 or fewer passenger seats are a small percentage of the commercial fleet, the operator typically knows the passengers, and it is unlikely a person would intentionally open the exit. The commenter states that such a requirement could become a hazard to emergency evacuation of these airplanes because the rules only require a single pair of exits. If the means to prevent intentional opening were to fail and the exit could not be opened, a higher percentage of exits would become unavailable than for larger airplanes.

FAA reply: While the commenter's points have some merit, the requirement is not related to how the airplane is operated. The intent of the requirement is to safeguard against an event of intentional opening, regardless of whether the operator knows the passengers. The commenter's statement therefore is not relevant that the number of passengers carried in commercial service on airplanes with 19 or fewer passenger seats is a small percentage of the total. Consideration of exit availability is more significant.

In a review of airplanes of this size as part of the FAA's response to NTSB safety recommendation A–02–020, it does appear that many current designs could be affected by this requirement. On some airplanes, the main entry door is openable at relatively high differential pressures. Whether this would constitute a hazard to the airplane would have to be investigated. The entry door is typically the largest exit on the airplane. Although the loss of this exit would represent more than 50 percent of the evacuation capability of the airplane, the remaining exit would still be adequate for the number of people on board. The intentional opening of the exit is an immediate hazard to the airplane. This concern outweighs the potential decrease in evacuation capability that could occur if the exit were unavailable because of a system failure, and if there were an emergency evacuation at the same time. While the evacuation capability would be significantly reduced, it would still satisfy the regulatory requirements and be acceptable for the number of people on board.

No changes were made to the final rule.

Comment: One commenter recommends adding the following requirements:

- Ability to close the doors after being opened in an emergency.
- Reliability tests.
- Function with minor fuselage deformation.
- Display of slide arming status on the fuselage exterior

FAA reply: The commenter's recommendations relate to emergency evacuation, which was not the focus of the NPRM. Although the NPRM had some ancillary impact on evacuation requirements, it focused on the airworthiness of fuselage doors. The commenter's proposed requirements for reliability tests and door opening with minor deformation are effectively already part of the regulations. Section 25.809(g) requires provisions to minimize the probability of jamming of the emergency exits resulting from fuselage deformation that might occur in a minor crash landing. In addition, regulations governing escape slide performance result in extensive tests of exit system reliability. These recommendations are beyond the scope of the NPRM as they relate primarily to emergency evacuation.

No changes were made to the final rule.

Comment: The Civil Aviation Authority of the United Kingdom (CAA–UK) recommends adoption of the proposed requirements and a clarifying change to the intent of § 25.783(a)(2). The CAA–UK states that since the hazardous condition identified in § 25.783(a)(2) is unlatching, then the event to be prevented should also be unlatching.

FAA reply: The rule, as proposed, would require that inadvertent opening of the door be extremely improbable, but does not specifically address the unlatching event. Section 25.783 has historically categorized the opening of a door as the safety threat and has not addressed intermediate steps in the sequence of that opening. This rule is more specific regarding the reason that a door can become a hazard. The purpose of paragraph (a)(2) is to prevent the hazardous condition. It therefore makes sense that the requirement address unlatching as extremely improbable, rather than simply door opening. In this case, the FAA assumes that if the door unlatches, it will open.

The Joint Aviation Authorities (JAA) submitted the final version of their Notice of Proposed Amendment, NPA, 25D–301, to the docket for NPRM No. 03–01 and recommends the FAA adopt the language of the NPA, which they revised to address comments, including those of the CAA–UK. As our NPRM was the result of harmonization efforts with the JAA and Transport Canada, we consider the content of the JAA NPA important in maintaining harmonization.

As the result of the CAA–UK comment and in order to maintain harmonization, § 25.783(a)(2) is changed.

Comment: The JAA proposes adding the following new requirement to the final rule to address an issue not specifically covered in NPRM No. 03–01: "Each door that could result in a hazard if not closed, must have means to prevent the latches from being moved to the latched position unless the door is closed."

FAA reply: The proposed requirements contain provisions to prevent the out-of-sequence actuation of certain elements of the door mechanism. This approach is a basic philosophy to ensure that false or misleading indications are not created by out-of-sequence operation. For example, proposed § 25.783(d)(5) states: "It must not be possible to position the lock in the locked position if the latch and the latching mechanism are not in the latched position." In this case, the JAA has adopted a new requirement to address latch movement prior to closing. Many current designs already incorporate such means.

While not directly covered in the NPRM, this requirement is clearly in keeping with the overall approach to fuselage door safety expressed in the NPRM and could be seen as a logical outgrowth of the proposed requirements. We have determined, however, that there may be instances where such a provision would not be necessary, and so adopting the requirement for all designs would impose an unnecessary burden. For example, a manually-operated passenger entry door could have latches that, when in the latched position, would inhibit movement of the door to the closed position. That is, the door is obviously standing open and would be obvious to the person operating the door. In that case, the design of the door fulfills the objective of preventing door closure with the latches in the latched position.

Conversely, for some designs, such a provision would clearly be necessary to meet the requirements of this rule as written. An example would be a cargo door that is operated remotely and could be positioned such that the operator would not be able to visually determine whether it was properly closed. If the latches were in the latched position, this would add to the potential confusion. Paragraph (e)(2), as adopted, requires positive means, clearly visible from the operator's station, to indicate that each door that could be a hazard is not properly closed, latched, and locked. For the remotely operated cargo door, satisfying the requirement would likely require a means to prevent the door from being closed with the latches in the latched position. While this rule will not maintain strict harmonization with the JAA, we believe the intent of the requirement as adopted by the JAA is still satisfied. Designs found acceptable by the FAA can also be found acceptable by the JAA.

No changes were made as the result of this comment.

The CAA–UK and one individual also had several editorial suggestions for clarity on the use of terms, which we accepted where appropriate. These suggestions are purely editorial and do not change the substance of the requirements.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this final rule.

Executive Order 12866 and DOT Regulatory Polices and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform

Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this final rule has minimal costs, and that it is neither "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this rule will not have a significant economic impact on a substantial number of small entities, will reduce barriers to international trade, and will not impose an Unfunded Mandate on State, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the regulation. Accordingly, the FAA has determined the expected impact of this rule is so minimal the rule does not warrant a full evaluation. We provide the basis for this determination as follows.

Currently, airplane manufacturers must satisfy both part 25 and the European standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, European Authorities, Transport Canada, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in the United States, Europe, and Canada. As explained in detail previously, these efforts are referred to as "harmonization."

This final rule amends the current fuselage door standard contained in 14 CFR part 25 with a new improved door standard. This new standard will set forth, as a regulatory requirement, some of the existing technical guidance criteria that have been determined to be necessary for safety but which, up to this point, have not been included in the regulations. In addition, this rule addresses recommendations from the NTSB and the ATA task force on doors.

With the one exception noted, this rule harmonizes the FAA and European requirements for fuselage doors. The rule will relieve a certification burden on industry by eliminating regulatory differences between the airworthiness standards and related guidance material of the United States and Europe.

Costs and Benefits of the Final Rule

In the NPRM, the FAA identified only one section, 25.783(b), where manufacturers would incur a measurable cost. For the other changes, the FAA has not made quantitative cost estimates but has provided qualitative cost estimates. There were no comments to the docket contesting these estimates.

1. *Paragraph 25.783(a)* is descriptive and has no expected cost.

2. *Paragraph 25.783(b)* relates to opening by persons. The requirement is new to have design precautions taken to minimize the possibility for a person to open a door intentionally during flight, but is expected to be accommodated in existing design practices for all but one United States manufacturer. (Requirements regarding inadvertent opening are not new.) One manufacturer expects to incur an estimated cost of $0.75 million, which will include the requirements for the prevention of intentional opening of the doors.

3. *Paragraph 25.783(c)* covers means to prevent pressurization. The requirement to consider single failures in the pressurization-inhibit system is new, but is believed to be industry practice. Thus, the cost, if any, is expected to be very little for a new design. The provision to permit certain doors to forego this system is actually cost relieving and could result in a minor cost reduction in some cases.

4. *Paragraph 25.783(d)* covers latching and locking. Most of these changes incorporate recommendations currently contained in an advisory circular. The vast majority of airplanes already comply, and basic design practice is to comply with these requirements. Therefore, these requirements, while new, have minimal cost impact. The requirement for each latch to have a lock that monitors the latch position formalizes existing practice. The requirement to eliminate forces in the latching mechanism that could load the locks is new and may not be complied with in all cases currently. The FAA believes that these costs are minimal.

5. *Paragraph 25.783(e)* covers warning, caution, and advisory indications. The reliability of the door indication system will be required to be higher for all doors. This is expected to have only a small cost impact, as will the requirement for an aural warning for certain doors, and the requirement to provide an indication to the door operator.

6. *Paragraph 25.783(f)* contains the visual inspection provision requirement. The requirement for direct visual inspection is extended to more door types, and may add costs in some cases.

7. *Paragraph 25.783(g)* deals with certain maintenance doors, removable emergency exits, and access panels. This provision may reduce costs in some cases as indicated in the AC.

8. *Paragraph 25.783(h)* covers doors that are not a hazard and is intended to provide relief for certain doors, so it could reduce costs.

9. Paragraphs 25.783(i), 25.783(j), 25.809(b), 25.809(c), and 25.809(f) move text to other sections, improve clarity, and have no impact on cost. These changes, as summarized in the NPRM, are repeated here for the reader's understanding of the changes.

- The changes to § 25.783(i) are removed from existing § 25.783 and added in § 25.810 ("Emergency egress assist means and escape routes") as a new paragraph (e).
- The changes to § 25.783(j) move the special requirement for lavatory doors from the current paragraph (j) to the new § 25.820 ("Lavatory doors").
- Section 25.809(b) ("Emergency exit arrangement") is revised by adding a new paragraph (b)(3) to require that each emergency exit must be capable of being opened, when there is no fuselage deformation, "even though persons may be crowded against the door on the inside of the airplane." This specific requirement is currently a part of § 25.783(b), but is more appropriate as part of the emergency exit arrangement requirements of § 25.809.
- The changes to § 25.809(c) include the requirement that the means of opening emergency exits also must be marked so it can be readily located and operated, even in darkness. This requirement is currently located in § 25.783(b), but is more appropriate as part of the emergency exit arrangement requirements of § 25.809.
- Section 25.809(f) is revised to require that the external door be located where persons using it will not be endangered by the propellers when appropriate operating procedures are used. This requirement currently is found in § 25.783(d), but is more applicable to the emergency exit arrangement requirements of § 25.809.

10. *Paragraph 25.807* corrects an unintended deletion.

Summary of Costs and Benefits

This final rule is expected to—

• Maintain or provide an increase in the level of safety;

• Have only a relatively small effect on costs when compared to current industry practice; and

• Provide some cost savings to manufacturers by avoiding duplicative testing and reporting that could result from the existence of differing requirements under the current standards.

This rule will codify existing guidance, standard industry practice, and industry recommendations for the design standards for fuselage doors. The FAA believes the cost savings from a single certification requirement exceed the minimal additional compliance cost. The FAA therefore considers the final rule will be cost-beneficial. This conclusion is reinforced by industry's support for the proposal and the absence of comments to the docket regarding the economic analyses.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including businesses and governments.

Agencies must perform a review to determine whether a final rule will have a significant impact on a substantial number of small entities. If the determination is that the final rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

If, however, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As stated in the initial regulatory flexibility determination, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities for two reasons:

First, the rule is expected to provide relief from some regulatory costs. The final rule will require that manufacturers of transport category aircraft meet a single certification requirement, rather than different standards for the United States and Europe. Manufacturers of the affected airplanes are believed to already meet, or expect to meet most standards that will be required by this final rule.

Second, all affected U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criterion of 1,500 employees for aircraft manufacturers, as published by the Small Business Administration in 13 CFR part 121, Small Business Size Regulations; Size Standards (65 FR 53533, September 5, 2000). The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation. All of these manufacturers have more than 1,500 employees and therefore do not qualify as small entities.

The FAA certified in the NPRM that the proposal would not have a significant impact on a substantial number of small entities. There were no comments to the docket contesting this FAA certification. Consequently, as the rule is expected to provide cost relief, there are no small entities affected, and the comments received did not dispute the initial economic analysis, the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and has determined that it will reduce trade barriers by narrowing the differences between U.S. standards and European international standards.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. The requirements of Title II of the Act therefore do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Plain English

Executive Order 12866 (58 FR 51735, October 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

• Are the requirements clearly stated?

• Do the regulations contain unnecessary technical language or jargon that interferes with their clarity?

• Would the regulations be easier to understand if they were divided into more (but shorter) sections?

• Is the description in the preamble helpful in understanding the final rule?

Please send your comments to the address specified in the **FOR FURTHER INFORMATION CONTACT** section.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this final rule qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use.

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Recording and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

■ 2. Section 25.783 is revised to read as follows:

§ 25.783 Fuselage doors.

(a) *General.* This section applies to fuselage doors, which includes all doors, hatches, openable windows, access panels, covers, etc., on the exterior of the fuselage that do not require the use of tools to open or close. This also applies to each door or hatch through a pressure bulkhead, including any bulkhead that is specifically designed to function as a secondary bulkhead under the prescribed failure conditions of part 25. These doors must meet the requirements of this section, taking into account both pressurized and unpressurized flight, and must be designed as follows:

(1) Each door must have means to safeguard against opening in flight as a result of mechanical failure, or failure of any single structural element.

(2) Each door that could be a hazard if it unlatches must be designed so that unlatching during pressurized and unpressurized flight from the fully closed, latched, and locked condition is extremely improbable. This must be shown by safety analysis.

(3) Each element of each door operating system must be designed or, where impracticable, distinctively and permanently marked, to minimize the probability of incorrect assembly and adjustment that could result in a malfunction.

(4) All sources of power that could initiate unlocking or unlatching of any door must be automatically isolated from the latching and locking systems prior to flight and it must not be possible to restore power to the door during flight.

(5) Each removable bolt, screw, nut, pin, or other removable fastener must meet the locking requirements of § 25.607.

(6) Certain doors, as specified by § 25.807(h), must also meet the applicable requirements of §§ 25.809 through 25.812 for emergency exits.

(b) *Opening by persons.* There must be a means to safeguard each door against opening during flight due to inadvertent action by persons. In addition, design precautions must be taken to minimize the possibility for a person to open a door intentionally during flight. If these precautions include the use of auxiliary devices, those devices and their controlling systems must be designed so that—

(1) No single failure will prevent more than one exit from being opened; and

(2) Failures that would prevent opening of the exit after landing are improbable.

(c) *Pressurization prevention means.* There must be a provision to prevent pressurization of the airplane to an unsafe level if any door subject to pressurization is not fully closed, latched, and locked.

(1) The provision must be designed to function after any single failure, or after any combination of failures not shown to be extremely improbable.

(2) Doors that meet the conditions described in paragraph (h) of this section are not required to have a dedicated pressurization prevention means if, from every possible position of the door, it will remain open to the extent that it prevents pressurization or safely close and latch as pressurization takes place. This must also be shown with any single failure and malfunction, except that—

(i) With failures or malfunctions in the latching mechanism, it need not latch after closing; and

(ii) With jamming as a result of mechanical failure or blocking debris, the door need not close and latch if it can be shown that the pressurization loads on the jammed door or mechanism would not result in an unsafe condition.

(d) *Latching and locking.* The latching and locking mechanisms must be designed as follows:

(1) There must be a provision to latch each door.

(2) The latches and their operating mechanism must be designed so that, under all airplane flight and ground loading conditions, with the door latched, there is no force or torque tending to unlatch the latches. In addition, the latching system must include a means to secure the latches in the latched position. This means must be independent of the locking system.

(3) Each door subject to pressurization, and for which the initial opening movement is not inward, must—

(i) Have an individual lock for each latch;

(ii) Have the lock located as close as practicable to the latch; and

(iii) Be designed so that, during pressurized flight, no single failure in the locking system would prevent the locks from restraining the latches necessary to secure the door.

(4) Each door for which the initial opening movement is inward, and unlatching of the door could result in a hazard, must have a locking means to prevent the latches from becoming disengaged. The locking means must ensure sufficient latching to prevent opening of the door even with a single failure of the latching mechanism.

(5) It must not be possible to position the lock in the locked position if the latch and the latching mechanism are not in the latched position.

(6) It must not be possible to unlatch the latches with the locks in the locked position. Locks must be designed to withstand the limit loads resulting from—

(i) The maximum operator effort when the latches are operated manually;

(ii) The powered latch actuators, if installed; and

(iii) The relative motion between the latch and the structural counterpart.

(7) Each door for which unlatching would not result in a hazard is not required to have a locking mechanism meeting the requirements of paragraphs (d)(3) through (d)(6) of this section.

(e) *Warning, caution, and advisory indications.* Doors must be provided with the following indications:

(1) There must be a positive means to indicate at each door operator's station that all required operations to close, latch, and lock the door(s) have been completed.

(2) There must be a positive means clearly visible from each operator station for any door that could be a hazard if unlatched to indicate if the door is not fully closed, latched, and locked.

(3) There must be a visual means on the flight deck to signal the pilots if any door is not fully closed, latched, and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed, latched, and locked indication is improbable for—

(i) Each door that is subject to pressurization and for which the initial opening movement is not inward; or

(ii) Each door that could be a hazard if unlatched.

(4) There must be an aural warning to the pilots prior to or during the initial portion of takeoff roll if any door is not fully closed, latched, and locked, and its opening would prevent a safe takeoff and return to landing.

(f) *Visual inspection provision.* Each door for which unlatching of the door could be a hazard must have a provision for direct visual inspection to determine, without ambiguity, if the door is fully closed, latched, and locked. The provision must be permanent and discernible under operational lighting conditions, or by means of a flashlight or equivalent light source.

(g) *Certain maintenance doors, removable emergency exits, and access panels.* Some doors not normally opened except for maintenance purposes or emergency evacuation and some access panels need not comply with certain paragraphs of this section as follows:

(1) Access panels that are not subject to cabin pressurization and would not be a hazard if open during flight need not comply with paragraphs (a) through (f) of this section, but must have a means to prevent inadvertent opening during flight.

(2) Inward-opening removable emergency exits that are not normally removed, except for maintenance purposes or emergency evacuation, and flight deck-openable windows need not comply with paragraphs (c) and (f) of this section.

(3) Maintenance doors that meet the conditions of paragraph (h) of this section, and for which a placard is provided limiting use to maintenance access, need not comply with paragraphs (c) and (f) of this section.

(h) *Doors that are not a hazard.* For the purposes of this section, a door is considered not to be a hazard in the unlatched condition during flight, provided it can be shown to meet all of the following conditions:

(1) Doors in pressurized compartments would remain in the fully closed position if not restrained by the latches when subject to a pressure greater than ½ psi. Opening by persons, either inadvertently or intentionally, need not be considered in making this determination.

(2) The door would remain inside the airplane or remain attached to the airplane if it opens either in pressurized or unpressurized portions of the flight. This determination must include the consideration of inadvertent and intentional opening by persons during either pressurized or unpressurized portions of the flight.

(3) The disengagement of the latches during flight would not allow depressurization of the cabin to an unsafe level. This safety assessment must include the physiological effects on the occupants.

(4) The open door during flight would not create aerodynamic interference that could preclude safe flight and landing.

(5) The airplane would meet the structural design requirements with the door open. This assessment must include the aeroelastic stability requirements of § 25.629, as well as the strength requirements of subpart C of this part.

(6) The unlatching or opening of the door must not preclude safe flight and landing as a result of interaction with other systems or structures.

■ 3. Amend § 25.807 by revising paragraph (h) to read as follows:

§ 25.807 Emergency exits.

* * * * *

(h) *Other exits.* The following exits also must meet the applicable emergency exit requirements of §§ 25.809 through 25.812, and must be readily accessible:

(1) Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits.

(2) Any other floor-level door or exit that is accessible from the passenger compartment and is as large or larger than a Type II exit, but less than 46 inches wide.

(3) Any other ventral or tail cone passenger exit.

* * * * *

■ 4. Amend § 25.809 by adding a new paragraph (b)(3), and by revising paragraphs (c) and (f) to read as follows:

§ 25.809 Emergency exit arrangement.

* * * * *

(b) * * *

(3) Even though persons may be crowded against the door on the inside of the airplane.

(c) The means of opening emergency exits must be simple and obvious; may not require exceptional effort; and must be arranged and marked so that it can be readily located and operated, even in darkness. Internal exit-opening means involving sequence operations (such as operation of two handles or latches, or the release of safety catches) may be used for flightcrew emergency exits if it can be reasonably established that these means are simple and obvious to crewmembers trained in their use.

* * * * *

(f) Each door must be located where persons using them will not be endangered by the propellers when appropriate operating procedures are used.

* * * * *

■ 5. Amend § 25.810 by adding a new paragraph (e) to read as follows:

§ 25.810 Emergency egress assist means and escape routes.

* * * * *

(e) If an integral stair is installed in a passenger entry door that is qualified as a passenger emergency exit, the stair must be designed so that, under the following conditions, the effectiveness of passenger emergency egress will not be impaired:

(1) The door, integral stair, and operating mechanism have been subjected to the inertia forces specified in § 25.561(b)(3), acting separately relative to the surrounding structure.

(2) The airplane is in the normal ground attitude and in each of the attitudes corresponding to collapse of one or more legs of the landing gear.

* * * * *

■ 6. Add a new § 25.820 to read as follows:

§ 25.820 Lavatory doors.

All lavatory doors must be designed to preclude anyone from becoming trapped inside the lavatory. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools.

Issued in Renton, Washington, on April 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–9948 Filed 4–30–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 2057/P.L. 108–220

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§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003

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500–599	(869–050–00096–2)	12.00	[5]Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003
27 Parts:			
1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910*(§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
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32 Parts:			
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191–399	(869–050–00117–9)	63.00	July 1, 2003
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630–699	(869–050–00119–5)	37.00	[7]July 1, 2003
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800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7]July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6]July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
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18–End	(869–050–00134–9)	62.00	July 1, 2003
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40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8]July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
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63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
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86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
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136–149	(869–150–00155–1)	61.00	July 1, 2003
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425–699	(869–050–00162–4)	61.00	July 1, 2003
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41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
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42 Parts:			
1–399	(869–050–00169–1)	60.00	Oct. 1, 2003
400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
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45 Parts:			
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200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
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48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
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1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

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[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

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May 5	May 20	June 4	June 21	July 6	August 3
May 6	May 21	June 7	June 21	July 6	August 4
May 7	May 24	June 7	June 21	July 6	August 5
May 10	May 25	June 9	June 24	July 9	August 9
May 11	May 26	June 10	June 25	July 12	August 9
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May 18	June 2	June 17	July 2	July 19	August 16
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May 20	June 4	June 21	July 6	July 19	August 18
May 21	June 7	June 21	July 6	July 20	August 19
May 24	June 8	June 23	July 8	July 23	August 23
May 25	June 9	June 24	July 9	July 26	August 23
May 26	June 10	June 25	July 12	July 26	August 24
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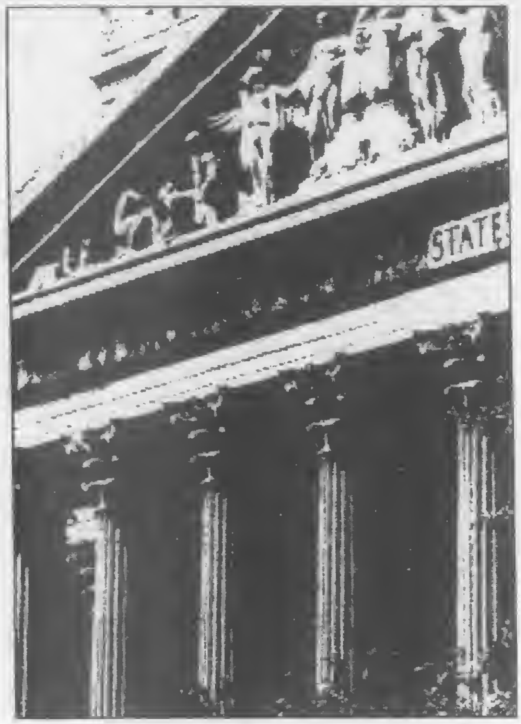

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