DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

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

Title 24—Housing and Urban Development

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

(Docket No. H-78-509)

PART 81—REGULATIONS IMPE

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

ACTION: Final rulemaking.

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


FOR FURTHER INFORMATION CONTACT:

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

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

I. THE HISTORY OF FNMA

FNMA came into being as a "Government-sponsored private corporation" as a result of the enactment of title VIII of the Housing and Urban Development Act of 1968. Previously, it was a Government Corporation within the Department of Housing and Urban Development, a cabinet-level Department comprised of the numerous constituent agencies that had been established to carry out the Nation's housing goals. The statutory language of FNMA's Charter, the legislative history, and the historical antecedent of the corporation make clear that the change in FNMA's status from a Government corporation to a Government-sponsored private corporation did not alter the public purposes to be accomplished by FNMA. Rather, the change in FNMA's status reflected the conclusion of the Congress, acting at the request of the Secretary, that the new FNMA, acting in conjunction with the Administration of the Johnson administration and with the general concurrence of the housing industry, was best suited to carry out the purposes for which FNMA was created.

II. FNMA'S SECONDARY MARKET OPERATIONS

A. ORIGINS

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

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

In response to this situation, President Roosevelt on November 17, 1933, established the National Emergency Council. (4) The Council identified three basic problems: 1. The short-term (3- to 5-year) unamortized mortgage which, in the view of the Council, resulted from the need for liquidity among mortgage lenders; 2. High interest rates, particularly in developing areas of the country, where the supply of capital was inadequate to meet expanding demand; and 3. The lack of investor confidence that resulted from the collapse of existing credit systems during the Depression.

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

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

The establishment of the Reconstruction Finance Corporation Mortgage Co. in 1935 (9) partially satisfied the need for a secondary market facility for the new FHA-insured home mortgages. However, its capacity to meet the demand for funds for FHA-insured home mortgages was inadequate. Thus, in anticipation of even higher demands for funds expected to arise as a result of the new FHA-Insured home mortgage programs (section 267 of the National Housing Act), (10) President Roosevelt

FEDERAL REGISTER, VOL. 43, NO. 196—TUESDAY, AUGUST 15, 1978
URGED ENACTMENT OF LEGISLATION TO
BROADEN THE PROVISIONS OF TITLE III OF THE
NATIONAL HOUSING ACT (1934) UNDER WHICH
THE CHARTERING OF NATIONAL
MORTGAGE ASSOCIATIONS WAS AUTHORIZED.
(11)


THE ORIGINAL FNMA WAS A GOVERNMENT CORPORATION WHICH UTILIZED PROPER FEDERAL FUNDS TO PROVIDE ITS INITIAL CAPITAL. (12) WITH FUNDS OBTAINED THROUGH THE ISSUANCE OF ITS DEBENTURE SECURITIES, IT EXTENDED LIQUIDITY TO MORTGAGE LENDERS BY PURCHASING THE NEW, RELATIVELY LONG-TERM, FHA-INSURED MORTGAGES. FNMA'S ACTIVITIES DREW A MORE SUSTAINED FLOW OF CAPITAL FOR FHA-INSURED AND AFTER 1948, VA-GUARANTEED RESIDENTIAL MORTGAGES, ATTRACTED NON-TRADITIONAL SOURCES OF CAPITAL TO INVEST IN THESE MORTGAGES, AND FACILITATED THE TRANSFER OF FUNDS "FROM CAPITAL RICH TO CAPITAL POOR AREAS," EXACTLY AS THE NATIONAL EMERGENCY COUNCIL IN 1933 HAD EXPECTED THE NATIONAL MORTGAGE ASSOCIATIONS TO DO.

FNMA'S OPERATIONS EXPANDED AT AN ACCELERATED RATE AFTER 1945 (13) BECAUSE OF ITS EXTENSIVE PURCHASE OF THE 4-PERCENT VA MORTGAGES AUTHORIZED BY THE SERVICEMEN'S READJUSTMENT ACT OF 1944. THE INCREASING DOLLAR VOLUME OF MORTGAGE PURCHASES BY FNMA LED TO FEARS THAT THE CREATION OF NUMEROUS NATIONAL MORTGAGE ASSOCIATIONS, AS AUTHORIZED BY THE NATIONAL HOUSING ACT (1934), COULD LEAD TO AN OVEREXPANSION OF MORTGAGE CREDIT. (14) AS EARLY AS 1939, CONGRESS HAD GIVEN THE FEDERAL HOUSING ADMINISTRATION DISCRETION TO REFUSE TO CHARTER NEW NATIONAL MORTGAGE ASSOCIATIONS. (15) CONGRESS COMPLETELY ELIMINATED THE CHARTERING AUTHORITY IN 1946, REPLACING IT WITH A "STATUTORY CHARTER" WHICH GAVE FNMA ITS UNIQUE STATUS AS THE SOLE NATIONAL SECONDARY MORTGAGE MARKET FACILITY. (16) ON SEPTEMBER 7, 1946, FNMA WAS TRANSFERRED FROM RFC TO THE HOUSING AND HOME FINANCE AGENCY, LATER TO BECOME THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ORDER TO IMPROVE THE PERFORMANCE OF THE SECONDARY MORTGAGE MARKET (17)

RULES AND REGULATIONS

SOCIATION WITH RELATED HOUSING MATTERS. (17)

II. FNMA CHARTER ACT OF 1954

AS THE VOLUME OF FNMA'S OPERATIONS INCREASED, TRADITIONAL MORTGAGE LENDERS COMPLAINED THAT FNMA'S PARTICIPATION IN THE MORTGAGE-LENDING FIELD DEPRESSED MORTGAGE INTEREST RATES TO UNREASONABLY LOW LEVELS AND COMPETED UNFAIRLY WITH PRIVATE ENTERPRISE. IN THE EARLY 1950'S, VARIOUS ORGANIZATIONS OF TRADITIONAL MORTGAGE LENDERS ADVOCATED WINDING UP FNMA OR REPLACING IT WITH A SECONDARY MARKET FACILITY WHICH WOULD ULTIMATELY BECOME PRIVATELY FINANCED AND OPERATED. (18) THESE TRADITIONAL MORTGAGE LENDERS POINTED OUT THAT THEY COULD NOT AFFORD TO DEAL IN THE LOW-INTEREST-RATE, LONG-TERM MORTGAGES PURCHASED BY FNMA.

THE LEGISLATORS STATED THAT FNMA WAS ABLE TO PURCHASE THE MORTGAGES ONLY "BECAUSE IT RAISED ITS INVESTIBLE FUNDS UNDER THE PROTECTION OF THE TREASURY AT RATES BELOW THE RATES PRIVATE INVESTORS PAID FOR THEIR FUNDS." THEY URGED THAT THE ONLY TYPE OF GOVERNMENT-SPONSORED SECONDARY MARKET FACILITY WHICH WOULD NOT DISRUPT THE CONTINUED PRIVATELY FINANCED MORTGAGE INDUSTRY WOULD BE A FACILITY WHICH RECEIVED "NO SUBSIDY, DIRECT OR INDIRECT," FROM THE GOVERNMENT. (19)

THE RESULT OF THE 1954 CHARTER ACT WAS TO RECHARTER FNMA AS A PRIVATELY FINANCED CORPORATION, THOSE WHO WANTED TO CONTINUE AND EXTEND FNMA, AND THOSE WHO WANTED TO REPLACE FNMA IN A STANDBY POSITION, WHILE PRIVATE MORTGAGE INSURANCE WAS GIVEN AN OPPORTUNITY TO SOLVE SECONDARY MARKET PROBLEMS. (20) PRESIDENT EISENHOWER PROPOSED THAT FNMA BE RECHARTED AND THAT THE HOUSING ACT OF 1954 SERVE THREE DISTINCT FUNCTIONS:

1. TO PROVIDE ASSISTANCE TO THE SECONDARY MARKET FOR FHA-INSURED AND VA-GUARANTEED MORTGAGES IN ORDER TO FURNISH ADDITIONAL LIQUIDITY FOR MORTGAGE INVESTMENTS AND TO IMPROVE THE DISTRIBUTION OF MORTGAGE INVESTMENT FUNDS;

2. TO PROVIDE GOVERNMENT ASSISTANCE FOR CERTAIN TYPES OF MORTGAGES, OR MORTGAGES GENERALLY, IF NEEDED TO RETARD OR STOP A DECLINE IN HOUSING ACTIVITIES WHICH THREATENS THE STABILITY OF A HIGH-LEVEL NATIONAL ECONOMY AND

3. TO MANAGE AND LIQUIDATE, IN AN ORDERLY MANNER, THE MORTGAGES HELD IN THE PORTFOLIO OF THE PRESENT FNMA.

THE CHARTER ACT CONTEMPLATED THE EVENTUAL TRANSFER OF THE SECONDARY MARKET OPERATIONS OF FNMA TO A PRIVATIZED FINANCED AND OPERATED CORPORATION AND ANTICIPATED THE USE OF THE SECONDARY MARKET OPERATIONS OF FNMA ONLY AS "RESERVE FACILITY." (21) DETERMINATIONS OF THE VOLUME OF PURCHASES AND SALES, OF PRICES, AND OF CHARGES OR FEES WERE TO "BE CONSISTENT WITH THE OBJECTIVES" THAT "EXCESSIVE USE OF THE ASSOCIATION'S FACILITIES" SHOULD BE AVOIDED. IN ADDITION, THE OPERATIONS OF FNMA'S SECONDARY MARKET FACILITY SHOULD "ASSURE THAT ITS INCOME DERIVED FROM SUCH OPERATIONS SHALL BE FULLY SELF-SUPPORTING." (22)

BY REQUIRING SELLERS OF MORTGAGES TO FNMA TO MAKE A CAPITAL CONTRIBUTION EQUAL TO 3 PERCENT OF THEIR SALES TO FNMA AND TO PAY A FEE FOR ITS SERVICES, THE CHARTER ACT PROVIDED A MAJOR DISINCENTIVE FOR PRIVATE LENDERS OR MORTGAGE ORIGINATORS TO USE FNMA'S SECONDARY MARKET FACILITIES. (23) THE 1954 CHARTER ACT ALSO PROHIBITED FNMA FROM MAKING ANY ADVANCE CONTRACTS OR COMMITMENTS TO PURCHASE MORTGAGES EXCEPT ON A VERY LIMITED ONE-FOR-ONE BASIS WITH A LENDER WHO PAID A FEE FOR A LOAN FROM IT. (22)

HOWEVER, GOVERNMENT SUPPORT OF THE SECONDARY MARKET OPERATIONS OF FNMA WAS CONTINUED IN THE 1954 CHARTER ACT OVER THE OBJECTIONS OF THE TRADITIONAL MORTGAGE LENDERS. THEIR OBJECTION WAS THAT THERE WOULD BE "NO SUBSIDY, DIRECT OR INDIRECT," FROM THE GOVERNMENT TO SUCH A CORPORATION (FNMA) AND IT WAS NOT FOLLOWED BY THE CONGRESS. FNMA'S ABILITY TO RAISE ITS INVESTIBLE FUNDS UNDER THE PROTECTION OF THE TREASURY AT RATES BELOW THE RATES PRIVATE INVESTORS PAID" WAS CONTINUED BY THE 1954 CHARTER ACT. BY AUTHORIZING FNMA TO OBTAIN FUNDS FOR ITS SECONDARY MARKET OPERATIONS UNDER THE PROTECTION OF THE TREASURY AND AT RATES BELOW THOSE PAID BY PRIVATE INVESTORS, CONGRESS EXPRESSLY REJECTED THE NOTION THAT THE SECONDARY MARKET OPERATIONS AUTHORIZED BY THE CHARTER ACT WERE TO BE CARRIED OUT SOLELY AS THEY WOULD BE BY A PRIVATE, PROFIT-MAKING CORPORATION.

THE DISINCENTIVES TO DOING BUSINESS WITH FNMA, WHICH WERE PUT INTO THE CHARTER ACT AT THE BEHEST OF TRADITIONAL MORTGAGE LENDERS TO INSURE FNMA'S ACTIVITIES AS A "RESERVE FACILITY," WERE SUBTANTIALLY REDUCED BY SUBSEQUENT AMENDMENTS TO THE CHARTER ACT. IN 1958, CONGRESS REMOVED THE PROHIBITION AGAINST THE ISSUANCE OF STANDBY COMMITMENTS ADOPTED IN 1954 FOR THE PURCHASE OF MORTGAGES ON NEWLY CONSTRUCTED PROPERTIES AND REDUCED THE STOCK PURCHASE REQUIREMENTS IMPOSED ON LENDERS DOING BUSINESS WITH FNMA. (26)

FNMA'S IMPACT ON MORTGAGE FINANCING IN THE UNITED STATES WAS NOT REDUCED BY THE REQUIREMENTS OF THE CHARTER ACT OF 1954. PURCHASES OF MORTGAGES INCREASED SUBSTANTIALLY FROM 1954 TO 1956. IN 1957, WHEN TIGHT CREDIT CONDITIONS PREVAILED, FNMA PURCHASED MORE THAN 11 PERCENT OF ALL SINGLE-FAMILY RESIDENTIAL MORTGAGES ORIGINATED IN THAT YEAR. THE RELATIVELY EASY CREDIT CONDITIONS THAT PREVAILED IN 1958 MARKED THE FIRST YEAR OF SIGNIFICANT FNMA SALES OF MORTGAGES FROM

FEDERAL REGISTER, VOL. 43, NO. 158—TUESDAY, AUGUST 15, 1978
RULES AND REGULATIONS

its portfolio. (37) However, with tightened credit conditions in 1980, FNMA again entered the market in a substantial way and purchased almost 9 percent of all single-family mortgages originated in that year. During the credit shortage of 1988, FNMA purchased fully 13 percent of all home mortgages originated.

Thus, in 14 years of operation under the Charter Act of 1984, FNMA became the single most important factor in mortgage finance, (32) accomplishing through the conduct of its secondary market operations the very goals envisioned in 1983 by the National Emergency Council for secondary market facilities. (33)

G. THE HOUSING AND URBAN DEVELOPMENT ACT OF 1989

Prior to 1988, Congress undertook no steps to implement the 1984 Charter Act design of converting FNMA's secondary market operations to private ownership. Treasury stock was retired in 1984 under the Charter Act; rather it was increased on three separate occasions, bringing the Government's capital interest in FNMA to more than $1,058,000,000 in 1988. (33) Nevertheless, the goal of turning the secondary market operations of FNMA over to private management was realized in 1988 when President Johnson was persuaded to propose the transfer to avoid the effect of an accounting principle that would have required inclusion of FNMA's secondary market operations in the Federal budget. (32)

Under the new statutory scheme, set forth in title VIII of the Housing and Urban Development Act of 1988, FNMA was partitioned into two separate corporations. It became "a Government-sponsored private corporation" and retained the assets, liabilities, and functions that it had carried out under sections 304 (Secondary Market Operations) of the FNMA Charter Act. (34) The other corporation, designated GHMA, remained in the Government and retained all the assets, liabilities, and functions that FNMA had carried out under sections 305 (Special Assistance) and 306 (Management and Liquidation) of the Charter Act.

Moreover, just as the basic secondary market activities to be carried out by FNMA remained intact, so did the public purposes to be achieved by these activities. Nothing either in the language of the Act or in its legislative history indicates that the government-oversight of FNMA's operations anticipated at the time of the 30 years of its operations as a Government corporation, all the assets and liabilities of the secondary market operations which it had acquired during the 30 years of its operations as a Government corporation. A large, ongoing, and profitable business was turned over to FNMA. (35) Its status in the secondary mortgage market in 1988, and other benefits provided by the Charter Act, assured FNMA it could have no effective competition from the private sector.

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

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

3. The Federal Reserve Banks are FNMA's Fiscal and Paying Agent. Under section 311 of the Charter Act, FNMA uses the Federal Reserve Banks as its depository custodian and paying agent, thereby reinforcing the view that FNMA debentures are in some way connected with the Federal Government.

4. Exemption from State taxes. Section 309(b)(2) of the Charter Act exempts FNMA from all taxation imposed by any State (except real property tax)—a provision usually applicable only to governmental entities under the doctrine of intergovernmental tax immunity. In addition to the economic advantage afforded FNMA by the provision, it reinforces the widely held view of FNMA as a governmental entity.

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

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

B. REGULATORY AUTHORITY

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

FEDERAL REGISTER, VOL. 43, NO. 158—TUESDAY, AUGUST 15, 1978

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

As the Senate report states:

The Secretary would have general regulatory powers over FNMA to assure that the purposes of the Charter Act are served. The issuance of all securities or obligations by FNMA would have to be approved by the Charter Act, and it would participate in the decision making process as to the level of mortgage purchases at various times. In addition, the Secretary would have to determine the rate at which FNMA's mortgage purchases be related to housing for low- and moderate-income families, but with reasonable economic restraints.

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

The new FNMA would be a "Government-sponsored private corporation" regulated by the Secretary of Housing and Urban Development, and would have a status analogous to that of the Federal Reserve Board and the Federal Home Loan banks. (41)

The Senate report also emphasizes that:

The committees feel that adequate safeguard are necessary to protect against abuses of the public interest.

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

1. The purchase, servicing, sale, or lending on the security of, or otherwise dealing in conventional mortgages. (Sec. 303(b)(2))

2. The purchase, servicing, sale, or lending on the security of, or otherwise dealing in conventional mortgages. (Sec. 303(b)(2))

3. Determination of the amount of nonrefundable capital contributions required to be made by each mortgage seller (not to exceed 2 per cent of the unpaid principal amount of mortgages purchased or to be purchased). (Sec. 303(b)(2))

4. Determination of the level of stock retention requirements imposed on each servicer of its mortgages (not to exceed 2 per cent of the aggregate outstanding principal balances of all mortgages of the Corporation which have been purchased subsequent to September 1, 1968, and which are then held in service for the Corporation). (Sec. 303(c)(2))

5. Allowing the obligors of the Corporation to exceed 18 times the sum of its capital, capital surplus, general surplus, reserves, and undistributed earnings. (Permitted only if the Secretary so fixes higher ratio.) (Sec. 304(b).)

6. Payment of cash dividends to stockholders. (Permitted only if the annual aggregate amount does not exceed the rate determined to be a fair rate of return by the Secretary after consideration of the current earnings and capital condition of the Corporation. (Sec. 304(c).)

In addition to these specific powers, the Secretary was given the power to issue such rules and regulations as he determines to be necessary and proper to assure that the purposes of the Charter Act are carried out. The Senate Report indicates that the general regulatory power of the Secretary over FNMA is plenary. (47)

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

1. Regulation must be consistent with the maintenance of a "reasonable economic return" to FNMA, and a "fair rate of return" to its shareholders. (41) and (42)

2. Regulation may not extend to FNMA's internal affairs, such as personnel, salary, and other usual corporate matters, except where the exercise of such powers is necessary to protect the financial interests of the government or (43) otherwise necessary to assure that the purposes of the Charter Act are carried out. (45) (Emphasis added.)

In addition to the enumerated specific powers and general regulatory authority granted to the Secretary, Congress conferred additional authority upon the executive branch. The President of the United States, under Section 304(b) of the Charter Act, is authorized to appoint 5 public members to the 15 member Board of Directors of the Corporation, and to remove both the Presidential appointees and the 10 private members of the Board elected by the shareholders for "good cause." Further, section 304(b) of the Charter Act gives the Secretary of the Treasury the authority to make the first long-term commitment to FNMA, and the rate of interest of any obligations proposed to be issued by FNMA, and the times during which FNMA may have access to the capital markets. By expressly reserving many specific controls to the President of the United States, the Secretary of Treasury, and the Secretary of Housing and Urban Development, Congress indicated that in turning over secondary market operations of FNMA over to private management, it intended to preserve to the Federal Government the "public interest" to be served by FNMA's operation of these secondary market functions.

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

Further, Congress expressly retained the rights to discontinue the Corporation, and thereby has implicitly retained the right to alter the composition of its Board of Directors. (46)

Now does the Charter Act provide for shareholder control over the Corporation's discretion, the right of shareholders to present proposals for consideration by the Board, or the right of shareholders to inspect corporate books—a right conferred upon the Secretary of Housing and Urban Development. (Sec. 309(b).) Besides conferring many shareholder rights upon entities outside the Corporation, the Charter Act expressly vests in the Board of Directors the right to approve or amend the bylaws (Sec. 308) and the right to set shareholder voting and director quorum requirements.

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

G. FNMA'S CONDUCT OF ITS SECONDARY MARKET OPERATIONS

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

To support the success of its secondary market operation, FNMA is the second largest borrower in the
RULES AND REGULATIONS

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

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

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

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

Following the hearings, the Senate committee staff concluded that FNMA's management and Board "generally seem to view the Corporation's sole public responsibilities as providing liquidity to the mortgage market and complying with other direct mandates under the charter," and suggested that FNMA hold a unique and favored position as a Government-linked Corporation give it a responsibility to pursue the public interest more broadly. FNMA's conduct of its secondary market activities has not accomplished the public purposes of the Charter Act. In its secondary market program for conventionally-mortgaged properties, FNMA has failed to assure that (1) a reasonable percentage of its Federal agency rate borrowings which support the conventional mortgage program flows into central cities—areas that have difficulty in obtaining mortgage credit, and (2) a reasonable percentage of these borrowings benefits low- and moderate-income families who live in central cities.

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

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

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

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

III. THE REGULATIONS

A. THE PROPOSED REGULATIONS

The Department's proposed regulations were addressed to these substantial problems in FNMA's conduct of its secondary market operations. Prior to the publication of the proposed regulations, no previous administrations had attempted to clarify the relationship between the FNMA and of directors of FNMA by the President of the United States and, more important, through oversight by HUD.

It is the Committee's impression that, in the case of FNMA, this public oversight function has been inadequately discharged by HUD, leaving this massive corporation to conduct its affairs in any manner it sees fit. The proposed regulations sought to discharge the Department's statutory mandate by clarifying its regulatory relationship with FNMA in accordance with the requirements of the Charter Act. The proposed regulations are designed to clearly cover those areas in which Congress requires that FNMA obtain HUD's approval prior to implementing a major change in its operations.
Charter Act; §§ 81.10 and 81.17 dealing with conventional mortgages on housing for low-and-middle income families and implementing section 309(h) of the Charter Act; and §§ 81.31-81.34 dealing with examinations and audits of FNMA books and financial transactions and implementing section 309(h) of the Charter Act. (66) This general regulatory framework is maintained in the final rule.

In addition § 81.29 of the proposed regulations set up definitive and regular reporting requirements to enable the Department to obtain the data required to carry out its oversight functions. These reporting requirements are included in the final rule.

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

The proposed regulations addressed the problems raised by FNMA's operation of the housing lottery auction. The provisions of § 81.34 would have required FNMA, prior to the close of business on the last business day prior to the day on which FNMA is scheduled to hold a commitment auction, to submit to the Secretary an estimate of the dollar amounts of purchase commitments expected to be issued in its FHA-VA mortgage auction and in its conventional mortgage auction. A similar provision is contained in the final rule.

Because FNMA's underwriting guidelines were causing certain urban areas to be redlined, the proposed regulations (§ 81.19) would have required that HUD approve FNMA's underwriting guidelines to ensure that they were nondiscriminatory in effect. The provision sought to implement HUD's general regulatory powers (see 309(h)) under the Charter Act, so that HUD's exercise of its oversight responsibilities with respect to FNMA were conducted in accordance with the Congressional mandate that all HUD programs relating to housing and urban development affirmatively further the policy of fair housing throughout the United States. (67) The provision is contained in modified form in the final rule.

The proposed regulations (§§ 81.19) made explicit equal employment opportunity requirements imposed on FNMA, its contractors and vendors by reasons of FNMA's status as a contractor, subject to the provisions of § 309(h) of the Charter Act and insured that FNMA's conduct of its secondary market operations achieved the purposes of the Charter Act. The final rule contains revised provisions addressing these same problems.

B. THE COMMENTS

Although most of the comments received in response to the proposed regulations were critical half came from mortgage bankers, commercial and investment bankers, and thrift institutions. In addition, a substantial percentage of the comments came from FNMA shareholders who had received from FNMA's management information which characterized the effect of the proposed regulations and informed them of management's view of the proposed regulations. Eight percent of the comments were from non-financial private participants in the housing industry—real estate brokers, and developers, builders and material suppliers. On the other hand, Senators and Representatives from urban areas who submitted formal comments and large local governments, generally opposed the thrust of the proposed regulations. Labor and public employee groups also supported the proposed regulations.

Critical comments focused on four major areas. First, the greatest amount of comment was generated by the provisions of §§ 81.16 (d) and (e), which mandated the use of an absolute percentage of all commitments sold by FNMA and an absolute percentage of all mortgages purchased by it. (Sections 81.16 (d) and (e) would have required that ultimately 60 percent of the principal amount of commitments to purchase conventional home mortgages issued by FNMA during each calendar year be for the purchase of mortgages secured by properties located in a central city or property improved by a previously occupied home. Section 81.17 would have required that 30 percent of the aggregate principal amount of all mortgages insured by FNMA in any calendar year consist of mortgages secured by housing for low- and moderate-income families.) Second, there was substantial opposition to § 81.14(c) which would have prohibited FNMA from issuing any obligation convertible into common stock and § 81.14(d), which would have required FNMA to submit a request for approval to the Secretary of Housing and Urban Development at least 15 days prior to the date of issuance of FNMA debt obligations.

Third, numerous commentators objected to § 81.13 which would have required FNMA to obtain HUD approval of a revised statement of home mortgage underwriting guidelines—and required that these guidelines make clear that FNMA would not discriminate in purchasing conventional mortgages, and § 81.18, which would have imposed equal employment opportunity requirements on FNMA, its contractors and vendors. Fourth, FNMA objected to § 81.23 which would have required it to develop a plan for the conduct of its secondary market operations covering a period of at least three years. Moreover, many commentators objected to the twenty-three separate reports which the provisions of § 81.23 would have required FNMA to submit on a regular basis.

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

The provisions of §§ 81.14 have been extensively modified. Under the final regulations, FNMA's authority to borrow, the form of borrowing, and other matters relating to its borrowings will be regulated only by the Secretary of the Treasury. The Secretary of Housing and Urban Development will exercise her approval authority only with respect to FNMA's purchases of mortgages or issuance of commitments to purchase mortgages. Finally, the number of reports required in § 81.23 has been reduced from 23 to 6.

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

C.  SECTION- BY- SECTION ANALYSIS OF FINAL REGULATIONS

SUBPART A—GENERAL PROVISIONS

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

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

(d) “Debt-to-capital ratio”—This term was defined in the proposed regulations to mean the ratio of the outstanding amount of FNMA obligations issued under section 304(b) of the Charter Act (general obligations) to the market value of FNMA’s net worth accounts plus the outstanding amount of FNMA obligations issued under section 304(e) of the Charter Act (subordinated obligations). Since section 304(e) provides that subordinated obligations are deemed to be capital of FNMA if “entirely subordinated to FNMA general obligations, and since section 304(a) provides for the issuance of partially subordinated obligations, language has been added to the definition to provide that section 304(a) capital not be treated as capital only if entirely subordinated to all FNMA general obligations.

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

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

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

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

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

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

(l) “Housing for low- and moderate-income families”—In the proposed regulations, this term was defined to include any residence that is properly falling within one of the following three categories:

(1) Any housing financed by a mortgage loan insured by FHA under certain sections of the National Housing Act;
(2) Any housing project having 25 percent or more of its units eligible for rental assistance under section 8 of the U.S. Housing Act of 1937; and
(3) Any single-family dwelling purchased at a price below the current median price for such housing in the geographical area in which the dwelling is located.

Comments received by the Department indicated that the proposed definition of this term should include a reference to section 237 of the National Housing Act. While the requirements of § 81.17 (purchase of mortgages secured by housing for low- and moderate-income families) are not applicable to FHA-insured mortgages in the final regulations, the first definition category has been retained and modified as suggested by the comments received. The revised definition remains useful as part of the revised reporting requirements under § 81.33 and will help the Department ascertain the extent to which FHA purchase of FHAS mortgages benefit low- and moderate-income families.

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

Comments on the third section of the proposed definition pointed out the difficulty in determining the current median price for single-family housing in each Standard Metropolitan Statistical Area (SMSA) or county not in an SMSA. Accordingly, the category has been revised to employ a data base of median family income, which is regularly compiled by HUD and will be made available to FNMA. As revised, this section includes any single-family dwelling (including a condominium or planned unit development unit) purchased at a price in excess of 2.5 times the median family income for the appropriate geographical area in which the dwelling is located. It was pointed out in the comments that there is no assurance that a house priced within the means of a low- or moderate-income family will be occupied by a low- or moderate-income family. Therefore, the Department, however, believes that the regulation will be effective in furthering national housing goals if it results in availability to FNMA of a number of comments. Accordingly, the term has been defined to mean each of the political subdivisions named in the title of an SMSA or most recently determined by the U.S. Census Bureau. In addition, a current list of such central cities is set forth in Appendix A to these regulations.

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

(o) “Debt instrument”—This term, used but not defined in the proposed regulations, is defined as applying to...
obligations and securities issued by FNMA under sections 304 (b), (d), and (e) of the Charter Act.

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

PART II—OPERATIONS OF FNMA

Section 8.11 General. This section identifies the specific grants of statutory authority which authorize the Secretary to promulgate these regulations. Minor editorial changes have been made in the proposed regulations and references to Title VIII of the Civil Rights Act of 1968 and section 603 of the Department of Housing and Urban Development Act have been included.

Section 8.12 Issuance of Common Stock. The proposed regulations, the final regulations codify the current temporary suspension of the requirement for FNMA's mortgage seller or servicer to receive all capital contributions to FNMA. In addition, part 8.12 has been revised to refer to the Secretary's approval of FNMA determinations to suspend these requirements.

Under the mandate to section 203(b) of the Charter Act that FNMA "shall at all times require each servicer of its mortgages to own a minimum amount of common stock," the proposed regulations would have allowed FNMA to reduce the servicer stock retention requirement to one share of common stock for each $100,000 of FNMA held mortgages serviced by such servicer. A number of comments pointed out that the present servicer stock retention requirement is one share of common stock for each $100,000 of FNMA owned mortgages serviced, and that a large number of FNMA shares of common stock would be available for sale if this requirement were reduced to one share for each $100,000. FNMA expressed the fear that the market price of FNMA common stock could be adversely affected if the large number of shares immediately became available for sale. Accordingly, this provision has been revised to require the Secretary's approval of the one share per $100,000 requirement which is presently in effect.

The proposed section would also have provided that common stock held by FNMA to FNMA under sections 304 (b), (d), and (e) of the Charter Act.

(a) of § 8.13 of the final rule provides a means for Secretarial approval of any change in FNMA's determination as to stock purchase or retention requirements for FNMA mortgage sellers and servicers.

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

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

[Section 8.13 Reserved]

Section 8.14 Issuance of Obligations. The proposed regulations would have required that not less than 15 days prior to the proposed date of the issuance of any obligations, securities or other debt instruments, FNMA submit to the Secretariat a written request for approval of the issuance. Included with the request would be information as to the proposed date of issuance, interest rate, maturity, and principal amount; whether the debt is to be secured by mortgages or subordinated to other obligations; and the proposed use of the proceeds. The regulations would also have precluded the issuance by FNMA of any obligation convertible into common stock.

A number of commentators criticized § 8.14 asserting that its requirements were unrealistic and failed to recognize the fluid character of the market for securities. The comments further stated that any procedure under which FNMA must submit the terms of any obligation to HUD for approval 15 days prior to its date of issuance deprives FNMA of the flexibility to react to changing market conditions. Without the flexibility to wait until the last possible moment to assess the impact of the size and terms of its borrowings, some borrowers feared that FNMA would make marketing decisions which would have a disruptive influence on the money market.

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

The Department of the Treasury also stated its concern that the provisions of § 8.14 would interfere with its relationship with FNMA.

Paragraph (b) of § 8.14, which would have prohibited the issuance by FNMA of any obligation convertible into common stock, was criticized by FNMA, as beyond HUD's authority and as unwise restriction limiting FNMA's ability to raise equity capital. Major changes have been made in this provision to accommodate these adverse comments.

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

In response to comments by FNMA, the final regulations provide a regular procedure for the approval of FNMA's requests for increases in the Corporation's total obligatory authority. Based on the new definition in § 8.15(b) this requirement relates only to FNMA's authority to purchase mortgages or offer commitments.

Section 8.15 Debt-to-Capital Ratio. Section 304(b) of the Charter Act provides that the debt-to-capital ratio may not exceed 18 to 1. Unless an aggregate ratio is fixed by the Secretary. The present level fixed by the Secretary is 20 to 1. The proposed and final regulations would provide procedures to be followed in altering the debt-to-capital ratio.

FEDERAL REGISTER, VOL. 43, NO. 155—TUESDAY, AUGUST 15, 1978

RULES AND REGULATIONS

Several comments were received on the debt-to-capital ratio provisions of the proposed regulations. First, it was pointed out that the prohibition on the issuance of any debt which would cause FNMA's debt-to-capital ratio to exceed 15 to 1 would work a great hardship if there were a need to issue obligations sufficient to finance payments of principal and interest due on outsourndated subordinated debentures. While this contingency is very remote the final regulations have been revised to accommodate this possibility. Several commentators asserted that the proposed regulations could be interpreted as authorizing the Secretary to reduce FNMA's maximum debt-to-capital ratio below 15 to 1. The final rule has been revised to reflect that the Secretary may not reduce debt-to-capital ratio to less than 18 to 1.

Some commentators suggested that the Secretary lacks any authority to decrease the debt-to-capital ratio, once a specified ratio above 18 to 1 has been approved. These comments were rejected. The grant of authority to increase the debt-to-capital ratio above 18 to 1 was made on the implicit authority to reduce the debt-to-capital ratio back to 18 to 1 if conditions warrant.

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

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

Section 81.16 Conventional Mortgages in Central Cities. The proposed regulations contained a fixed percentage of commitments to purchase conventional mortgages to be used for mortgages secured by properties in central cities ($81.16(d)) and properties improved by previously occupied houses ($81.16(e)). In each category the annual percentage requirement would have been 10 percent in 1978 and 30 percent thereafter. The comments on these provisions (and the provisions of §81.17 which mandated low- and moderate-income mortgage purchase requirements) fall into two broad categories: (1) those relating to the Secretary's legal authority to impose the requirements; and (2) those relating to the proposed regulations as being impracticable or harmful to FNMA's business.

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

FNMA also denied that the Secretary had legal authority to assert the requirement of section 309(b)—that is, that he may require that a reasonable portion of FNMA's mortgage purchases be related to a specific goal of providing adequate housing for low- and moderate-income families but with reasonable economic return to the Corporation. As FNMA's dealings in conventional mortgages, FNMA

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

(2) Impracticability and Harmful Effect. Numerous comments asserted that the requirements of §§81.16 (d) and (e) and 81.17 would seriously disrupt the FNMA mortgage system. Some comments asserted that FNMA's ability to provide liquidity for the mortgage market would be impaired by the requirements of §§81.16 (d) and (e), and 81.17 of the proposed regulations. These comments pointed out that a failure of demand in the mandated categories would prevent FNMA from being able to serve liquidity needs in nonmandated categories because the aggregate amount of all commitments and purchases would have to be reduced in order to achieve the mandated percentage in the favored categories.

It was also pointed out that §§81.16 (d) and (e) and 81.17 would require FNMA to abandon the forward commitment procedure by which mortgage bankers are able to buy FNMA's commitments to purchase large blocks of mortgages without identifying the individual loans to be delivered. The abandonment of the forward commitment procedure would, it was argued, force many lenders to buy their commitments from FNMA only after specifically negotiated transactions in the interval between loan origination and loan transfer.

Comments asserted that the resulting warehouseing of loans would cause higher operating costs for originators and higher interest rates for mortgagors. It was also asserted that such a procedure would unnecessarily tie up large amounts of mortgage capital for extended periods. The requirements in the proposed regulations have been substantially modified in view of these comments.

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

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

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

FEDERAL REGISTER, VOL. 43, NO. 158—TUESDAY, AUGUST 15, 1978

In central cities has been eliminated. The final rule asserts only that at the end of any year following a year in which FNMA's purchases of central city conventional mortgages have been less than 30 percent of its aggregate purchases of conventional mortgages, the Secretary may establish an annual goal for the purchase of central city conventional mortgages, but establishing this annual goal the Secretary will consider: (1) The total number of such purchases of conventional mortgages in central cities by FNMA in the calendar year immediately preceding; (ii) the ratio of the number of conventional mortgages secured by properties located in central cities purchased by FNMA in the calendar year immediately preceding to the total number of conventional mortgages purchased by FNMA in that period; (iii) the ratio of the number of properties in central cities of the type which may secure conventional mortgages purchased by FNMA to the total number of properties of that type located in United States cities, as determined by the Secretary; (iv) the condition of the housing market; and (v) all relevant economic factors.

Section 81.17 Conventional Mortgage Purchase Related to Homeownership, Low- and Moderate-Income Families. The provisions of §81.17 of the proposed regulations were substantially similar to the current Homeownership, Low- and Moderate-Income Families. The final rule no longer is based on the provisions of 81.17. If FNMA's reports for the first two quarters of any year for which the Secretary has established an annual goal for the purchase of conventional mortgages secured by housing for low- and moderate-income families show a level of purchases for such mortgages below the level needed to reach the goal, FNMA will be required to submit to the Secretary a plan of special actions it proposes to take to meet its level of purchases of such mortgages or a statement of reasons why the goal should be suspended or altered. The Secretary could approve, reject, or seek modification of the plan of special actions proposed by FNMA or suspend the goal. If the Secretary rejects the special actions proposed by FNMA or refuses to suspend the goal, she may: (1) Require FNMA to conduct a separate audit of the mortgages securing such mortgages which are secured by housing for low- and moderate-income families and which meet FNMA's standards (with a reasonable rate of return to FNMA); (2) require FNMA to hold open an offer to purchase such mortgages; (3) condition her approval of increase in FNMA's obligations upon use of a portion of such authority for the purchase of such mortgages; or (4) any combination of the three. However, these restrictions on the making of mortgage loans in these restrictions are not to be applied to subsection §81.18(b)(3) of the final rule, relating to neighborhoods and property, the prohibitions do not overlap ECOA requirements and are not necessary to properly implement the congressional mandate to the Secretary in section 506(a)(5) of Title VII of the Civil Rights Act of 1968.

Furthermore, the general regulatory authority contained in the Department of Housing and Urban Development Act is sufficient to permit the Secretary to implement the responsibilities imposed on her by section 506(a)(5) of Title VII of the Civil Rights Act of 1968 by requiring review of FNMA appraisal and credit evaluation standards for the limited purpose of assessing the elimination of race (religious, sex) related judgments in such evaluations.

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

FNMA's comments on the proposed regulation asserted that these requirements are inapplicable under the Charter Act already apply to the internal employment practices of FNMA through contract provisions contained in the FNMA-GNMA Combined Services Agreement and that the Corporation's internal practices are in compliance with these provisions. In addition, FNMA asserted that the requirement that it apply these provisions to its contractors and vendors interferes with the internal affairs of FNMA and "equates FNMA with a Government agency." The provisions contained in §81.19 of the proposed regulations have been promulgated as of June 29, 1979, been included in all direct contracts for goods and services between private corporations and agencies of the Federal Government and in all contracts for federally assisted construction programs. They are now contained in substantially the same form in the FNMA-GNMA Combined Services Agreement pursuant to the regulations in 12 CFR Part 130. As in the case of private corporations contracting with HUD, the Combined Services Agreement and §81.19 of the regulations require FNMA to include the standard E.O. 11246 clause in contracts with vendors and suppliers. FNMA's comments on the proposed
RULES AND REGULATIONS

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

The Secretary has determined as a matter of national policy to impose equal employment opportunity requirements identical to those § 31.10 requires FNMA to impose on its contractors and vendors on all GNMA services and sellers.

SUBPART C- REPORTING REQUIREMENTS

All of the reporting requirements contained in the proposed regulations have been reexamined and substantial modifications have been made to take into account the various comments received. The total number of reports required has been substantially reduced. Section 31.33 General. This section is unchanged from the proposed regulations. No adverse comments were received.

Section 31.22 Business Activities Report. The proposed regulations would have required FNMA to develop a general 3-year plan for the conduct of its secondary market operations. The plan would have been based on FNMA's proposed methods for providing secondary mortgage market liquidity, conducting its stabilization functions, transferring capital and providing support for low- and moderate-income housing. Under § 31.22(c) an annual budget plan would also have been required setting forth estimated dollar amounts of commitments to be purchased and estimated purchases and sales of home and project mortgages. FNMA in its comments have asserted that the provisions of § 31.22 are beyond the Secretary's authority to the extent that they required reporting on prospective commitments.

This assertion was rejected. The authority to require both retrospective and prospective reporting is clearly contained in 30(d)(h) of the Charter Act. Section 30(d)(h) places mandatory reporting upon the nature of the report which may be required, but states only that the Secretary may "require (FNMA) to make such reports on its activities as he deems advisable." In addition, the general regulatory authority conferred upon the Secretary by section 35(h) of the Charter Act provides authority for the Secretary to require information necessary to enable him to "make such rules and regulations as may be necessary to insure that the purposes of (the Charter Act) are accomplished."

The Secretary has deemed it necessary to require, in order to insure that the public purposes of the Charter Act are being carried out, reports on: (1) FNMA's plans for the conduct of its secondary market operations; (2) FNMA's mortgage acquisition and borrowing plans; and (3) the general conduct of its business.

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

In response to these comments, in the final rule the 3-year general plan has been reduced to a 1-year plan to be set out in the new Business Activities Report. The new Business Activities Report requires FNMA to provide a general plan for the conduct of its secondary market operations, containing an assessment of: (1) The amount of supplemental assistance FNMA will provide to the secondary market, (2) the amount of additional obligatory authority it will require, and (3) projected increases or decreases in the size of its mortgage portfolio. FNMA will also be required to estimate its future annual need for additional equity financing, indicate its target for return on equity and the incremental and average cost of its debt.

The provisions of § 31.22(b) of the proposed regulations which required FNMA to submit to the Secretary information currently submitted to the OMB have been eliminated and pursuant to Appendix B, item 1(b)(ii) of the final rule FNMA will only have to provide to the Secretary a copy of the report submitted to OMB.

The provisions of § 31.23(c) of the proposed regulations which required a budget plan setting forth calendar year estimates of certain activities by FNMA have been replaced by provisions contained in Appendix B, item 1(b)(ii) of the final rule which require that similar information be reported on a quarterly basis only.

Section 31.23 Regular Reports. The proposed regulation would have required the submission of 23 different regular reports at various times during the year. These reports would in general have addressed: the results of FNMA's auctions, its borrowing and debt authority, its loan portfolio, its debt portfolio, investors and mortgage purchasers, yields on mortgages purchased and sold, expenditures, revenues and income, and stock prices.

In general, comments received expressed the opinion that the reporting requirements of § 31.23 were excessive or unnecessary, would result in excessive paperwork, and would be time consuming and costly to FNMA. The comments stated that the end result of these requirements would be to increase the cost of mortgage credit to the Nation's homeowners. Several comments suggested that the report's time requirements were unrealistically short in certain instances and that the information required in some reports was available from other sources. Further concern was expressed that the release of certain information to HUH would in turn result in a release of the information by HUD through the Federal Freedom of Information Act. FNMA stated that several of the reports would require changes in their current internal reporting forms; that section 1 of report 4 contained a typographical error; that report 9 required the disclosure of information similar to that published in the Treasury Department's Survey of Ownership, and that report 22 requiring a disclosure of the ownership of FNMA stock did not consider that two-thirds of the stock was held in street names or by non-residents.

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

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

Section 31.23(b) is unchanged. No adverse comments were received.

Section 31.24 National Estimates of Amount of Purchase Commitments at FNMA Auctions. The provisions of § 31.24 would have required FNMA, one business day before each commitment auction, to submit to the Secretary an estimate of the dollar amounts of purchase commitments it expected to issue in its FHA-VA mortgage auction and in its conventional mortgage auction. Comments received by FNMA stated that reliable estimates of the amount of such commitments are
rarely available because of the speculative nature of the market. In addition, it was stated that public disclosure of the estimates in advance of the auction could unnecessarily affect the auction while advance knowledge of the estimates by only a few potential bidders would place those bidders in an unfair competitive advantage.

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

Section 81.35 Minutes of Meetings. The proposed regulation (§ 81.35) would have required submission of completed minutes to the Secretary within 10 days after each meeting of the FNMA Board of Directors or any committee thereof.

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

In response to these comments, the requirement that minutes be regularly transmitted to the Secretary has been withdrawn. In the final rule, the provisions of § 81.35 have been replaced by a requirement that the minutes be available for inspection by duly authorized representatives of the Secretary. Any particular matter in such minutes that FNMA determines contains information that availability outside the corporation might financially injure FNMA or adversely affect the conduct of its business will, at the request of the advance knowledge of the estimates by only a few potential bidders would place those bidders in an unfair competitive advantage.

Section 81.23 Other Information. In the proposed regulation this section was designated § 81.26 "Other Reports" and required FNMA to furnish to the Secretary, in addition to the reports and information required by the other provisions of Subpart C, such further reports and other information concerning its activities as the Secretary may request. As revised, this section requires FNMA to furnish only "information concerning its activities" upon written request of the Secretary.

Subpart D—Examinations and Audits

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

Section 81.32 Examination of Books, Records, and Documents. This section has been revised to reflect more closely the language contained in section 309(h) of the Housing Act. As revised, the section requires FNMA to make available for examination by HUD representatives its books and financial transactions and related documents. The amended section now also requires the maintenance of minutes discussed under § 81.36.

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

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

Subpart E—Book-Entry Procedures for FNMA Securities

Subpart E of the regulations governs book-entry procedures for FNMA securities. This subpart was present in the old regulations and is included here as an accommodation to FNMA. Two proposed sections in this subpart, §§ 81.45 and 81.46, provided that definitive securities would be issued in limited situations. In comments received from FNMA, however, it was pointed out that FNMA discontinued issuing definitive securities on March 19, 1978, and that date those securities have been issued in book-entry form only. Sections 81.45 and 81.46 have been revised to reflect this.

The only other change made in subpart E is in § 81.48, which provides in the proposed regulation that interest due on FNMA securities was to be charged to the general account of the Treasurer of the United States and that such securities were to be redeemed and charged to the general account of the Treasurer of the United States but, instead, uses an account with the New York Federal Reserve Bank. Section 81.48 has therefore been revised to refer exclusively to the account at the New York Federal Reserve Bank.

A finding of inapplicability respecting the National Environmental Policy Act (42 U.S.C. 4321 et seq.) has been made in accordance with 36 CFR part 802. The copies of this Finding of Inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Room 8118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

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

Subpart A—General Provisions

Sec. 81.1 Scope of Part.

81.2 Definitions.

Subpart B—Operations of FNMA

81.11 General.

81.12 Issuance of Common Stock.

81.13 Dividends on Common Stock. (Reserved.)

81.14 Issuance of Debt Instruments and Obligations, etc.

81.15 Debenture Capital Stock.

81.16 Conventional Mortgages in Central Cities.

81.17 Conventional Mortgage Purchases Related to Housing for Low and Moderate Income Families.

81.18 Home Mortgage Underwriting Guidelines.


Subpart C—Reporting Requirements

Sec. 81.21 General.

81.22 Business Activities Reports.

81.23 Regular Reports.

81.24 Estimate of Amount of Purchase Commitments at FNMA Auctions.

81.25 Other Information.

Subpart D—Examinations and Audits

81.31 General.

81.32 Examination of Books, Records, and Documents.

81.33 Annual Audit of FNMA.

81.34 Special Audits.
RULES AND REGULATIONS

Subpart C—Book-Entry Procedures for FNMA Securities

Sec.
81.41 Definitions.
81.42 Authority of Reserve Bank.
81.43 Scope and Effect of Book-entry Procedures.
81.44 Transfer or Pledge.
81.45 Withholding of FNMA Securities.
81.46 Delivery of FNMA Securities.
81.47 Registered Bonds and Notes.
81.48 Servicing Book-entry FNMA Securities: Payment of Interest and Maturity or Unpaid Installment.
81.49 Treasury Department Regulations: Application to FNMA.

APPENDIX A—Central Cities.

APPENDIX B—Business Activities Report.

APPENDIX C—Reporting Requirements.

Annuities: Section 36 of the Department of Housing and Urban Development Act, 42 U.S.C. 3828(d).

Subpart A—General Provisions

§ 81.1 Scope of part.

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

§ 81.3 Definitions.

As used in this part, the term—
(a) "Charter Act" means the Federal National Mortgage Association Charter Act (Title III of the National Housing Act, 12 U.S.C. 1716, et seq.).
(b) "FNMA" means the Federal National Mortgage Association.
(c) "Secretary" means the Secretary of Housing and Urban Development and, where appropriate, any person designated by the Secretary to perform a particular function for the Secretary.
(d) "Debt-to-capital ratio" means the ratio of (1) the aggregate principal amount outstanding at any one time of obligations issued by FNMA under section 306(b) of the Charter Act or (2) the sum of the principal amount of FNMA capital, capital surplus, general surplus, reserves, undistributed earnings; and the outstanding total principal amount of obligations issued by FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

(a) "Home mortgage" means a mortgage loan secured by real property upon which is located a structure containing not less than one nor more than four dwelling units.
(b) "Mortgage loan" means a loan secured by real property, consisting of a dwelling unit in a condominium or planned unit development project, or any undivided interest therein, or interest in more than one dwelling unit in a common interest development project, or any undivided interest therein, secured by a mortgage or a deed of trust which creates a first mortgage on one of the following interests in real property:

1. An estate in fee simple;
2. A leasehold or subleasehold extending for a period of 10 years beyond the maturity of the loan;
3. A leasehold or subleasehold of any duration beyond the remaining estate in fee simple.

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

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

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

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

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

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).

FNMA under section 306(e) of the Charter Act which are entirely subordinated to the obligations of FNMA issued or to be issued under section 306(b).
RULES AND REGULATIONS

36213

thors the Secretary of the Department of Housing and Urban Development to (1) require that a reasonable portion of the corporation's mortgage purchases be related to the national need to provide or request housing for low- and moderate-income families, but with reasonable economic return to the corporation; (2) examine the books and financial transactions of the corporation; and (3) require the corporation to make such reports on its activities as she deems advisable.

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

(c) This subpart is promulgated pursuant to the Secretary's authority, as set forth above, to implement the foregoing provisions of the Charter Act to insure, pursuant to the Secretary's general regulatory authority, as set forth in section 309(c) of the Charter Act, that the purposes of the Charter Act are accomplished and to implement requirements imposed on the Secretary by section 806(c)(6) of the civil rights Act of 1968 (82 Stat. 84; 42 U.S.C. 3606(e), et seq.).

§ 81.13 Issuance of common stock.

(a) The first sentence of section 309(c) of the Charter Act directs FNMRA to issue shares of its common stock to each seller of mortgage loans who makes capital contributions to FNMRA. Under section 309(c) of the Charter Act, such capital contributions may be required by FNMRA that, with respect to home mortgages purchased by FNMRA pursuant to commitments issued on or after February 7, 1978, and project mortgages purchased by FNMRA pursuant to commitments issued on or after April 28, 1978, the sellers of such mortgage loans are not required to make any capital contributions to FNMRA.

(b) Section 309(c) of the Charter Act directs FNMRA to require each servicer of its mortgage loans to own a minimum amount of FNMRA common stock, as determined from time to time by FNMRA with the approval of the Secretary. The Secretary has approved the determination of FNMRA to require each servicer of its mortgage loans to own one share of common stock (stated value $100,000) for each $10,000, or fraction thereof, of the aggregate outstanding principal balance of all mortgage loans held by FNMRA which have been purchased by FNMRA on or after January 26, 1978, and which are being serviced by such servicer for FNMRA.

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

§ 81.14 Dividends on common stock.

(Reserved)

§ 81.14 Issuance of debt instruments and obligatory authority.

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

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

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

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

(a) Under section 304(b) of the Charter Act, FNMA's debt-to-capital ratio may not exceed 18 to 1, unless a greater maximum ratio is fixed by the Secretary. Effective December 5, 1969, the maximum debt-to-capital ratio for FNMA, was fixed at 25 to 1 by the Secretary.

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

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

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

(e) The Secretary may declare the maximum debt-to-capital ratio fixed in paragraph (a) of this section (but not below a ratio of 15 to 1), if she determines that such section (1) will not adversely affect the fiscal integrity of or limit the availability of credit to the corporation, and (2) will not impair FNMA's ability to discharge its obligations to the holders of FNMA's debt instruments and holders of subordinated debentures issued under section 304(c) of the Charter Act. The Secretary shall provide FNMA 30 workdays written notice of the effective date of any decrease in its maximum debt-to-capital ratio.

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

§ 81.16 Conventional mortgages in central cities.

(a) Section 302(b)(3) of the Charter Act authorizes FNMA, with the approval of the Secretary, pursuant to commitments or otherwise, to purchase, service, sell, lease on the security of, or otherwise deal in conventional mortgages, for the purposes set forth in section 302(a) of the Charter Act. Section 302(b)(3) of the Charter Act provides that the Secretary of Housing and Urban Development shall have general regulatory power over the Federal National Mortgage Association and that she may require that a reasonable portion of the corporation's mortgage purchases be related to the national goal of providing adequate housing for low- and moderate-income families, but with reasonable economic return to the corporation.

(b) Subject to the limitations and requirements contained in this section and those limitations or requirements expressed in prior written approvals (as required by section, 302(b)(3) of the Charter Act) by the Secretary of FNMA's entry into an agreement with respect to conventional home and unit mortgages under its secondary market operations, the approval of the Secretary is hereby given for FNMA, pursuant to commitments or otherwise, to purchase, service, sell, lease on the security of, or otherwise deal in conventional home and unit mortgages.

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

(g) Within 30 workdays from the date of the submission of a request by FNMA under paragraph (f)(1) of this section, the Secretary shall approve, reject, or request additional information as to the program with respect to conventional mortgages which FNMA proposes to undertake.

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

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

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

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

(b)(1) Beginning on March 1, 1979 and annually thereafter, whenever in the preceding calendar year FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families, as set forth in paragraph (i) of § 81.3 is less than 30 percent of the corporation's aggregate number of purchases of such mortgages for the period, the Secretary may establish an annual goal for FNMA's purchases of conventional mortgages secured by housing for low- and moderate-income families.

(b)(2) In establishing the annual goal with respect to FNMA purchases of conventional mortgages secured by housing for low- and moderate-income families the Secretary shall consider: (i) The total number of such purchases of conventional mortgages by FNMA in the calendar year immediately preceding; (ii) The ratio of the number of conventional mortgages secured by housing for low- and moderate-income families purchased by
FNMA in the calendar year immediately preceding the total number of conventional mortgages purchased by FNMA in that period; (iii) the relationship of the average price of conventionally financed homes in the various sections of the United States to the median income of families in these sections of the United States; (iv) the condition of the housing market; and (v) general economic factors.

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

(3) Within 15 days after receipt of the FNMA plan of special actions proposed to be taken by it to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or FNMA's statement of reasons why the annual goal for such purchases should be altered or suspended, the Secretary shall approve, reject, or seek modification of the FNMA plan of special actions proposed, or approve or reject its proposed alteration or suspension of the annual goal for the year. If the Secretary decides to retain the goal announced for the year, or rejects the special actions proposed by FNMA to increase its purchases of conventional mortgages secured by housing for low- and moderate-income families, or (II) require FNMA to conduct a separate auction, or auctions, of commitments to purchase conventional mortgages secured by housing for low- and moderate-income families, or (III) condition the approval of any increase in obligations authorized by the Secretary for the purchase of conventional mortgages secured by housing for low- and moderate-income families, FNMA shall not be required to meet FNMA's underwriting guidelines specified in the nondiscrimination standards set forth in paragraphs (b) of this section, FNMA shall advise the Secretary in writing of its intention to meet FNMA's underwriting guidelines for the purchase of conventional mortgages, which may be written to assure that FNMA will meet FNMA's underwriting guidelines applicable to such mortgages, or (b) which are not deemed by the corporation to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors, or (c) which are not purchased within the range of market prices for the particular class of mortgages involved, as determined by the corporation.

(4) If in any calendar year the programs authorized to be conducted under paragraph (a)(3) of this section are implemented by FNMA and FNMA is nevertheless unable to accomplish the purchase of conventional mortgages secured by housing for low- and moderate-income families in such numbers as will enable it to meet the annual goal announced by the Secretary pursuant to paragraph (b)(1) of this section, the requirements of paragraph (b)(1) of this section shall be deemed satisfied for that calendar year.

§ 81.18 Home Mortgage underwriting guidelines.

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

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

(1) Employment, upgrading, demotion or transfer;

(2) Recruitment or recruitment advertising;

(3) Layoff or termination;

(4) Rates of pay or other forms of compensation; and

(5) Selection for training programs.

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

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

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

(f) FNMA shall comply with all provisions of Executive Order 11246, and the applicable rules, regulations, and
orders of the Secretary of Labor promulgated thereunder.

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

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

Subpart C—Reporting Requirements

§ 81.21 General.

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

§ 81.32 Examination of books, records, and documents.

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

(b) FNMA shall maintain a stenographic record of the minutes of each meeting of the Board of Directors. FNMA shall make its books of records of FNMA available at its headquarters for examination by duly authorized representatives of the Secretary. FNMA shall make its books and financial transactions, available for examination by duly authorized representatives of the Secretary.

§ 81.33 Annual audit of FNMA.

Within 120 workdays following the submission by FNMA's independent auditors, of their report on FNMA's activities for any calendar year, the Secretary may, through duly authorized representatives, conduct an audit of FNMA's books and financial transactions for such calendar year, including such tests of FNMA's accounting records and such other auditing procedures as the Secretary may consider necessary in the circumstances.

The Secretary may accept a copy of the report of FNMA's independent auditors for a particular calendar year, if voluntarily submitted to her by FNMA, in full or partial satisfaction of the Secretarial audit authorized by
this section and limit her audit to any areas not covered by such report.

§ 81.34 Special audits.

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

Subpart E—Book-entry Procedures for FNMA Securities

§ 81.41 Definitions.

As used in this subpart, the term—

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

(b) "FNMA security" means any obligation of FNMA (except short-term discount notes and obligations collateralized by common stock) issued under 12 U.S.C. 1718 (b), (c), (d) and (e) in the form of a definitive FNMA security or a book-entry FNMA security.

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

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

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

(f) "Date of call" is, with respect to FNMA securities issued under 12 U.S.C. 1718 (d) and (e), the date fixed in the authorizing resolution of the Board of Directors of FNMA on which the obligor will make payment of the security before maturity in accordance with its terms, and, with respect to FNMA securities issued under 12 U.S.C. 1718 (b), the date fixed in the offering notice issued by FNMA.

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

§ 81.43 Authority of Reserve Bank.

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

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

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

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

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

§ 81.43 Scope and effect of book-entry procedure.

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

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

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

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

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

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

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

(b) A Reserve bank as Fiscal Agent of the corporation may apply the book-entry procedure to FNMA securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 178, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other FNMA securities deposited with a Reserve bank, as Fiscal Agent of the United States.

(c) Any person having an interest in FNMA securities which are deposited with a Reserve bank (in either its individual capacity or as Fiscal Agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry FNMA securities, subject to all provisions of this part, and in the manner and under the procedures prescribed by the Reserve bank.

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

§ 81.44 Transfer or pledge.

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

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

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

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

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

(b) A transfer or a pledge of transferable FNMA securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as Fiscal Agent of the United States) in a book-entry account under §§ 81.41 through 81.48, including securities in book-entry form under §§ 81.43(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or pledge in respect and perfect a pledge of the FNMA securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry FNMA securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry FNMA securities either in its individual capacity or as Fiscal Agent of the United States is not subject for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfer.
thereof under this paragraph. Where transferable FNMA securities are recorded on the books of a depository (a bank, trust company, insurance company, or similar entity), which regularly accepts in the course of its business FNMA securities as a custodial service for customers, and maintains accounts in the name of such customers reflecting ownership of or interest in such securities or account of the pledgee or transferor thereof and such securities are on deposit with a Reserve Bank in a book-entry account, hereunder, such depository shall, for purposes of perfecting a pledge of such securities or affecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from whom acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve Bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph and any such notice or advice shall have no effect. A Reserve Bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

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

(d) A Reserve Bank shall, upon receipt of appropriate instructions, convert book-entry FNMA securities and deliver them in accordance with such instructions; no such conversion shall affect existing interest in such FNMA securities. A transfer of book-entry FNMA securities by a Reserve Bank shall be made, in accordance with procedures established by the Reserve Bank not inconsistent with this part. The transfer of book-entry FNMA securities by a Reserve Bank may be made through a telegraphic transfer procedure.

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

§ 81.45 Withdrawal of FNMA securities.

(a) For all book-entry FNMA securities issued prior to March 10, 1976:

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

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

§ 81.46 Delivery of FNMA securities.

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

§ 81.47 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry FNMA securities of registered FNMA securities held by a Reserve Bank (in either its individual capacity or as Fiscal Agent of the United States) on the effective date of this part for any purpose specified in § 81.45(a). Registered FNMA securities deposited thereafter with a Reserve Bank for any purpose specified in § 81.45 shall be assigned for conversion to book-entry FNMA securities. The assignment, which shall be executed in accordance with the provisions of Subpart D of part 306, so far as applicable, shall be to "Federal Reserve Bank of __________, as Fiscal Agent of the Federal National Mortgage Association, for conversion to book-entry FNMA securities."

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

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

§ 81.49 Treasury Department regulations; applicability to FNMA.

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


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

Footnotes:

1. Title III of the National Housing Act; 12 U.S.C. 1719 et seq.

2. 31 CFR Part 306.

3. 43 FR 27669.


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


9. Pub. L. 1, January 31, 1935, 49 Stat. 1, Section 60 authorized the RFC, with the approval of the President, to subscribe for, or make loans upon the non-assignable stock of any National Housing Corporation organized under Title III of the National Housing Act, and of any mortgage loan company or other financial institution principally engaged in making loans secured by real estate mortgages. Between September 1935 and 1948 (when it was dissolved), the RFC Mortgage Co., purchased 65,624 FHA-insured mortgages in the aggregate amount of $293.3 million. Source: The National Housing Act: 1934-1948, published by FNMA, 1975 at 2.


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

posed would provide the basis for $1,000,000,000 of private funds obtainable through the sale of National Mortgage Association debentures. Message from the President of the U.S. 75th Cong., 3d Sess. (November 30, 1937) at 4-5.

12. The Association began operations with an initial capital of $10 million and paid in surplus of $1 million provided by the RFC which maintained supervisory control over the Association. *Background and History*, supra n. 5, at 2.

13. Although the FNMA portfolio was quickly inaudated with these below-market rate CO mortgages, FNMA continued to delay operating expenses and proper on its earnings from its call activities. In the period from 1938 to 1958, FNMA paid the Treasury Interest and dividends aggregating $201 million, and in addition, accumulated a surplus of $425 million. **Recommendations on Government Housing Policies and Programs**, December 1953, p. 363. (Hereafter FNMA Advisory Committee Report).

14. See H. Rep. No. 312, 78th Cong. 1st Sess. (March 25, 1943) at 5: "The Committee finds there can be no serious doubt that the basic need will be to audit in such a state that the Administrator will have to charter these Associated Associations without regard to the need for them with the above situation that there may be outstanding a large number of foreclosed depositories which would not be properly supervised in the market and would lead to a repetition of our experience with the closed stock–land banks."

18. For a study of the secondary mortgage market facilities advocated by these segments of the housing industry, see the programs that were commenced by the President's Advisory Committee on Government Housing Policies and Programs in the latter part of 1938, *A Report of the President's Advisory Committee Report*, supra n. 12.

19. The viewpoint of traditional mortgage lenders with respect to FNMA emphasized that FNMA was best expressed by Charles A. Gewitz, Executive Vice President of the National Association of Federal Credit Unions, in *The Mortgage Market: Are we Ready for the Federal Government*' at *The FNMA Growth* (hereafter FNMA) the FNMA's secondary market operations were intended to "provide supplementary assistance" by tapping non-traditional sources of funds through the issuance of FNMA mortgage paper which would be more liquid and entail less risk than investments in individual mortgages. It was thought that funds used by FNMA would be transferred to housing purposes by FNMA's use of them to purchase mortgages. "Improving the distribution of mortgage capital available for home mortgage market and minimum loss to the Federal Government." (id. at 23.)

20. The language of the statute as well as the legislative history makes clear that FNMA's secondary market operations were intended to "provide supplementary assistance" by tapping non-traditional sources of funds through the issuance of FNMA mortgage paper which would be more liquid and entail less risk than investments in individual mortgages. It was thought that funds would be transferred to housing purposes by FNMA's use of them to purchase mortgages. "Improving the distribution of mortgage capital available for home mortgage market and minimum loss to the Federal Government." (id. at 23.)

21. The purpose of this Article was to explain the concept during G.S. Congress meetings with Congressmen McDonough.

22. *Mr. McDowoun*. * * * Do you understand you to say that you may purchase only these mortgageable mortgages that the banks and other financial institutions will not purchase?

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

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

25. *Mr. Cole*. The best evidence of that is the record of practically no loss which FNMA or the FHA has experienced in mortgages.* (1954 House Hearings, supra n. 10, at 107–108.)

26. FNMA as an institution survived in the 1954 legislation only because FNMA supported successfully argued that there were legitimate government purposes which could be exercised only through its auspices. See, *Minority Report of the President's Advisory Committee Report*, supra n. 12, at 369.

27. FNMA was a significant and consistent seller of mortgages between 1961–1968. In that period FNMA sold more than $1.5 bil-

FEDERAL REGISTER, VOL. 43, NO. 159—TUESDAY, AUGUST 15, 1978
lions in mortgages, sales combined with payments made on mortgages it retained resulted in a decrease in the FNMA portfolio, despite increases, from $2.2 billion at the end of 1966 to $3 billion at the end of 1969. The failure of FNMA to be a net lender, even during periods of credit ease, since 1966 has embarrassed the corporation in controversy with traditional mortgage lenders and Congressional committees which have oversight over FNMA's activities. "Background and History," supra n. 9, at 8.

38. Tabled in a House report at pages 51 and 52 of a FNMA publication, "FNMA: Background and History, 1970," demonstrates the enormous increase in FNMA's mortgage portfolio during this period.

39. For an excellent discussion of the functions of a secondary market facility under the Charter Act of 1968, see "Background and History," supra n. 9, at 4-7.

40. H.R. 99-448, August 1, 1968, 82 Stat. 535, section 305 of the amended Charter Act provided for the exercise of oversight over the preferred stock held by the Secretary of the Treasury, on September 30, 1968, FNMA retained its preferred stock and FNMA's common stock was changed from nonvoting, $100 par value, to voting, no par value, conferring after a 3 to 8-year transition period the right to elect 10 members of the 12-man board of directors. Sections 302 and 303(b) of the Charter Act, 71 U.S.C. 1721(b), 1722(a)(1), of the 1968 Amendments provided that during the transition period the board of directors would consist of 10 of whom were appointed by the Secretary of Labor, and 1 of whom were appointed by the Secretary of HUD until the Board of Directors was re-established on December 31, 1968. Since the end of the transitional period, FNMA's five directors' positions which are not subject to shareholder control have been filled annually by appointments made by the President.


34. Id. at 82.


40. "The 1978 Annual Report of FNMA," recognizes that FNMA "...has not hesitated to purchase mortgage debt instruments that is broader than that available to other corporations. This makes it possible for FNMA to borrow at costs lower than other corporate savers." 41. Hearings on Proposed Housing Legislation for 1968 Before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 90th Cong., 2d Sess., 1439 (1968). When some witnesses expressed reservations that private ownership would change the public interest policies of FNMA, Senator Sparkman wrote then Secretary Weaver asking whether these concerns were justified. Secretary Weaver assured Senator Sparkman that changes in the functions of the secondary market operations would be "relatively few and of a minor nature." 41. H. Rept. No. 1123, supra, n. 35, at 82.

41. S. Rept. No. 1123, supra, n. 35, at 82.

42. Id. at 82.

43. See sections 305(a) and 305(b) of the Charter Act, 71 U.S.C. 1721(b), 1722(a)(1).

44. S. Rept. No. 1123, supra, n. 35, at 82.

45. Opinion of the Attorney General of the United States, June 3, 1977. The subject of the opinion was the constitutionality of the 1968 Amendments. 46. id. at 82.


49. See supra communications on the President's Commission on Budget Concepts, supra n. 47, and 72-73; Committee Memorandum, supra n. 49, at 30-30; Hearings on S. 1397, supra, n. 50, at 121-122; Committee Memorandum, supra n. 49, at 6-6; Memorandum Regarding the Policies and Performance of the Federal National Mortgage Association, 90th Cong., 1st Sess. (1967) (Hereinafter cited as Committee Memorandum).


51. Hearings on S. 1397, supra, n. 50, at 30-30; Hearings on FNMA, supra, n. 48, at 26, 26; Committee Memorandum, supra n. 49, at 30-30.

52. id. at 121-122; Committee Memorandum, supra n. 49, at 41.

53. A number of witnesses at the hearings examined the constitutionality of the FNMA's policy of constantly increasing the size of its mortgage portfolio. Hearings on FNMA, supra, n. 48, at 26, 26; Committee Memorandum, supra n. 49, at 30-30. In addition, they pointed out that a failure to balance mortgage purchases with sales, when this was feasible, is one of the factors that contribute to the passive spread between portfolio income and borrowing costs and the sizes of the portfolio. In 1977, this spread was 1.5 percent; 1977 average portfolio return was 8.3 percent and 1977 average borrowing cost was 6.5 percent. On a 1977 year-end portfolio of $33,187,846, FNMA therefore obtained a gross return in excess of $400 million. 54. Hearings on FNMA, supra, n. 48, at 3.

55. H. Rept. No. 1123, 90th Cong., 2d sess., 70 (1968). FNMA has not conducted an audit of its physical plant and although the Charter Act originally authorized the President to conduct audits of FNMA, the provision which granted these auditing powers has also been repealed. See section 801(b) of the Federal Housing Act, as enacted, repealed, by Housing and Urban Development Act of 1974 (Pub. L. No. 93-382, 88 Stat. 728).

56. See section 801(b) of the Civil Rights Act of 1964; 8 U.S.C. 259 et seq.
<table>
<thead>
<tr>
<th>STATE</th>
<th>CITY</th>
<th>STATE</th>
<th>CITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Auburn</td>
<td>Alabama</td>
<td>Birmingham</td>
</tr>
<tr>
<td>Anchorage</td>
<td>Anchorage</td>
<td>Alaska</td>
<td>Anchorage</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas</td>
<td>Arizona</td>
<td>Arizona</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Arkansas</td>
<td>Arkansas</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas</td>
<td>California</td>
<td>California</td>
</tr>
<tr>
<td>Atlanta</td>
<td>Atlanta</td>
<td>Colorado</td>
<td>Colorado</td>
</tr>
<tr>
<td>Anchorage</td>
<td>Anchorage</td>
<td>Connecticut</td>
<td>Connecticut</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas</td>
<td>Delaware</td>
<td>Delaware</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>District of Columbia</td>
<td>District of Columbia</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Florida</td>
<td>Florida</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Georgia</td>
<td>Georgia</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Hawaii</td>
<td>Hawaii</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Illinois</td>
<td>Illinois</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Indiana</td>
<td>Indiana</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Iowa</td>
<td>Iowa</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Kansas</td>
<td>Kansas</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Kentucky</td>
<td>Kentucky</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Louisiana</td>
<td>Louisiana</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Maine</td>
<td>Maine</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Maryland</td>
<td>Maryland</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Massachusetts</td>
<td>Massachusetts</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Michigan</td>
<td>Michigan</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Minnesota</td>
<td>Minnesota</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Missouri</td>
<td>Missouri</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Missouri</td>
<td>Missouri</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>New Hampshire</td>
<td>New Hampshire</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>New Jersey</td>
<td>New Jersey</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>New Mexico</td>
<td>New Mexico</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>New York</td>
<td>New York</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>North Carolina</td>
<td>North Carolina</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>North Dakota</td>
<td>North Dakota</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Ohio</td>
<td>Ohio</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Oklahoma</td>
<td>Oklahoma</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Oregon</td>
<td>Oregon</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Pennsylvania</td>
<td>Pennsylvania</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Rhode Island</td>
<td>Rhode Island</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>South Carolina</td>
<td>South Carolina</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>South Dakota</td>
<td>South Dakota</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Tennessee</td>
<td>Tennessee</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Texas</td>
<td>Texas</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Utah</td>
<td>Utah</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Vermont</td>
<td>Vermont</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona</td>
<td>Virginia</td>
<td>Virginia</td>
</tr>
</tbody>
</table>

FEDERAL REGISTER, VOL. 43, NO. 158—TUESDAY, AUGUST 15, 1978

**RULES AND REGULATIONS**

**WASHINGTON**
- Everett
- Kent
- Sequim
- Spokane
- Tumwater
- Yakima

**WEST VIRGINIA**
- Charleston
- Huntington
- Parkersburg
- Wheeling

**WISCONSIN**
- Appleton
- Eau Claire
- Green Bay
- Kenosha
- La Crosse
- Madison
- Milwaukee
- Oshkosh
- Racine
- Superior

**PUERTO RICO**
- Caguas
- Mayaguez
- Ponce
- San Juan

**RHODE ISLAND**
- Pawtucket
- Providence

**SOUTH CAROLINA**
- Charleston
- Columbia
- Greenville
- North Charleston
- Spartanburg

**SOUTH DAKOTA**
- Sioux Falls

**TENNESSEE**
- Bristol
- Chattanooga
- Clarksville
- Johnson City

**TEXAS**
- Abilene
- Amarillo
- Austin
- Beaumont
- Brownsville
- Bryan
- College Station
- Corpus Christi
- Dallas
- Denison
- Edinburg
- El Paso
- Fort Worth
- Galveston
- Harlingen
- Houston
- Killeen
- Laredo
- Odessa
- San Angelo
- San Antonio
- San Benito
- Sherman
- Temple
- Texas City
- Tyler
- Waco
- Wichita Falls

**UTAH**
- Salt Lake City
- Ogden
- Provo

**VIRGINIA**
- Colonial Heights
- Hampton
- Hopewell
- Lynchburg
- Newport News
- Norfolk
- Petersburg
- Portsmouth
- Richmond
- Roanoke
- Virginia Beach

---

**APPENDIX B—BUSINESS ACTIVITIES REPORT**

Pursuant to 24 CFR 31.22, FNMA shall supply the Secretary with a report containing the following information:

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

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

**ITEM 1—BUSINESS**

(a) Description of business activities:

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

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

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

(b) Describe the competitive position of FNMA in the marketplace, including, to the extent reasonably known:

(i) FNMA's principal methods of competition; (ii) positive and negative factors affecting that position; and (iii) all competitors actual or proposed and their effect on that position.

(c) Reports on business activities:

(i) Provide a general plan for the conduct of FNMA's secondary market operations including but not limited to FNMA's assessment of (a) the amount of supplementary assistance it will provide to the secondary market or residential mortgage; (b) the amount of additional obligation it will require; (c) the amount of increase or decrease in the size of its mortgage portfolio expected over the year; (d) any action other than the regular auction of commitments it proposes to facilitate the transfer of mortgage funds from areas of credit surplus to areas of credit shortage; (e) any actions it proposes to take to increase the use of its facilities in connection with mortgagees secured by properties in central cities; (f) its needs for additional equity financing; (g) its target for return on equity; (h) its need to issue additional debt instruments; (i) the average and incremental cost of debt necessary to grow the mortgage portfolio; (j) the average and incremental return expected on the mortgage portfolio for the ensuing year; and (k) such other events or changes in FNMA's business or the mortgage market, as the Secretary deems necessary.

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

(e) Estimated FNMA purchases and sales of home mortgage loans in processing of any other interests in such loans.

(f) Estimated commitments to purchase multifamily residential and other project loans or participation or other interests in such loans.

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

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

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

(j) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

(k) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

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

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

(n) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

(o) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

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

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

(r) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

(s) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

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

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

(v) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

(w) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

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

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

(z) Estimated FNMA commitment to purchase multifamily residential and other project loans or participation or other interests in such loans.

{...}

---

**ITEM 3—FEES**

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

**ITEM 4—LEGAL PROCEEDINGS**

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

ITEM 5—EXECUTIVE OFFICERS

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

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

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

(b) Give a brief account of the business experience during the past five years of each executive officer, including the officer’s principal occupation and employment during such period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where a person has been on FNMA’s board for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in previous positions to provide adequate disclosure of prior business experience.

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

(i) A petition filed by or against such person under the Bankruptcy Act or any state insolvency laws; the court appointment of a receiver, fiscal agent or similar officer for business or property of such person, or any partnership in which he or she was a general partner or within 3 years before the time of such filing, or any corporation or business association of which he or she was an executive officer or within 3 years before the time of such filing.

(ii)Conviction in a criminal proceeding (excluding traffic violations and other minor offenses) or being the subject of a pending similar criminal proceeding.

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

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

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

ITEM 6—RENUMERATION OF DIRECTORS AND OFFICERS

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

| Name of Individual or Number of Persons in Group | Allocated Direct Remuneration | Allocated Direct Remuneration
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>in group</td>
<td>was received</td>
</tr>
</tbody>
</table>

(b) Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by FNMA or any of its subsidiaries:

<table>
<thead>
<tr>
<th>(A) Name of Individual or Number of Persons in Group</th>
<th>(B) Amounts Paid or Accrued During Last Fiscal Year</th>
<th>(C) Estimated Annual Benefits Upon Retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Each Director or Officer named in paragraph (a)(1), naming each such person.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or at the specified number of years of service. In such case, column (A) may be given in the form of a table showing the annual benefits payable upon retirement to persons in specified salary classifications. In the case of any plan (which must be reported under this section) where the amount set aside each year depends upon the amount of earnings of the recipient or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information.

FEDERAL REGISTER, VOL. 43, NO. 158—TUESDAY, AUGUST 15, 1978
RULES AND REGULATIONS

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

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

Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

ITEM 18—OPTIONS GRANTED TO MANAGEMENT TO PURCHASE SECURITIES

Pursuant to the following information, in substantially the tabular form indicated, as to all options to purchase any securities from FNMA or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the calendar year, and as to all options held by such persons as of the latest practicable date, regardless of when such options were granted:

(a) Each director and officer named in answer to Item 10(a)(1), naming each such person; and

(b) All directors and officers of FNMA as a group, without naming them:

<table>
<thead>
<tr>
<th>Insert name</th>
<th>Insert name</th>
<th>Insert name</th>
<th>All directors and officers as a group</th>
</tr>
</thead>
</table>

**Options granted**
- Number of shares
- Average option price per share
- Options exercised:
  - Number of shares
  - Aggregate option price of shares purchased
  - Aggregate market value of shares on date options were exercised
  - Unexercised options held at insert date
  - Number of shares
  - Average option price per share

**ITEM 11—INTEREST OF MANAGEMENT AND OTHERS**

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

(1) Any director or officer of FNMA;

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

It should be noted that this item calls for disclosure of indirect, as well as direct material interests in transactions.

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

(b) State as to each of the following persons who was indebted to FNMA or its subsidiaries at any time since the beginning of the last calendar year of FNMA:

(1) the largest aggregate amount of indebtedness outstanding at any time during such period;

(2) the nature of the indebtedness and of the transaction in which it was incurred;

(3) the amount thereof outstanding as of the latest practicable date; and

(4) the rate of interest paid or charged thereon:

(1) Each director or officer of FNMA; and

(2) Each associate of any such director or officer.

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

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

(1) Any director or officer of FNMA;

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

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

APPENDIX C—REGULAR REPORTS
Pursuant to 24 CFR 812.23, FNMA shall submit certain regular reports to the Secretary of Housing and Urban Development. Results of free market system auctions

<table>
<thead>
<tr>
<th>Type of Loan</th>
<th>Total</th>
<th>FHA-VA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FHA-VA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) Date of auction: 
(b) Number of offers: 
(c) Dollar value of offers: 
(d) Number of competitive offers: 
(e) Number of noncompetitive offers: 
(f) Dollar value of noncompetitive offers: 
(g) Highest yield on offers: 
(h) Lowest yield on offers: 
(i) Median yield on offers: 
(j) Total value offered by mortgage companies: 
(k) Total value offered by non-mortgage companies: 
(l) Total value offered by all others: 
(m) Total value offered by other lenders: 
(n) Number of offers from lenders who made more than one offer: 
(o) Number of offers from lenders who made two or more offers: 
(p) Dollar value of offers from lenders who made two or more offers: 

RESULTS OF FREE MARKET SYSTEM AUCTIONS

1. AUCTIONS OF COMMITMENTS TO PURCHASE LOANS
Provide the results of each Free Market System auction of commitments to purchase home mortgage loans, including the status of obligational authority using the following forms:

<table>
<thead>
<tr>
<th>Type of Loan</th>
<th>Total</th>
<th>FHA-VA</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FHA-VA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(a) Date of auction: 
(b) Number of offers: 
(c) Dollar value of offers: 
(d) Number of competitive offers: 
(e) Number of non-competitive offers: 
(f) Dollar value of non-competitive offers: 
(g) Highest yield on offers: 
(h) Lowest yield on offers: 
(i) Median yield on offers: 
(j) Total value offered by mortgage companies: 
(k) Total value offered by non-mortgage companies: 
(l) Total value offered by all others: 
(m) Total value offered by other lenders: 
(n) Number of offers from lenders who made more than one offer: 
(o) Number of offers from lenders who made two or more offers: 
(p) Dollar value of offers from lenders who made two or more offers: 

3. INVESTORS PURCHASING FNMA SECURITY ISSUES
Provide a tabulation showing which investor groups purchased the securities issued by FNMA during the quarter. The report will follow the last quarterly report issued by FNMA and be provided on a cumulative basis for all securities issued. Separate figures should be shown for purchases of long-term securities (greater than six month maturity) and short-term securities as well as total securities purchased by each of the following investor groups:

- (a) Commercial banks (excluding trust departments). 
- (b) Mutual savings banks. 
- (c) Savings and loan associations. 
- (d) Life insurance companies. 
- (e) State and local government retirement funds. 
- (f) State and local governments. 
- (g) Private, non-insured pension funds. 
- (h) Credit unions. 
- (i) Bank administered personal trust and estates. 
- (j) Fire and casualty insurance companies. 
- (k) Non-financial corporations. 
- (l) Individuals and others. 
- (m) Retained by members of selling group classified by the Federal Reserve Bank of New York as “Security Dealers”.
- (n) Retained by other members of selling group not so classified.

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

- (a) Quarter.
- (b) Year.
- (c) VA guaranteed.
- (d) Conventional.
- (e) FHA Section 203.
- (f) FHA Section 231 (ch. 3).
- (g) FHA Section 231 (ch. 8).
- (h) FHA insured home loans.
- (i) Total dollar amount and number of mortgages reported in (h)-(q).
- (j) In central cities.
- (k) In suburbs.
- (l) In other areas.
- (m) FHA insured mortgage (indicate number of dwelling units covered by each project mortgage).
- (n) For each of the categories enumerated above indicates:
  - (1) Number of loans with one monthly debt service payment due at the end of the quarter.
  - (2) Number of loans with two monthly debt service payments due at the end of the quarter.
  - (3) Number of loans with three or more monthly debt service payments due at the end of the quarter.
- (p) Number of loans assigned, purchased, or foreclosed during the quarter.

5. CHARACTERISTICS OF CURRENT MORTGAGE PURCHASES
Provide a print-out of all mortgages purchased by FNMA during the quarter indicating the following:

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

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

- (a) Central cities.
- (b) Suburbs.
- (c) Other.

BOUND FOR LOW AND MODERATE INCOME FAMILIES

- (d) FHA § 231.
- (e) FHA § 233.
- (f) FHA § 234.
- (g) FHA § 237.
- (h) Total number of units in housing projects defined in § 63.23(I)(2) which are not reported under clauses (d) or (f) above.
- (i) Single family dwellings defined in § 63.23(I)(2) which are not reported under clauses (e) or (g) above.

Note: The information requested by clauses (a), (b), (c), and (d) shall be presented separately for:

- (1) Conventional home loans.
- (2) VA guaranteed home loans.
RULES AND REGULATIONS

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

In addition, the quarterly report should also show a breakdown of the commitment fees, measured in thousands of dollars, as follows:
(a) Underwriting revenue fees.
(b) Offer fees for competitive Free Market System bids.
(c) Commitment fees for Free Market System offers accepted.
(d) Proceeding fees for Convertible Standby Commitment Offers.
(e) Commitment fees for Convertible Standby Commitment offers accepted.
(f) Commitment fees upon delivery of a non-converted Convertible Standby Commitment.
(g) Commitment fees upon receipt of a conversion of Convertible Standby Commitments.

III. NET INCOME

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

9. COMMON STOCK

Provide a tabulation showing the distribution of the holdings of FNMA's outstanding common stock, as of the end of each calendar quarter, including the following:
(a) Quarter, year.
(b) Number of shares held by sellers of mortgage loans.
(c) Number of shares held by financial institutions.
(d) Number of shares held by individuals.
(e) Number of shares held by security dealers.
(f) Number of shares held by others.
(g) Total number of shares outstanding.
(h) Changes in number of shares outstanding (including data of change).
(i) Per share earnings, dividends.

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

[FR Doc. 78-22370 Filed 8-14-78; 8:45 am]