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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1 CFR Part 462

24 CFR Part 81

[Docket No. FR-4095-F-02]

RIN 2501-AC35

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes final procedures that govern the issuance, recordation, and transfer of Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively "Government-Sponsored Enterprises" or "GSEs") securities in the Book-entry System. The rule makes final, with only minor changes, the interim rule published in the **Federal Register** on December 2, 1996 (61 FR 63944).

EFFECTIVE DATE: June 30, 1997.

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

SUPPLEMENTARY INFORMATION:

I. Background

Both Fannie Mae and Freddie Mac use the Book-entry System of the Federal Reserve Banks to issue, record, and transfer ownership of certain of their respective securities. Although the Book-entry System was originally designed for Treasury securities, both GSEs have used this system under separate sets of regulations dating back to the late 1970s. Treasury regulations govern the Book-entry System, known as the commercial book-entry system, when it is used to issue, record, transfer and maintain Treasury securities. Recently, Treasury substantially modified its regulations governing Treasury securities held in this system to reflect contemporary legal development of the Uniform Commercial Code ("UCC"). Treasury's regulation was published on August 23, 1996 (61 FR 43626).

On December 2, 1996, pursuant to its general regulatory authority respecting the GSEs, HUD published in the **Federal Register** (61 FR 63944) an interim rule to revise the regulations governing the book-entry of GSE securities. As explained in the preamble to the interim rule, except as was necessary because of differences between the GSEs and their securities and Treasury and Treasury securities, HUD's revisions to its GSE book-entry regulations followed the revisions Treasury made to its book-entry regulations. The preamble to HUD's interim rule provided background information explaining HUD's process in developing the interim rule, HUD's analysis of revisions to the book-entry procedures, and a section-by-section comparison of the interim rule with Treasury's model. Since the discussion in the preamble to the interim rule remains applicable, HUD is not republishing the discussion contained in the preamble to the proposed rule.

II. Changes Contained in Today's Final Rule

HUD received only two public comments on the interim rule. Both of those comments came from Fannie Mae. Fannie Mae suggested several changes, all of which have been incorporated, in one form or another, into the final rule.

1. Fannie Mae suggested inserting a definition of "participant" to clarify that a participant can include a GSE, rather

than using the definition of "participant" in Treasury's TRADES regulation. Using the TRADES definition of participant would effectively exclude a GSE from being a participant within the meaning in HUD's GSE book-entry rule, since to be a participant under the TRADES definition, the entity must be a "person" and under HUD's GSE book-entry rule a "person" does not include a GSE. The GSEs frequently hold GSE securities directly through Federal Reserve Banks and act as participants. HUD has added a definition of "participant" to section 81.2 which includes the GSEs to clarify this point.

2. Fannie Mae suggested inserting a definition of "entitlement holder" to clarify that an entitlement holder can include a GSE, rather than using the definition of "entitlement holder" in Treasury's TRADES regulation. Using the TRADES definition of entitlement holder would effectively exclude a GSE from being an entitlement holder within the meaning in HUD's GSE book-entry rule, since to be an entitlement holder under the TRADES definition, the entity must be a "person" and under HUD's GSE book-entry rule a "person" does not include a GSE. While the interim rule defined "entitlement holder" in § 81.2, that definition did effectively exclude a GSE. Since Fannie Mae and Freddie Mac frequently hold GSE securities directly or indirectly through Federal Reserve Banks, they could be entitlement holders just as they could be participants. HUD agrees that the interim rule should be modified. HUD has revised the definition of "entitlement holder" in § 81.2 to include the GSEs to clarify this point.

3. Fannie Mae suggested adding a sentence to the end of the definition of "Book-entry GSE Security" to clarify that a book-entry GSE Security also includes the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Fannie Mae requested that this language be inserted to ensure that interest or principal "strips" relating to Fannie Mae securities are accorded the same treatment as Fannie Mae securities if they are also maintained on the books

of a Federal Reserve Bank. Fannie Mae noted that the final rule published by the Thrift Depositor Protection Oversight Board governing book-entry Resolution Funding Corporation ("RFC") securities included similar language. See Thrift Depositor Protection Oversight Board regulation governing book-entry RFC securities, Final rule, §§ 1511.1 (definition of "Book-entry Funding Corporation Security") (61 FR 66874, December 19, 1996).

HUD agrees that such a clarification is appropriate and has inserted language into the definition of "Book-entry GSE Security" addressing this point. HUD notes that the language in the final rule departs from the language in the regulation governing book-entry RFC securities because while the Securities Documentation for book-entry RFC securities specifically addresses whether the division of the separate interest and principal components is authorized, the Securities Documentation for Book-entry GSE Securities does not address this matter.

4. Fannie Mae suggested clarifying in § 81.92(a) that any choice of law provision in the Securities Documentation would be given effect only to the extent it is not inconsistent with HUD's regulation. HUD agrees with the comment. To the extent that the choice of law provisions in the Securities Documentation conflict with HUD's book-entry regulations, HUD's book-entry regulations would take precedence. Thus, the parenthetical in § 81.92(a) has been revised. This revision makes this provision in HUD's regulation more similar to the comparable provision in Treasury regulations applicable to Student Loan Marketing Association ("Sallie Mae") securities. See the Bureau of the Public Debt, Fiscal Service, Treasury regulation governing book-entry Sallie Mae securities, Final rule, §§ 354.2(a) (62 FR 621, 623, January 6, 1997).

5. Fannie Mae also suggested several editorial changes, all which have been incorporated into the final rule. These changes included clarifying the definition of "Eligible Book-entry GSE Security" in a manner consistent with the definition used by the Farm Credit Administration in its book-entry rule. See Farm Credit Administration regulation governing book-entry Farm Credit securities, Interim rule, § 615.5450 (definition of "Eligible book-entry security") (61 FR 67188, 67192, December 20, 1996).

In addition to these comments from Fannie Mae, during the comment period, HUD continued to consult with Treasury on the development of a final

rule. Treasury suggested one change to the rule which HUD has incorporated into this final rule.

The change suggested by Treasury is to delete the reference to "the United States" in the following four occurrences in the interim rule:

1. Section 81.92(a)(1), which specified that the rights and obligations of the United States with respect to a Book-entry GSE Security or Security Entitlement and the operation of the Book-entry System as it applies to GSE Securities are governed by the Book-entry regulations contained in this subpart H, the Securities Documentation (but not including any choice of law provisions in such documentation), and Federal Reserve Bank Operating Circulars.

2. Section 81.92(a)(2), which specified that the rights of the United States with respect to a Book-entry GSE Security or Security Entitlement and the operation of the Book-entry System applicable to GSE Securities are governed by the Book-entry regulations contained in this subpart H, the Securities Documentation (but not including any choice of law provisions in such documentation), and Federal Reserve Bank Operating Circulars.

3. Section 81.93(c)(1), which specified that the United States has no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve bank on whose books the interest of the Participant is recorded.

4. Section 81.94(a), which specified that the United States is not liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry GSE Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry GSE Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

The reason for eliminating the references to the United States in these four provisions is to avoid any unintended suggestion that there is an express or implied United States guarantee of GSE securities.

Notwithstanding that the GSEs enjoy the financial market's assumption that the Federal Government and, ultimately, the American taxpayer would stand behind the obligations of the GSEs, the GSEs' obligations explicitly are not guaranteed by the United States. See, e.g., section

1302(4), 1381(f) and 1382(n) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992, and codified, generally, at 12 U.S.C. 4501-4641) (requiring each GSE to state in its obligations and securities "are not guaranteed by the United States.")).

This change to these four provisions conforms HUD's rule to the book-entry rules published by other agencies with oversight of other Government Sponsored Enterprises. See Federal Housing Finance Board regulation governing book-entry Federal Home Loan Bank securities, Interim rule, §§ 912.2(a), 912.4(c)(1), 912.5(a) (61 FR 64021-64027, December 3, 1996); Thrift Depositor Protection Oversight Board regulation governing book-entry RFC securities, Final rule, §§ 1511.2(a)(1), 1511.2(a)(2), 1511.4(c)(1), 1511.5(a) (61 FR 66875-66878, December 19, 1996); Bureau of the Public Debt, Fiscal Service, Treasury regulation governing book-entry Sallie Mae securities, Final rule, §§ 354.2(a)(1), 354.2(a)(2), 354.4(c)(1), 354.5(a) (62 FR 621-625, January 6, 1997); and Tennessee Valley Authority ("TVA") regulation governing book-entry TVA Power securities, Final rule, §§ 1314.4(a)(1), 1314.4(a)(2), 1314.5(c), 1314.6(a) (62 FR 920-923, January 7, 1997).

Findings and Certifications

Public Reporting Burden

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

Impact on Small Entities

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

Environmental Impact

This rule is exempt from the requirement for an environmental assessment under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), in accordance with HUD regulations at 24 CFR 50.19(c)(1), as revised by a final rule on September 27, 1996 (61 FR 50919). In

accordance with 24 CFR 50.19(a), other Federal environmental laws, as described in 24 CFR 50.4, are not applicable to this rule.

Federalism Impact

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

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

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

Unfunded Mandates Reform Act

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

Catalog

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

List of Subjects

1 CFR Part 462

Accounting, Banks, Banking, Securities.

24 CFR Part 81

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

Accordingly, for the reasons set out in the preamble, under the authority of 42 U.S.C. 3535(d), the amendments to part 462 of title 1 of the Code of Federal Regulations and part 81 of title 24 of the Code of Federal Regulations published in the interim rule on December 2, 1996 are adopted as final with the following additional amendments:

TITLE 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for Part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716-1723h, and 4501-4641; 42 U.S.C. 3535(d) and 3601-3619.

2. In § 81.2(b), the definitions of "Book-entry GSE Security", "Eligible Book-entry GSE Security", "Entitlement Holder", and "Securities documentation" are revised and a new definition of "Participant" is added, in appropriate alphabetical order location, to read as follows:

§ 81.2 Definitions.

* * * * *

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System. Book-entry GSE Security also means the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

* * * * *

Eligible Book-entry GSE Security means a Book-entry GSE Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

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

* * * * *

Participant means a Person or GSE that maintains a Participant's Securities Account with a Federal Reserve Bank.

* * * * *

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

* * * * *

3. In § 81.92, paragraph (a) is revised to read as follows:

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

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

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

(i) A Book-entry GSE Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to GSE Securities; and

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

(i) A Book-entry GSE Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to GSE Securities;

* * * * *

§ 81.93 [Amended]

4. In § 81.93, paragraph (c)(1) is amended by removing the phrase " , the United States,".

§ 81.94 [Amended]

5. In § 81.94, paragraph (a) is amended by removing the phrase " , the United States,"; and paragraph (b)(2) is amended by removing the words "principal and interest" and by adding the words "redemption proceeds" in their place.

§ 81.96 [Amended]

6. In § 81.96, paragraph (d) is amended by removing the words "offering circular" and by adding in their place the words "Securities Documentation".

Dated: May 20, 1997.

Andrew Cuomo,

Secretary.

[FR Doc. 97-14028 Filed 5-28-97; 8:45 am]

BILLING CODE 4210-32-P

Office of Personnel Management

5 CFR Part 532

RIN 3206-AH88

Prevailing Rate Systems; Abolishment of Lubbock, TX, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to abolish the Lubbock, Texas, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and to establish a new Curry, New Mexico, NAF wage area. The Lubbock NAF wage area is presently composed of one survey area county (Lubbock, TX) and two area of application counties (Curry, NM, and Potter, TX). The new Curry NAF wage area will be composed of one survey area county (Curry, NM) and two area of application counties (Lubbock, TX, and Potter, TX).

DATES: This interim rule becomes effective on June 2, 1997. Comments must be received by June 30, 1997. Employees currently paid rates from the Lubbock, TX, NAF wage schedule will continue to be paid from that schedule until their conversion to the Curry NAF wage schedule on the effective date of the first wage schedule for the Curry NAF wage area.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Policy, Human Resources Systems Service, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606-4264.

FOR FURTHER INFORMATION CONTACT: Frank Derby, (202) 606-2848.

SUPPLEMENTARY INFORMATION: Because the pending closure of the Lubbock, TX, nonappropriated fund (NAF) wage area host activity, Reese Air Force Base, has left Lubbock County without an activity having the capability to conduct an NAF wage survey, the Department of Defense (DOD) recommended that the Office of Personnel Management (OPM) abolish the Lubbock, TX, NAF wage area and establish a new Curry, NM, NAF wage

area. The Lubbock wage area is presently composed of one survey area county (Lubbock, TX) and two area of application counties (Curry, NM, and Potter, TX). The new Curry wage area will be composed of one survey area county (Curry, NM) and two area of application counties (Lubbock, TX, and Potter, TX).

Curry County meets the minimum regulatory requirements in section 532.219 of title 5, Code of Federal Regulations, to be an NAF survey area. Cannon Air Force Base, located in Curry County, has more than the minimum required number of NAF employees paid under the FWS and has the capability to conduct a local wage survey. Also, Curry County has more than the required minimum number of private enterprise employees in establishments within survey specifications.

5 CFR 532.219 lists the following regulatory criteria that OPM considered when redefining the Lubbock wage area:

- (1) Proximity of largest activity in each county;
(2) Transportation facilities and commuting patterns; and
(3) Similarities of the counties in:
(i) Overall population;
(ii) Private employment in major industry categories; and
(iii) Kinds and sizes of private industrial establishments.

Another relevant factor that OPM weighed is the continuity of the historical composition of the Lubbock NAF wage area. Also, the willingness of DOD and its wage committee to establish a new wage area and conduct a new survey in this case furthers the concepts of wage rates based on local prevailing rates and of effective partnership in this period of wage area realignments necessitated by downsizing of the NAF workforce.

Full-scale wage surveys will be ordered in the Curry wage area in June of odd numbered fiscal years—e.g., in June 1997. The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because preparations for the 1997 Curry, NM, NAF wage area

survey must otherwise begin immediately.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B—[Amended]

2. Appendix B to subpart B of part 532 is amended for the State of Texas by removing the entry for Lubbock and by adding in alphabetical order for the State of New Mexico a new entry for Curry with a beginning month of survey of "June" and a fiscal year of full-scale survey of "Odd."

3. Appendix D to subpart B is amended by removing the wage area listing of Lubbock, Texas, and by adding in alphabetical order a new entry of Curry, New Mexico, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

New Mexico

* * * * *

Curry

Survey Area:

New Mexico:

Curry

Area of application. Survey area plus:

Texas:

Lubbock

Potter

* * * * *

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