Sections 320.1, 320.5 and 320.13 (formerly Sections 390.1, 390.5 and 390.13)

These sections have been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association.

Section 320.15 (formerly Section 390.15)

This section has been amended to remove reference to "straight pass through" securities, which are no longer guaranteed by the Association. This section also has been amended to remove the specific procedures followed by the Association upon the declaration of a default. To the extent necessary, these procedures are outlined in the Guides and/or the guaranty agreement with the issuer.

## 6. Part 330 (formerly part 395)

The former part 395, Multiclass Securities, has been moved to part 330, following part 320 dealing with the mortgage-backed securities program, to reflect its status as a program that flows directly from the mortgage-backed securities program. Some language has been removed because it is duplicative of language in Parts 300 and 320.

## B. Issuer Eligibility and Integrity Reforms

On December 9, 1993 (58 FR 64713), the Department published a proposed rule to reform the Association's issuer eligibility and integrity requirements for new issuer approval and maintenance of approved issuer status. A total of nine comments were received. The commenters included one approved issuer, one mortgage company, one federal savings bank, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the Office of the Comptroller of the Currency (OCC), the Independent Bankers Association of America and the Mortgage Bankers Association of America.

The commenters expressed general support for the Department's objectives of strengthening the issuer requirements. The commenters were especially supportive of the closer alignment of the Association's rules with those of Fannie Mae and Freddie Mac, and they expressed a desire for GNMA to continue in that direction. Some commenters opposed parts of the proposed rule, and some provided specific suggestions for changes. On the basis of these comments and further development of the concepts set forth in the proposed rule, the Department has made changes to the rule. These

Changes are discussed in the following sections of this preamble.

## 1. Section 320.3 (formerly Section 390.3) Eligible Issuers

There were four commenters on the paragraph dealing with Fannie Mae and Freddie Mac approval (former Section 390.3(a)(2), including Freddie Mac. Currently, Fannie Mae approval is required for program entry for single family issuers. This section proposed to include Freddie Mac approved seller/ servicers as applicants and to limit the Fannie Mae/Freddie Mac approval requirement to single family issuer applicants. While all comments on the proposed language were favorable, certain changes have been made as a result of the Association's own continued analysis of this section. The Association has decided to open its mortgage-backed securities program to issuers without Fannie Mae or Freddie Mac approval. Under the final rule, the Association will consider all applicants, although Fannie Mae and/or Freddie Mac approved applicants will be given special consideration in the approval process. Applicants with neither Fannie Mae nor Freddie Mac approval will be subject to a more stringent set of requirements to provide additional assurances that they are capable of performing the responsibilities of an issuer. These requirements will be set out in the applicable Guides.

The phrase limiting the applicability of this section to single family issuers has been dropped, since an alternative is now being provided to the Fannie Mae/Freddie Mac approval requirement. After an issuer is accepted into the MBS program, loss of either Fannie Mae or Freddie Mac approval continues to remain a basis for issuer default even in cases where the issuer qualified for program entry without Fannie Mae or Freddie Mac approval. In summary, as a result of further analysis, this section is being republished to reflect that (1) this section is applicable to all issuer types, and (2) Association approval is an acceptable alternative to Fannie Mae/ Freddie Mac approval. [Note: The "or the Association" language in the original regulations referred to the Tandem program which has been terminated.l

There were two commenters on the paragraph dealing with capacity to issue and service (former Section 390.3(a)(3). One comment agreed with the changes. The other commenter wants to expand the scope of the rule to allow the sale of servicing on pooled loans without requiring a change of issuer. The commenter stated that this would eliminate the mortgage assignment costs

currently incurred when servicing is sold and the issuer is substituted. Issuers may presently (1) service their pools themselves, (2) obtain subservicers for their pools, while remaining the issuer of record with full responsibility for those pools, (3) act as a subservicer for another issuer's pools, or (4) transfer issuer responsibility (and servicing) to another issuer. The Association believes these options give issuers the flexibility to manage their business while providing the Association with an adequate level of risk protection. The purpose of this section of the rule is to formally recognize that an issuer may choose to act as an issuer of pools or servicer or both. The Association is not prepared to make a major scope change to the rule to permit the sale of servicing without a change in issuer. Therefore the servicing language is not being changed. This section of the rule, however, is being republished with a minor change to clarify that the experience of the management of an issuer is a criterion for issuer eligibility.

There were three commenters on increasing the single family base net worth requirement to \$250,000. One commenter stated that the increase would be too costly for small lenders, while the other two commenters, both trade associations, agreed with the increase. One of these trade associations requested that GNMA consider special net worth requirements for small and minority lenders, and the other stated that the \$250,000 level would "increase the safety of the program yet not prohibit smaller institutions from

participating.'

There were two commenters on the requirement to index base Net Worth for inflation (former Section 390.3). One commenter generally agreed with the indexing. The other commenter questioned the need for indexing. It believes that the incremental component of net worth already takes inflationary concerns into account, and that smaller issuers may be adversely affected. It also requested that if indexing is implemented, that the Association (1) phase-in indexing over a minimum of 6 months, (2) reconsider whether the consumer price index (CPI) is the appropriate index, (3) allow decreases for inflation as long as the new value is not below \$250,000, and (4) place an annual cap on the potential increase.

The Association agrees that there are numerous factors to be considered in determining how the net worth element is implemented, and the impact on smaller issuers is certainly an important consideration. Since economic factors