monitor compliance with the housing goals (FHEFSSA, section 1336), and issue subpoenas (FHEFSSA, section 1348).117 The Secretary's functions, like the FTC's functions, include making factual determinations. For the Secretary these determinations include: (1) Whether a GSE is complying with the housing goals; (2) whether a GSE has made a good-faith effort to comply with a housing plan; and (3) whether a GSE has submitted the mortgage information and reports required under sections 1381(o), 1382(r), or 1337 of FHEFSSA. Under Morton Salt, these functions, along with the Secretary's general regulatory powers, support the Secretary's authority to verify independently the completeness and accuracy of data, information, and reports submitted by the GSEs, including conducting on-site verification when doing so is reasonably related to determining whether the GSEs are complying with the law.

Freddie Mac maintains that the Secretary can sufficiently monitor compliance through the extensive data and reports that the GSEs are required to provide. Freddie Mac points out that the Secretary can use the mortgage purchase data required to be submitted to verify the accuracy of the housing goal performance reported in the annual reports. Freddie Mac asserts, "If a GSE fails to submit required reports or data required under the Act or its charter, HUD can initiate enforcement proceedings and, incidental to those proceedings, can issue subpoenas for the production of documents and witnesses.

However, without the authority to verify the completeness and accuracy of the data, information, or reports submitted by each GSE, the Secretary would be hampered in making the determinations that are required. Such a situation could result in the Secretary erroneously concluding that the GSEs are complying with FHEFSSA's requirements when they are not, or that they are not complying with FHEFSSA's requirements when they are. Thus, where the Secretary determines that it is necessary to verify independently the data, information, or reports provided by the GSEs, including conducting onsite verification, such verification is

"reasonably related to the purposes of the enabling legislation."

Information Collection and Cost/Benefit Analysis

Freddie Mac argued that HUD's estimates of the cost of GSE compliance with the reporting requirements were grossly understated in the analysis provided with the proposed rule. Freddie Mac noted that HUD's estimate of its own costs to review the data was much higher than the costs estimated for the GSEs.

HUD did not act arbitrarily in estimating its own costs to review data as substantially higher than the costs to the GSEs of providing the data. HUD's estimates of costs did not include the GSEs' costs of amassing the data, including systems costs, because the cost estimates were intended to measure the incremental costs associated with compiling the data from the GSEs data systems, i.e., producing the tables, reports, and loan-level data tapes. The estimates also are not intended to reflect costs associated with data elements that the GSEs would collect in the absence of the final rule. Moreover, the costs should not reflect any analytical research conducted by the GSEs with respect to the data or the housing goals.

However, the Secretary does appreciate the GSEs' commitment to diligence in checking the accuracy of the data, and those costs have been accounted for in reviewing the information collection provisions in the final rule. In addition, after reviewing the comments on all areas of the rule in which information collection considerations were a factor, HUD revised its cost estimates to reflect more accurately the costs of producing each of the reports required by the rule. These revised cost estimates have been provided to OMB, and the Economic Analysis that analyzes the costs and benefits associated with the provisions of this final rule is available to the public, as noted under "Significant Regulatory Action" in the "Other Matters" section of this preamble.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this rule do not affect a physical structure or property and relate only to statutorily required accounting and reporting procedures, and, therefore, are categorically excluded from the

requirements of the National Environmental Policy Act.

Executive Order 12866

This rule constitutes a "significant regulatory action" as that term is defined in subsection 3(f) of Executive Order 12866 on Regulatory Planning and Review issued by the President on September 30, 1993. A preliminary review of the rule indicated that it might, as defined in that Order, have an annual effect on the economy of \$100 million or more. Accordingly, an economic Analysis was prepared and is available for review and inspection in Room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12612. Federalism

The General Counsel, as the Designated Official under subsection 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The requirements of the rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those

determine the "form" in which the data is to be provided, as well as what information, other than the mortgage characteristics indicated in the statute, the Secretary may also require.

¹¹⁷ "Administrative authority to inspect and copy business records was implied as a reasonable projection of a principle reflected in a statutory grant of subpoena power." 2B Norman J. Singer, Sutherland on Statutory Construction § 55.04 (5th ed. 1992) (citing Porter v. Gantner & Mattern Co., 156 F.2d 886 (9th Cir. 1946)).