

goals provisions through cease-and-desist orders and to assess civil money penalties against the GSEs.¹⁸⁴ In view of the seriousness of these actions, the Act itself details the procedural requirements for enforcement and rights of the GSEs during the sanctions process.¹⁸⁵ Because the Act details procedural requirements, this subpart mainly restates and rarely augments these procedures in the regulations.

Secretarial Enforcement Through Cease-and-Desist Orders and Civil Money Penalties

The Secretary may issue a cease-and-desist order where a GSE fails to: Submit a housing plan that complies with the Act; make a good faith effort to comply with a housing plan approved by the Secretary; or submit any information required under the reporting requirements under the Fannie Mae Charter Act or the Freddie Mac Act.¹⁸⁶ The Secretary will provide the GSEs with written notice of the charges which will fix a date for a hearing to be conducted by a HUD Administrative Law Judge. If, based on the record of the hearing, the Administrative Law Judge finds sufficient facts to sustain the action or the GSE fails to appear at the hearing, the Administrative Law Judge may issue and serve an order. The order may require the GSE to: (1) Submit a housing plan, where the notice of charges was based on the GSE's failure to submit a plan; (2) comply with a housing plan, where the notice was based on the lack of good faith efforts of the GSE to comply with a housing plan; or (3) provide the information, where the notice of charges was based on the GSE's failure to submit information.

Civil Money Penalties

The Secretary may impose civil money penalties on a GSE if the GSE has failed to: Submit a housing plan in substantial compliance with the Act; make a good faith effort to comply with a housing plan approved by the Secretary; or submit information required under the GSEs' Charter Acts.¹⁸⁷ Civil money penalties shall not exceed the following: (1) For failing to submit a housing plan, \$25,000 for each day that the failure occurs; and (2) for failing to make a good faith effort to comply with a housing plan or failing to submit information, \$10,000 for each day that the failure occurs.¹⁸⁸

Hearings, Enforcement and Judicial Review

Under this subpart, all hearings are on the record, heard before a HUD Administrative Law Judge, and conducted in accordance with chapter 5 of title 5 of the United States Code and applicable HUD regulations. The Secretary will make available to the public any final order and any written agreement or other written statement for which a violation may be redressed by the Secretary.¹⁸⁹ The Secretary may withhold release of an agreement or statement if the Secretary determines that public disclosure would: seriously threaten the GSE's financial health or security, or be contrary to the public interest.¹⁹⁰

To enforce any notice or order under this subpart, the Secretary may request that the Attorney General bring an action against the GSE in the United States District Court for the District of Columbia.¹⁹¹ A GSE may obtain judicial review of a final order by filing a petition praying that the United States Court of Appeals for the District of Columbia modify, terminate, or set aside the order.¹⁹²

Subpart H—Book-Entry Procedures

This subpart authorizes the GSEs' use of book-entry systems to issue and maintain records of the GSEs' securities. The Secretary is authorized to promulgate these provisions under section 1321 of FHEFSSA, which confers on the Secretary general regulatory authority and the authority to "make such rules and regulations as shall be necessary and proper" to ensure that the purposes of the Act, the Fannie Mae Charter Act, and the Freddie Mac Act are accomplished.

The GSEs currently issue and maintain records of their securities by entries in record systems maintained by the Federal Reserve banks; these systems are also used for U.S. Treasury securities. The Treasury Department has promulgated regulations establishing book-entry procedures.¹⁹³ Treasury regulations¹⁹⁴ permit the GSEs to use the system provided regulations are in force authorizing book-entry. Since 1978, HUD's Fannie Mae regulations (24 CFR 81.41 *et seq.*), authorized Fannie Mae to use book-entry procedures and recently, by regulation, the Secretary specifically extended the Fannie Mae book-entry regulations to allow Fannie

Mae to continue to use the book-entry system pending the issuance of these comprehensive regulations.¹⁹⁵ Freddie Mac currently operates under book-entry regulations (1 CFR part 462) that it promulgated in 1978.

Virtually all of the GSEs' debt and mortgage-backed securities issuances and trading market depend on book-entry procedures. As of September 30, 1994, Fannie Mae debt outstanding was \$239.3 billion and Fannie Mae MBS outstanding was \$523.5 billion; as of that date, Freddie Mac's debt outstanding was \$82 billion and Freddie Mac's MBS outstanding was \$464 billion. Providing for use of book-entry GSE securities instead of definitive GSE securities has increased administrative efficiencies for investors, brokers and dealers as well as the GSEs themselves and facilitated the investment of capital in the GSEs' instruments. Use of the book-entry system facilitates the GSEs' Charter Act purposes of assisting the secondary market by improving the distribution of investment capital available for home financing.¹⁹⁶

The regulations proposed in this subpart track the latest book-entry procedures established by the Department of the Treasury at 31 CFR part 306, subpart O, which are applicable to Treasury securities. The existing Fannie Mae book-entry regulations, 24 CFR part 81, subpart E, tracked an earlier version of Treasury's regulation. Minor changes have been made to adapt the Treasury regulation to the GSEs. In the interest of ensuring that the GSEs may continue to use the book-entry system and, at the same time, ensuring that the GSEs are subject to the same regulations, these regulations would replace Fannie Mae's book-entry regulations at 24 CFR 81.41 *et seq.* and would supersede Freddie Mac's book-entry regulations at 1 CFR part 462.

Subpart I—Other Provisions

This subpart includes miscellaneous regulatory provisions concerning equal employment opportunity and regulatory examinations.

The Secretary has general regulatory power over the GSEs and is directed to make rules and regulations to ensure that the purposes of the Charter Acts are accomplished.¹⁹⁷ To monitor the GSEs' compliance with the Secretary's regulatory authorities under the Charter Acts, these regulations, and the Act, and to verify the GSEs' data submissions and

¹⁸⁴ Sections 1341 and 1345.

¹⁸⁵ See, e.g., sections 1341–1348.

¹⁸⁶ Section 1341(a).

¹⁸⁷ Section 1345(a).

¹⁸⁸ Section 1345(b).

¹⁸⁹ Section 1346(a).

¹⁹⁰ Section 1346(c).

¹⁹¹ Section 1344(a).

¹⁹² Section 1343(a).

¹⁹³ See 31 CFR 306.115 *et seq.*

¹⁹⁴ 31 CFR 306.0, n.1.

¹⁹⁵ 59 FR 54366 (Oct. 28, 1994).

¹⁹⁶ Fannie Mae Charter Act, sections 301(3) and (4), and Freddie Mac Act, sections 301(b) (3) and (4).

¹⁹⁷ Section 1321.