FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1249 and 1282

RIN 2590–AA26

2010–2011 Enterprise Affordable Housing Goals; Enterprise Book-Entry Procedures

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to provide for the establishment, monitoring and enforcement of new affordable housing goals effective for 2010 and 2011 for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). Section 1332(a) of the Safety and Soundness Act, as amended by HERA, requires the Federal Housing Finance Agency (FHFA) to establish three single-family owner-occupied purchase money mortgage goals and a single-family refinancing mortgage goal. Section 1333(a) of the Safety and Soundness Act requires FHFA to establish a multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing subgoal. FHFA is issuing and seeking comments on a proposed rule that would establish new affordable housing goals for 2010 and 2011, consistent with the Safety and Soundness Act, as amended. The proposed rule would also revise and update the rules for counting mortgages for purposes of the affordable housing goals to ensure clarity and consistency with the new goals.

DATES: Written comments must be received on or before April 12, 2010.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA26, by any one of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA26, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA26, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "RIN 2590–AA26" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include "RIN 2590–AA26" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Nelson Hernandez, Senior Associate Director, Housing Mission and Goals, (202) 408–2993, Brian Doherty, Manager, Housing Mission and Goals, (202) 408–2991, Paul Manchester, Principal Economist, Housing Mission and Goals—Quantitative Analysis, (202) 408–2946, Sharon Like, Associate General Counsel, (202) 414–8950, Lyn Abrams, Attorney, (202) 414–8951, or Kevin Sheehan, Attorney, (202) 414–8952. These are not toll-free numbers. The mailing address for each contact is: Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, HERA amended the Safety and Soundness Act to create FHFA as an independent agency of the Federal Government.[1] HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities.[2]

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations.[3] The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages.[4] Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation.[5]

B. Statutory and Regulatory Background

Prior to HERA, the Safety and Soundness Act provided the Secretary of HUD with the authority to establish, monitor and enforce affordable housing

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, § 1101, Public Law 110–289, 122 Stat. 2654 (2008), codified at 12 U.S.C. 4501 *et seq.*

[2] *See* 12 U.S.C. 4513.

[3] *See* HERA at section 1302, 122 Stat. 2795.

[4] *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.*

[5] *Id.*

goals for the Enterprises.[6] HUD issued regulations establishing affordable housing goals for the Enterprises, which were periodically updated, most recently in 2004, when HUD established new housing goal levels for 2005 through 2008.[7] HUD's regulations provided for the housing goal levels for 2008 to continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD.[8] In August 2009, FHFA issued a final rule that adopted many of the existing housing goals provisions in a new part 1282 of title 12 of the Code of Federal Regulations. As authorized by section 1331(c) of the Safety and Soundness Act, the final rule also revised the levels of the existing affordable housing goals in light of current market conditions.[9]

The Safety and Soundness Act, as amended by HERA, requires the Director of FHFA to establish new affordable housing goals effective for 2010 and beyond. The new housing goals include four goals for single-family, owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal.[10] The single-family housing goals target purchase money mortgages for low-income families, families that reside in low-income areas, and very low-income families, and refinancing mortgages for low-income families.[11] The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families.[12]

C. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition. The Enterprises remain under conservatorship at this time.

III. Prospective and Market-Based Goals

Following passage of the Safety and Soundness Act, HUD established housing goals for Fannie Mae and Freddie Mac in October 1993,[13] and revised and expanded those goals in 1995,[14] 2000,[15] and 2004.[16] Multi-year goals were set in the 1993 housing goals rule for 1993–94 (subsequently extended to 1995), in the 1994 housing goals rule for 1996–99 (with the goal levels for 1999 continuing in effect for 2000), in the 2000 housing goals rule for 2001–03 (with the goal levels for 2003 continuing in effect for 2004), and in the 2004 housing goals rule for 2005–08.

In each case, the numerical goals were established up to four years in advance. The goals were set as specific minimum goal-qualifying percentages of all dwelling units financed by mortgages acquired by each Enterprise in a given year, except for the special affordable multifamily subgoal, which was set as a minimum dollar volume of this type of business. In the 2004 final rule, HUD added three single-family home purchase subgoals, which were similarly set as specific minimum goal-qualifying percentages of all home purchase mortgages financed by the Enterprises on owner-occupied properties in metropolitan statistical areas (MSAs).

HUD set the goals for 1993–2008 based on the six factors as specified in the Safety and Soundness Act. The most important such factors were past performance on the goals and, especially, for the home purchase subgoals, HUD's estimates of the goal-qualifying shares of home purchase mortgages in the primary mortgage market on properties in MSAs. For the overall goals, HUD's estimates of the goal-qualifying shares of all dwelling units financed in the primary market by the Enterprises in each year were also important. For example, HUD estimated that low- and moderate-income units would account for 50–55 percent of all units financed in the primary mortgage market for 2003–04, and 51–56 percent of all units financed in 2005–08. The low- and moderate-income goal was set at 50 percent for 2003–04, and was later established to increase in accordance with the market range over the 2005–08 period—specifically, 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. A similar approach was followed with regard to the overall underserved areas and special affordable goals for 2005–08.

As recent market developments show, it can be difficult to forecast the goals-qualifying shares of the primary mortgage market several years in advance. The forecasts developed by HUD were based on the assumption of a "home purchase market environment," a market environment in which purchase mortgages dominate over refinancing mortgages. However, when market conditions result in higher than average refinance activity, the actual market goals-qualifying shares can be significantly different from the forecast because the actual refinance share would dominate. A second reason for the divergence between forecasted and actual shares of goals-qualifying units in the primary mortgage market is the variation in the affordability of housing, such as measured by the National Association of Realtors (NAR) housing affordability index. If the price of a product or service declines, it is more affordable to the consumer. In this respect, housing is no different from any other product. A third reason for divergence is the variance in the size of the multifamily mortgage market over time. Under the previous goals counting regime, multifamily units played a significant role in whether an Enterprise met the goals. A fourth reason for the divergence is the change in the size of the share of the mortgage market accounted for by Federal Housing Administration (FHA) and Department of Veterans Affairs (VA) mortgages. As discussed below, the market share of mortgages insured by FHA increased dramatically in recent years, from a monthly low of 2.5 percent in October 2005 to 32 percent in December 2008.

As measured after the fact, HUD's market estimates often differed significantly from the actual goals-qualifying shares of the primary market. Specifically, the actual low- and moderate-income share of the primary market in 2003 was 53 percent, which was within HUD's 2001–2003 forecasted range of 50–55 percent, but when the share increased to 58 percent for 2004, it exceeded the upper end of the range. The low- and moderate-income share of the primary market remained high, at 57 percent for 2005, above HUD's 2005–2008 forecasted range of 51–56 percent, but then decreased to 55 percent for 2006 and 52 percent for 2007. Thus, over the 2005–2007 period, the low- and moderate-income goals increased steadily, while the low- and moderate-income share of the primary mortgage market decreased steadily.

While the Enterprises are in conservatorship, FHFA expects the Enterprises to continue to fulfill their core statutory purposes, including their support for affordable housing. The affordable housing goals are one set of measures of that support. FHFA does not intend for the Enterprises to undertake uneconomic or high-risk activities in support of the goals.

[6] *See* 12 U.S.C. 4561 *et seq.* (2008).

[7] *See* 24 CFR part 81 (2008).

[8] *See* 24 CFR 81.12 through 81.14 (2008).

[9] *See* 74 FR 39873 (Aug. 10, 2009).

[10] *See* 12 U.S.C. 4561 and 4563(a)(2).

[11] *See* 12 U.S.C. 4562.

[12] *See* 12 U.S.C. 4563.

[13] *See* 58 FR 53048 (Oct. 13, 1993) and 58 FR 53072 (Oct. 13, 1993).

[14] *See* 60 FR 61846 (Dec. 1, 1995).

[15] *See* 65 FR 65044 (Oct. 31, 2000).

[16] *See* 69 FR 63580 (Nov. 2, 2004).

Further, the fact that the Enterprises are in conservatorship should not be a justification for withdrawing support from these market segments. While in conservatorship the Enterprises have tightened their underwriting standards to avoid poor quality mortgages that have contributed substantially to their losses. Maintaining sound underwriting discipline going forward is important for conserving the Enterprises' assets and for supporting their mission in a manner in which the achievement of housing goals directly relates to actual market conditions. In light of these circumstances and the difficulties in anticipating market deviations from the normal home purchase environment in the traditional approach to goal-setting, FHFA proposes in this rule to measure the Enterprises' single-family goal performance relative to benchmark levels for the goals-qualifying shares of the Enterprises' mortgage purchases, as well as relative to the *actual* goals-qualifying shares of the primary mortgage market. A dual approach prevents exclusive reliance on multi-year mortgage market forecasts. The primary disadvantage of this approach is that information on the goals-qualifying shares of the current single-family primary market is not available until the release of Home Mortgage Disclosure Act (HMDA) data in late summer of the following year, approximately nine months after the rating period. However, FHFA believes that the market-based approach proposed in this rule is an appropriate measure of mission achievement under the housing goals for the Enterprises, especially while they are operating in conservatorship, and that the overall advantages of this approach outweigh the disadvantages.

In 2010, FHFA expects to begin to conduct a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and make data collected under that survey available to the public.[17] Release of that data is likely to provide detailed information on home mortgage lending activity more frequently and in a timelier manner than does the public release of the data collected under HMDA. FHFA will use the survey data in its monitoring of Enterprise affordable housing goals performance in 2010 and subsequent years.

This proposed rule would establish single-family housing goals that include (1) an assessment of Enterprise performance as compared to the actual share of the market that meets the criteria for each goal, and (2) a benchmark level to measure Enterprise performance. The benchmark levels for performance are intended to provide greater certainty for the Enterprises in establishing strategies for meeting the affordable housing goals. An Enterprise would be found to have failed to meet a housing goal if its annual performance falls below both the benchmark level and the actual share of the market that meets the criteria for a particular housing goal for that year. An Enterprise would not be found to have failed to meet a goal if it achieves the benchmark level for that goal, even if the actual market size for the year is higher than the benchmark level, because for planning purposes the Enterprises need to be able to rely on the benchmarks that FHFA has set.[18]

The proposed approach to setting goals, involving both the setting of a prospective target and an assessment of actual market opportunity, is a departure from past practice at HUD, as well as in the transitional housing goals established by FHFA for 2009. FHFA has determined that this approach is appropriate in light of the difficulties of predicting the market, especially in light of recent market turmoil, but also in view of the difficulty in making those projections accurately even in more stable economic environments. FHFA views this approach as fully consistent with Congressional intent in granting goal-setting power to the regulator, in light of the many provisions that Congress inserted into the statute to enable the goals to be adjusted to reflect changing market conditions or otherwise suggesting that the goals should be set in light of market conditions. Those provisions include: The requirement that the agency calculate the preceding three-year average percentages of goal-eligible originations for each goal category, and take that information into account in setting the single-family goals;[19] the authority to adjust goals, when they have been set for more than one year, based on market conditions;[20] the discretionary authority to adjust a goal in response to a petition, partly in response to market conditions and the risk of "over-investment";[21] and provisions for relief from enforcement if goals are determined not to have been feasible.[22]

IV. Changes in Structure of Housing Goals for 2010–2011

The proposed rule would modify the structure of the housing goals established by HUD for 2005–2008, and subsequently extended and modified for 2009 by FHFA, in a number of ways for 2010–2011. There would be no overall goals for 2010–2011 covering all of each Enterprise's mortgage purchases, as in the past. Rather, there would be four separate goals for purchases of single-family mortgages and two goals for purchases of multifamily mortgages. These changes, many of which are required by changes made by HERA in the governing statute, are described in more detail below.

Enterprise goal performance under each of the single-family housing goals is measured using a fraction of qualifying mortgage purchases as a percent of total mortgage purchases. Neither the numerator nor the denominator includes Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that would be specifically excluded as ineligible under proposed § 1282.16(b). The 2010–2011 single-family goals, as proposed, would establish separate goals for home purchase mortgages and refinancing mortgages. This differs from past treatment, which combined such purchases for the overall goals.

In addition, the proposed rule would count only conventional loans for purposes of the housing goals. This means that certain FHA loans that previously counted toward the goals, such as Home Equity Conversion Mortgages (HECMs), will no longer be counted. Second liens, which also counted toward the goals in the past, would be excluded from counting for purposes of the housing goals in the future. The Enterprises have purchased very few second liens in the past.

Under the 2010–2011 goals, mortgages financing rental units in single-family properties, which were previously included in the goals, would no longer be counted. However, FHFA will continue to monitor the Enterprises' purchases of such mortgages with regard to rental units in both 2–4 unit owner-occupied housing and investor-owned 1–4 unit rental housing.

The 2010–2011 multifamily goals would be based on the numbers of affordable dwelling units financed, rather than being specified in minimum dollar terms. The special affordable

[17] 12 U.S.C. 4544(c).

[18] *See* 12 U.S.C. 4561(b), acknowledging "the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet such annual goals."

[19] 12 U.S.C. 4562(e)(2)(A).

[20] 12 U.S.C. 4562(e)(3).

[21] 12 U.S.C. 4564(b)(1), (2).

[22] 12 U.S.C. 4566(b).

multifamily subgoal in effect prior to 2010 applied to purchases of mortgages on housing for families with incomes below 60 percent of area median income (AMI) and for families with incomes between 60 percent and 80 percent of AMI living in low-income areas. The overall multifamily goal for 2010–2011 is somewhat broader in its coverage than the previous special affordable multifamily goal, applying to mortgages on housing for families with incomes no greater than 80 percent of AMI, regardless of location. However, the 2010–2011 very low-income multifamily subgoal would be targeted to households with slightly lower incomes. The qualifying household income for purposes of the 2010–2011 multifamily subgoal would be at or below 50 percent of AMI.

The 2010–2011 low-income home purchase and refinancing goals in the proposed rule would target households with lower incomes than the past low- and moderate-income goals. The past low- and moderate-income goals included families with incomes up to 100 percent of AMI. Under the proposed rule, the low-income home purchase and refinancing goals would include only families with incomes no greater than 80 percent of AMI.

The 2010–2011 low-income areas home purchase goal would be somewhat more targeted than the past underserved areas home purchase subgoal. For example, the new low-income areas housing goal includes families in census tracts with incomes up to 80 percent of AMI, while the underserved areas home purchase subgoal included families in census tracts with incomes up to 90 percent of AMI. The narrower scope of the low-income areas housing goal may be seen by comparing performance on the underserved areas home purchase subgoal in 2008 (approximately 30 percent for both Enterprises) with what their performance would have been on the low-income areas home purchase goal in 2008 (approximately 15 percent for both Enterprises).

V. Analysis of Single-Family Housing Goals

Section 1332(e)(2) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following seven factors in setting single-family housing goals:

(1) National housing needs;

(2) Economic, housing, and demographic conditions, including expected market developments;

(3) The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;

(4) The ability of the Enterprise to lead the industry in making mortgage credit available;

(5) Such other reliable mortgage data as may be available;

(6) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

(7) The need to maintain the sound financial condition of the Enterprises.[23]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goals-qualifying mortgages under each housing goal, as calculated based on HMDA data for the three most recent years for which data is available.[24]

A. Analysis of Factors for Single-Family Housing Goals

FHFA's analysis of each of the factors is set forth below.

1. National Housing Needs

With the collapse of subprime and Alt-A lending, tighter credit conditions, and stricter underwriting standards, single-family mortgage originations fell 38 percent in 2008. The Enterprises' share of single-family mortgage-backed securities (MBS) issuance rose to over 73 percent in that year, however, and the credit risk characteristics of their purchases began to improve. Falling house prices caused equity in homes to decline sharply. The resetting of interest rates on poorly underwritten adjustable rate mortgages (ARMs) originated in recent years, deteriorating household balance sheets, rising unemployment, continued credit tightening, and the deepening recession contributed to increases in mortgage delinquency and home foreclosure rates as well as sharply lower housing starts and sales.

The decline in home prices that began in 2007 accelerated sharply in 2008. Continued tightening in lender credit policies, large inventories of unsold homes, significant volumes of homes in foreclosure, rising unemployment, and increasing pessimism among potential homebuyers combined to drive home prices down further.

Despite improving housing affordability, the U.S. homeownership rate declined since peaking at 69 percent in 2004. In the third quarter of 2009, the homeownership rate was 67.6 percent, down from the 67.9 percent in the third quarter of 2008.[25] The homeownership rate for married couples with children declined from 78.8 percent in the third quarter of 2008 to 77.9 percent in the third quarter of 2009.[26] The homeownership rate for Black households declined markedly from 48.2 percent in the third quarter of 2008 to 46.8 percent in the third quarter of 2009.[27] Between 2000 and 2005, the homeowner vacancy rate—the proportion of the homeowner inventory that is vacant for sale—averaged about 1.7 percent. However, that rate increased 70 basis points in 2006 alone, to 2.7 percent in the fourth quarter, and has inched up generally every year since, reaching 2.9 percent in the first and fourth quarters of 2008. That was the highest rate since the Census Bureau began collecting that statistic in 1956. The persistently high rate reflects both the high level of foreclosures and declining home sales.

A recent NAR study of homebuyers and sellers between July 2008 and June 2009 shows the number of first-time homebuyers rose to 47 percent of all homebuyers, from 41 percent in the prior year's study. The median age for first-time homebuyers was 30 years and the median income was $61,600. The typical first-time homebuyer purchased a home costing $156,000, down from $165,000 in the prior year's study. The study found that 55 percent of entry level buyers financed their purchase with an FHA loan, and another 8 percent used the VA loan program.[28]

According to FHFA's Monthly Interest Rate Survey (MIRS), the average loan-to-value ratio (LTV ratio) of single-family, conventional, purchase money mortgages, which increased rapidly from 73.6 percent in 2003 to 79.3 percent in 2007, fell to 76.7 percent in 2008. The proportion of such loans with LTV ratios greater than 90 percent dropped sharply from 2007's level of 29 percent—the highest level recorded—to 18 percent in 2008.

HMDA data for 2008 indicated that applications from Black borrowers fell by 48 percent, and applications from Hispanic borrowers fell by 55 percent.[29]

[23] 12 U.S.C. 4562(e)(2).

[24] *See* 12 U.S.C. 4562(e)(2)(A).

[25] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 87.

[26] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 89.

[27] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 88.

[28] "NAR Survey Shows First-Time Home Buyers Set Record in Past Year." Press Release. National Association of Realtors. Nov. 13, 2009.

[29] "HMDA Data Show Huge Decline in 2008 Mortgage Activity—Except at Government Insured Programs." *Inside Mortgage Finance.* Oct. 2, 2009 at 8.

Originations rose somewhat in the first two quarters of 2009 over the last two quarters of 2008, but the $410 billion in mortgage originations in the third quarter of 2009 showed a decline of more than 25 percent over the second quarter's $550 billion.[30]

One of the key catalysts of the current economic crisis was falling housing prices after the substantial increase that began in 2000. From January 2000 through the May 2006 peak, the S&P/Case-Shiller housing price index rose by approximately 105 percent, only to fall by more than 30 percent since then. The less volatile FHFA housing price index, which reflects the book of business of the Enterprises, peaked later and has since declined about 11 percent.

Changes in mortgage underwriting, particularly for affordable products, had a direct impact on the national housing market. During the boom, as house price appreciation reduced affordability, low documentation Alt-A loans, interest-only loans and ARMs proliferated. Subprime market share tripled to more than 20 percent of the market. Lenders accepted more loans with higher LTV ratios and lower borrower credit scores. The Joint Center for Housing Studies report, "State of the Nation's Housing 2009," describes the effect of loosened mortgage underwriting standards on the housing market. In 2005, a household with median owner income of about $57,000 and spending 28 percent of income on mortgage principal and interest could qualify for a 30-year, fixed-rate loan of $225,000. If the same borrower took out an ARM loan at a discounted interest rate, the maximum loan amount increased to $265,000. By adding an interest-only feature to that ARM and qualifying the household based on the initial interest-only payments, the potential loan size grew to $356,000. Allowing the borrower to spend 38 percent of income on mortgage costs meant that the mortgage loan could total approximately $482,000. Interagency regulatory guidance on nontraditional and subprime loans issued in 2006 and 2007, including guidance to the Enterprises by OFHEO, contributed to limiting the numbers of such loans as underwriting standards were subsequently strengthened.[31]

A result of the crisis is that the mortgage market has returned to more traditional and prudent lending standards. Mortgage underwriting standards in the near term can be expected to continue to be more conservative than earlier in the decade.

The decline in housing prices has made housing more affordable. A composite index of housing affordability for the third quarter of 2009 showed that families earning the median income had 159.2 percent of the income needed to purchase a median-priced existing single-family home, a figure 24 percent higher than the 128.6 percent reported for the third quarter of 2008, although down from the 169.2 percent affordability level of the prior quarter.[32] Housing price declines have brought standard affordability ratios closer to or even above historical levels. In one national survey of 122 metropolitan areas, the number of areas where the home price is less than three times the median household income has declined to the same level as in 2003.[33] While the unemployment rate may decline in 2010 and 2011, or at a minimum the rate of unemployment may level off, there are concerns as to whether jobs will return in areas where excess single-family housing units are located.[34]

From April 2008 through December 2008, eligible first-time homebuyers received a $7,500 tax credit. From January 2009 through the end of November 2009, the tax credit was revised to include an $8,000 non-refundable tax credit. On November 5, 2009, the Congress enacted H.R. 3548, the Unemployment Compensation Extension Act, which extended and expanded the $8,000 non-refundable homebuyer tax credit. Under the legislation, qualifying first-time homebuyers receive the $8,000 tax credit if they sign a contract by April 30, 2010, and close by June 30, 2010. To encourage "move up" homebuyers, the legislation allows homebuyers who purchase a new primary residence to qualify for a $6,500 tax credit, provided they owned their current home for at least five consecutive years in the previous eight years.[35]

2. Economic, Housing and Demographic Conditions

The current turmoil in the housing and mortgage markets has created less than favorable conditions for expansions in credit to borrowers on the margins of homeownership. The adverse market conditions include: (1) Tightened credit underwriting practices; (2) sharply increased standards of private mortgage insurance (MI) companies; (3) increased role of FHA in the marketplace; (4) collapse of the private label mortgage-backed securities (PLS) market; and (5) increasing unemployment. These developments contribute to a decrease in the overall number of single-family loans likely to qualify for affordable housing goals credit.

Tightened credit underwriting practices. In general, more conservative underwriting standards in the mortgage market will likely result in fewer goals-qualifying loans and a lower percentage of goal-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 and 2009 in response to declining market conditions and early payment defaults, among other factors, and such standards can be expected to remain in place in the near future. In May 2008, responding to changes in private MI underwriting, Fannie Mae revised its down payment policy to lower the maximum allowable LTV ratio for loans underwritten by Desktop Underwriter (DU) and for manually underwritten loans. The implementation of Fannie Mae's updated DU Version 8.0, effective in December 2009, generally reduces the allowable "back-end" borrower debt-to-income ratio—the portion of a borrower's income that goes toward paying debts—to 45 percent. In addition, it eliminates DU recommendations for Expanded Approval II and Expanded Approval III loans, loans which historically counted heavily toward the housing goals.[36] If the DU 8.0 revisions had been in effect

[30] "Mortgage Origination Volume Dropped Sharply in 3Q09, But 2009 May End on a Rising Trend." *Inside Mortgage Finance.* Oct. 30, 2009 at 3–4.

[31] *See* Office of Federal Housing Enterprise Oversight, "OFHEO Director James B. Lockhart Commends Enterprises on Implementation of Subprime Mortgage Lending Guidance," News Release (Sept. 10, 2007), available at *http://www.fhfa.gov/webfiles/1608/Lockhartcommends ENTERPRISEsreSubprime91007.pdf. See also* Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Statement on Subprime Mortgage Lending, 72 FR 37569–37575 (July 10, 2007); and Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609–58618 (Oct. 4, 2006).

[32] *U.S. Housing Market Conditions,* 3rd Quarter 2009. Department of Housing and Urban Development at 17.

[33] "State of the Nation's Housing 2009." Joint Center for Housing Studies of Harvard University at 9.

[34] Emile J. Brinkmann, Mortgage Bankers Association. Senate Banking, Housing and Urban Affairs Committee. Oct. 20, 2009 at 3.

[35] "House Clears Extension of Jobless Benefits, Homebuyer's Tax Credit." Congressional Quarterly Today Online News. Nov. 5, 2009.

[36] Desktop Originator/Desktop Underwriter Release Notes. DU Version 8.0. DODU 0909. Fannie Mae. Sept. 22, 2009. DU 8.0 will allow a back-end ratio of up to 50 percent for case files with strong compensating factors.

for all of 2009, substantially fewer goals-qualifying loans would have been underwritten. The changes to DU will likely have a similar effect in 2010 and 2011. Freddie Mac has similarly tightened its underwriting standards.

Sharply increased standards of private mortgage insurers. Much like tighter credit underwriting standards generally, higher underwriting standards of private MI providers have resulted in fewer goal-qualifying loans and a lower percentage of goal-qualifying loans in the market. As a result of stress in the mortgage markets, beginning in late 2007, MI providers implemented major changes in the types of risk they were able to insure. MI providers that had experienced substantial ratings downgrades acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs. In October 2009, Standard and Poor's put five MI providers on credit watch for potential downgrades, citing economic developments that were having a negative effect on the MI providers' book of business.[37] For the first nine months of 2009, private MI activity was down more than 60 percent from the previous year. MGIC, the largest mortgage insurer, reported a $517.8 million net loss for the third quarter of 2009, an amount equal to more than half of the MI industry's loss for the period.[38] In addition, MI providers have implemented measures in "declining markets" that have sharply limited the insurability of certain higher-LTV mortgage loans.

As a result of these conditions, the availability of MI for high-LTV or low credit score loans is much reduced relative to what it was a few years ago. These developments limit the ability of MI providers to write new business and reduce the overall mortgage lending volume, particularly for higher-LTV mortgages, which historically have tended to be more likely to count for purposes of the housing goals.

Increased role of FHA in the marketplace. Another factor that has had substantial marketplace impact is the increase in the share of mortgages insured by FHA and mortgages guaranteed by the VA. These loans generally are pooled into mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and mortgages guaranteed by the VA ordinarily do not receive goals credit. In general, the impact of the FHA market on the percentage of loans in the conventional market that qualify for a particular goal depends on: (1) The goal-qualifying size of the overall market; (2) the share of the market accounted for by FHA mortgages; and (3) the extent to which FHA mortgages have goals qualifying characteristics.

The market share of mortgages insured by FHA and mortgages guaranteed by the VA has risen dramatically. In the third quarter of 2009, FHA endorsed a record $104.2 billion in mortgages, which brought the agency's total production to $360.7 billion for the government's fiscal year, or nearly a billion dollars a day.[39] A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs. Nearly 80 percent of FHA's purchase-loan borrowers in 2009 were first-time homebuyers, and in the second quarter of 2009, nearly half of all first-time buyers in the housing market used FHA-insured loans.[40] To ensure long-term actuarial soundness, FHA announced several policy changes on January 20, 2010 that could have the effect of limiting its role in the mortgage market, including: (1) Reducing the maximum permissible seller concession from the current 6 percent to 3 percent, which is in line with marketplace norms; (2) requiring a minimum credit score of 580 for new borrowers seeking to qualify for the 3.5 percent downpayment program; and (3) increasing the up-front mortgage insurance premium by 50 basis points, to 2.25 percent. In addition, FHA asked for a change in the law to allow it the ability to increase the maximum annual mortgage insurance premium.[41]

Collapse of private label securities market. In the middle part of the decade—the period covered by the prior HUD rule on affordable housing goals—Fannie Mae and Freddie Mac were major purchasers of the AAA-rated tranches of PLS that contained substantial amounts of subprime mortgages. While the size and nature of the Enterprises' subprime holdings differed, these purchases had an impact on the achievement of the housing goals for each Enterprise, particularly for the home purchase subgoals. Such loans were not a large factor in the mortgage marketplace in 2008 or 2009. OFHEO provided guidance to the Enterprises in 2007 incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board and the National Credit Union Administration. The guidance restricted the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.[42]

Increasing unemployment. Unemployment and underemployment have an effect on mortgage default rates, and on the number of borrowers seeking and obtaining a purchase money mortgage or a refinance. According to the Bureau of Labor Statistics of the U.S. Department of Labor, the unemployment rate rose from 9.8 percent to 10.1 percent in October 2009, as nonfarm payroll employment continued to decline. Construction employment decreased by 62,000 jobs in October.[43] The unemployment rate declined to 10.0 percent in November 2009,[44] and it remained at that level in December 2009.[45] The average duration of unemployment has also increased significantly over the last year.

NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation

[37] "FHA Ends 2009 Fiscal Year With a Bang, Topping $100 Billion in Quarterly Originations for the First Time." *Inside Mortgage Finance.* Oct. 30, 2009 at 8.

[38] "Private MIs Continue to Take a Beating as FHA Rockets to New Record Market Share." *Inside Mortgage Finance.* Nov. 13, 2009 at 3–4.

[39] "FHA Ends 2009 Fiscal Year With a Bang, Topping $100 Billion in Quarterly Originations for the First Time." *Inside Mortgage Finance.* Oct. 30, 2009 at 8.

[40] "HUD Secretary, FHA Commissioner Report on FHA's Finances." HUD Press Release No. 09–214. Nov. 12, 2009.

[41] "FHA Announces Policy Changes to Address Risk and Strengthen Finances." HUD Press Release No. 10–001. Jan. 20, 2010.

[42] On August 10, 2007, OFHEO issued letters directing the Enterprises to apply the principles and practices of the interagency *Statement on Subprime Mortgage Lending* to their purchases of subprime loans in the regular flow of business, including bulk purchases. OFHEO directed that, not later than September 13, 2007, nontraditional and subprime loans purchased by Fannie Mae and Freddie Mac as part of PLS transactions comply with the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending.* This application to PLS conformed to the underwriting provisions of the guidance. Further, OFHEO directed that the Enterprises adopt such business practices and take such quality control steps as necessary to ensure the orderly and effective implementation of the guidance with respect to the purchase of PLS. OFHEO News Release (Sept. 10, 2007).

[43] "The Employment Situation—October 2009." Economic News Release USDL–09–1331. Bureau of Labor Statistics. U.S. Department of Labor. Nov. 6, 2009.

[44] "The Employment Situation—November 2009." Economic News Release USDL–09–1479. Bureau of Labor Statistics. U.S. Department of Labor. Dec. 4, 2009.

[45] "The Employment Situation—December 2009." Economic News Release USDL–09–1583. Bureau of Labor Statistics. U.S. Department of Labor. Jan. 18, 2010.

counseling, has estimated that the two leading causes of mortgage default rates were a reduction in income (28 percent of defaults) and loss of income (17 percent of defaults).[46] The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market going forward.

Refinancings. In 2009, Fannie Mae and Freddie Mac refinanced 4 million mortgage loans through November. Refinancing volumes are strongly influenced by mortgage interest rates and LTV ratios on existing mortgages.

Under the umbrella of the Administration's Making Home Affordable program, the Home Affordable Refinance Program (HARP) is an effort by the Enterprises to enhance the opportunity for owners to refinance. Under this program, homeowners whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mae who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of low monthly mortgage interest rates, which Freddie Mac's January 21, 2010 weekly report indicated had fallen to 4.99 percent for a 30-year, fixed-rate mortgage. For homeowners with a current LTV ratio between 80 and 125 percent, the Enterprises will refinance mortgages without requiring additional mortgage insurance.

Demographic conditions. In establishing the 2010 goals, FHFA analyzed current demographic trends for their possible effect on housing demand. Analysis of current trends reveals that by 2008, household formation rates were already on the decline. In addition, the recession and unemployment have reduced immigration, which in the past has been a driver of housing demand. It is still too early to assess the impact of the current economic downturn on housing demand, particularly given regional variations in impact and mitigating factors, such as increased affordability of housing ownership. In the long-term, housing demand is likely to increase as a result of population growth, immigration, and future household formation by the generation born between 1981 and 2000.[47] However, the impact of long-term demographic conditions on short-term goals performance would be minimal.

3. The Performance and Effort of the Enterprises Toward Achieving the Housing Goals in Previous Years

Section 1332(a) of the Safety and Soundness Act, as amended by section 1128 of HERA, requires FHFA to establish three single-family home purchase mortgage goals for the Enterprises: A goal for low-income families; a goal for families that reside in low-income areas; and a goal for very low-income families. Revised section 1332(a) also requires FHFA to establish a goal for single-family refinancing mortgages for low-income families. The following section reviews what performance would have been on these four single-family goals if they had been in effect over the 2001–08 period.

Low-Income Families Housing Goal. The affordable housing goals in the Safety and Soundness Act, as amended, apply to the Enterprises' acquisitions of "conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing" for the targeted groups. Accordingly, they are similar in structure to the home purchase subgoals established by HUD for Fannie Mae and Freddie Mac for 2005–08, and subsequently extended and modified for 2009 by FHFA. One difference is that the subgoals established by HUD applied only to mortgages on properties in metropolitan areas, while the new goals apply to mortgages on properties in all locations.

The low-income families housing goal applies to mortgages made to "low-income families," defined as families with incomes no greater than 80 percent of AMI.[48] Past performance on this goal, if it had been in effect in previous years, is shown in Table 1. As indicated, Fannie Mae's performance would have risen markedly between 2001 and 2003, and then, with the exception of 2006, would have fallen steadily between 2003 and 2008. Its performance last year, at 23.2 percent, would have been the lowest of the period. Freddie Mac's performance generally would have risen between 2001 and 2005, and then declined between 2005 and 2008. Its performance last year would have been 24.5 percent, also the lowest of the period.

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[46] NeighborWorks, *National Foreclosure Mitigation Counseling Program Update,* Jan. 23, 2009.

[47] "State of the Nation's Housing 2009." Joint Center for Housing Studies of Harvard University.

[48] 12 U.S.C. 4502(14).

Table 1

GSE Past Performance on the Low-Income Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income HP Mortgages	227,297	161,657	
	Total HP Mortgages	979,999	661,115	
	Low-Inc. % of HP Mortgages	23.2%	24.5%	26.5%
2007	Low-Income HP Mortgages	391,833	285,299	
	Total HP Mortgages	1,491,750	1,087,626	
	Low-Inc. % of HP Mortgages	26.3%	26.2%	25.4%
2006	Low-Income HP Mortgages	405,120	301,940	
	Total HP Mortgages	1,390,710	1,097,773	
	Low-Inc. % of HP Mortgages	29.1%	27.5%	23.5%
2005	Low-Income HP Mortgages	368,591	369,425	
	Total HP Mortgages	1,331,349	1,269,969	
	Low-Inc. % of HP Mortgages	27.7%	29.1%	24.8%
2004	Low-Income HP Mortgages	458,833	228,439	
	Total HP Mortgages	1,516,311	896,479	
	Low-Inc. % of HP Mortgages	30.3%	25.5%	27.1%
2003	Low-Income HP Mortgages	544,903	218,506	
	Total HP Mortgages	1,747,765	806,875	
	Low-Inc. % of HP Mortgages	31.2%	27.1%	
2002	Low-Income HP Mortgages	386,136	259,642	
	Total HP Mortgages	1,426,597	988,336	
	Low-Inc. % of HP Mortgages	27.1%	26.3%	
2001	Low-Income HP Mortgages	361,726	246,759	
	Total HP Mortgages	1,359,482	989,567	
	Low-Inc. % of HP Mortgages	26.6%	24.9%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Very Low-Income Families Housing Goal. The Safety and Soundness Act, as revised by HERA, defines a "very low-income" owner-occupied property as one occupied by a family with income no greater than 50 percent of AMI.[49] Past performance on this goal, if it had been in effect in previous years, is shown in Table 2. As indicated, Fannie Mae's performance would have risen from 6.8 percent in 2001 to 9.0 percent in 2003 and 2004, and then, with the exception of 2006, generally decreased, to 5.6 percent in 2008, the lowest in the period. Freddie Mac's performance on this goal would have changed little over the 2001–08 period, remaining in the range of 6.2 percent to 7.0 percent.

[49] 12 U.S.C. 4502(24).

Table 2

GSE Past Performance on the Very Low-Income Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Very Low-Income HP Mortgages	54,518	41,006	
	Total HP Mortgages	979,999	661,115	
	Very Low-Income % of HP Mtgs.	5.6%	6.2%	7.1%
2007	Very Low-Income HP Mortgages	95,180	67,860	
	Total HP Mortgages	1,491,750	1,087,626	
	Very Low-Income % of HP Mtgs.	6.4%	6.2%	6.2%
2006	Very Low-Income HP Mortgages	110,802	70,319	
	Total HP Mortgages	1,390,710	1,097,773	
	Very Low-Income % of HP Mtgs.	8.0%	6.4%	5.6%
2005	Very Low-Income HP Mortgages	94,786	91,532	
	Total HP Mortgages	1,331,349	1,269,969	
	Very Low-Income % of HP Mtgs.	7.1%	7.2%	5.8%
2004	Very Low-Income HP Mortgages	136,745	58,063	
	Total HP Mortgages	1,516,311	896,479	
	Very Low-Income % of HP Mtgs.	9.0%	6.5%	6.8%
2003	Very Low-Income HP Mortgages	157,637	56,615	
	Total HP Mortgages	1,747,765	806,875	
	Very Low-Income % of HP Mtgs.	9.0%	7.0%	
2002	Very Low-Income HP Mortgages	95,824	66,797	
	Total HP Mortgages	1,426,597	988,336	
	Very Low-Income % of HP Mtgs.	6.7%	6.8%	
2001	Very Low-Income HP Mortgages	92,595	61,151	
	Total HP Mortgages	1,359,482	989,567	
	Very Low-Income % of HP Mtgs.	6.8%	6.2%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Very Low-income" refers to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).

Low-Income Areas Housing Goal. The low-income areas housing goal targets the Enterprises' purchases of mortgages in specified geographic areas, in a manner similar to the previous underserved areas goal. The Safety and Soundness Act, as revised by HERA, now defines a "low-income area" as a census tract or block numbering area in which the median income does not exceed 80 percent of AMI, including families with incomes not greater than 100 percent of AMI who reside in minority census tracts and in designated disaster areas.[50] It defines a "minority census tract" as a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI.[51]

According to the 2000 census, of the 66,144 unique census tracts, there were 18,613 low-income tracts. There were 25,254 tracts with a minority population of at least 30 percent, of which 5,711 had a tract income greater than 80 percent of AMI but less than or equal to 100 percent of AMI. Accordingly, based on the 2000 census, there were 24,324 tracts that would be targeted by this goal, excluding tracts in designated disaster areas, but only families with incomes no greater than AMI would be included in the 5,711 high-minority, moderate-income tracts.

Past performance on the low-income areas housing goal, if it had been in effect in previous years, excluding designated disaster areas, is shown in Table 3. As indicated, Fannie Mae's

[50] 12 U.S.C. 4502(28).

[51] 12 U.S.C. 4502(29).

performance would have varied over time. It would have reached its highest level, 19.3 percent, in 2002, and its lowest level, 15.1 percent, in 2008. Freddie Mac's performance would have peaked at 19.3 percent in 2002, then fallen sharply to 13.3 percent in 2003, and would have been 15.2 percent in 2008.

Table 3

GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income Tract HP Mortgages	119,154	81,338	
	High-Minority Tract HP Mortgages	29,302	19,369	
	Subtotal Goal-Qualifying Mortgages	148,456	100,707	
	Total HP Mortgages	979,999	661,115	
	Low-Inc. Area % of Mortgages	**15.1%**	**15.2%**	**15.4%**
2007	Low-Income Tract HP Mortgages	209,070	152,521	
	High-Minority Tract HP Mortgages	47,595	36,131	
	Subtotal Goal-Qualifying Mortgages	256,665	188,652	
	Total HP Mortgages	1,491,750	1,087,626	
	Low-Inc. Area % of Mortgages	**17.2%**	**17.3%**	**17.8%**
2006	Low-Income Tract HP Mortgages	200,921	157,430	
	High-Minority Tract HP Mortgages	49,399	37,670	
	Subtotal Goal-Qualifying Mortgages	250,320	195,100	
	Total HP Mortgages	1,390,710	1,097,773	
	Low-Inc. Area % of Mortgages	**18.0%**	**17.8%**	**18.4%**
2005	Low-Income Tract HP Mortgages	176,702	191,222	
	High-Minority Tract HP Mortgages	42,681	46,399	
	Subtotal Goal-Qualifying Mortgages	219,383	237,621	
	Total HP Mortgages	1,331,349	1,269,969	
	Low-Inc. Area % of Mortgages	**16.5%**	**18.7%**	**17.2%**
2004	Low-Income Tract HP Mortgages	209,410	102,979	
	High-Minority Tract HP Mortgages	58,382	25,188	
	Subtotal Goal-Qualifying Mortgages	267,792	128,167	
	Total HP Mortgages	1,516,311	896,479	
	Low-Inc. Area % of Mortgages	**17.7%**	**14.3%**	**16.3%**
2003	Low-Income Tract HP Mortgages	218,239	85,538	
	High-Minority Tract HP Mortgages	69,738	21,944	
	Subtotal Goal-Qualifying Mortgages	287,977	107,482	
	Total HP Mortgages	1,747,766	806,874	
	Low-Inc. Area % of Mortgages	**16.5%**	**13.3%**	
2002	Low-Income Tract HP Mortgages	223,439	153,455	
	High-Minority Tract HP Mortgages	64,956	36,966	
	Subtotal Goal-Qualifying Mortgages	288,395	190,421	
	Total HP Mortgages	1,426,597	988,336	
	Low-Inc. Area % of Mortgages	**20.2%**	**19.3%**	
2001	Low-Income Tract HP Mortgages	201,903	135,745	
	High-Minority Tract HP Mortgages	55,687	33,291	
	Subtotal Goal-Qualifying Mortgages	257,590	169,036	
	Total HP Mortgages	1,359,482	989,567	
	Low-Inc. Area % of Mortgages	**18.9%**	**17.1%**	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income tracts" are those with tract income no greater than 80 percent of area median income (AMI). "High minority tract mortgages" refer to home purchase loans made to families with incomes no greater than 100 percent of AMI living in tracts where minorities comprise at least 30 percent of the population and tract median income exceeds 80 percent of AMI but does not exceed 100 percent of AMI. This goal also includes home purchase loans made to families in designated disaster areas, but such mortgages are not included in this table.

Refinancing Housing Goal. Under the Safety and Soundness Act, as revised by HERA, the refinancing housing goal is targeted to low-income families, *i.e.,* families with incomes no greater than 80 percent of AMI. It applies to mortgages that are "given to pay off or prepay an existing loan secured by the same property." Thus, the goal would not apply to home equity loans.

Past performance on this goal, if it had been in effect in previous years, is shown in Table 4. As indicated, Fannie Mae's performance would have peaked in 2004, following the 2001–03 refinance boom, and declined thereafter, to a low of 23.1 percent last year. Freddie Mac's performance would have peaked in 2005, and then also declined, to 23.9 percent in 2008.

Table 4

GSE Past Performance on the Low-Income Refinance Goal, 2001-08

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

Year	Type of Refinance Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2008	Low-Income Refinance Mtgs.	336,611	234,035	
	Total Refinance Mortgages	1,457,881	978,187	
	Low-Inc. % of Refinance Mtgs.	23.1%	23.9%	24.1%
2007	Low-Income Refinance Mtgs.	373,196	304,060	
	Total Refinance Mortgages	1,485,335	1,168,055	
	Low-Inc. % of Refinance Mtgs.	25.1%	26.0%	23.3%
2006	Low-Income Refinance Mtgs.	341,625	316,260	
	Total Refinance Mortgages	1,250,096	1,139,833	
	Low-Inc. % of Refinance Mtgs.	27.3%	27.7%	23.7%
2005	Low-Income Refinance Mtgs.	432,261	484,267	
	Total Refinance Mortgages	1,499,315	1,660,103	
	Low-Inc. % of Refinance Mtgs.	28.8%	29.2%	25.6%
2004	Low-Income Refinance Mtgs.	626,987	387,825	
	Total Refinance Mortgages	2,134,012	1,465,570	
	Low-Inc. % of Refinance Mtgs.	29.4%	26.5%	27.0%
2003	Low-Income Refinance Mtgs.	1,621,444	832,176	
	Total Refinance Mortgages	6,324,265	3,823,803	
	Low-Inc. % of Refinance Mtgs.	25.6%	21.8%	
2002	Low-Income Refinance Mtgs.	779,227	616,977	
	Total Refinance Mortgages	3,267,256	2,768,510	
	Low-Inc. % of Refinance Mtgs.	23.8%	22.3%	
2001	Low-Income Refinance Mtgs.	561,919	405,748	
	Total Refinance Mortgages	2,323,674	1,752,313	
	Low-Inc. % of Refinance Mtgs.	24.2%	23.2%	

Source: FHFA analysis of GSE loan-level data and Home Mortgage Disclosure Act (HMDA) data. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

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Interpreting Past Goal Performance Data. Past performance is not necessarily a good indicator of future goal performance, due to changes in mortgage interest rates, home prices, credit availability, and other factors. This subsection briefly discusses the role of the purchase of PLS in achieving past performance, and the possible effects of changes in underwriting guidelines recently adopted by the Enterprises. Also, FHFA has partial-year data which allow calculation of each Enterprise's performance in the first three quarters of 2009 relative to the proposed 2010–2011 goals. Such data are proprietary, but preliminary full-year data will be included in the final rule for the 2010–2011 goals.

The Enterprises purchased PLS in recent years primarily due to anticipated profitability, to maintain market share, and because some PLS, especially those containing subprime mortgages, helped achieve the housing goals. The performance data in Tables 1–4 include the effects of these PLS purchases. Elsewhere in the proposed rule is a discussion regarding counting mortgages included in PLS toward the affordable housing goals in 2010–2011.

In response to the housing crisis and their financial difficulties, including the performance of PLS, the Enterprises have adopted more conservative underwriting guidelines. As previously discussed, those changes will affect goal performance.

4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available

As background for the statutory requirement to consider the Enterprises' "ability * * * to lead the industry in making mortgage credit available," a Senate committee report on legislation leading to the enactment of the Safety and Soundness Act in 1992 expressed concern that Enterprise purchases had not kept pace with market originations of mortgages to low- and moderate-income borrowers.[52] FHFA shares that concern and has defined the proposed Enterprise housing goals in part against that history. FHFA believes that, in fact, the Enterprises have played a leading role in sustaining the mortgage market during the recent crisis.

Leading the industry in making mortgage credit available includes making mortgage credit available to primary market borrowers at differing income levels. It also includes the ability of the Enterprises to respond to pressing mortgage needs in the current market, such as the threat of a loss of a home by the borrower, for example, by implementing the loan modification and refinance programs under the Administration's Making Home Affordable Program, and by supporting State and local housing finance agencies. The Enterprises' ability to respond is reflected through the introduction of safe and sound innovative products, technology and process improvements.

In the current market environment, the Enterprises, along with FHA and VA, now lead the market. From 1997–2003, the Enterprises' share of mortgage originations grew to almost 55 percent. From 2004–2006, the private mortgage market predominated, and the Enterprises' market share dropped to below 35 percent. After the private mortgage market began to deteriorate in 2007, the Enterprises' share of the single-family mortgage market grew to about 75 percent, with FHA and VA accounting for the bulk of the balance.[53]

At the same time, the Enterprises have been severely stressed by the financial crisis. As described below, they have suffered losses that have depleted their capital and resulted in their being sustained only by multi-billion-dollar infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. In this environment, in which FHFA as conservator is also exercising a statutory mandate to conserve and preserve the Enterprises' assets, it is especially important that the Enterprises not take on undue additional credit risk by purchasing mortgages in any defined segment in quantities beyond what market originations reasonably provide.

FHFA has taken into account all of the foregoing considerations in assessing the Enterprises' ability to lead the industry.

5. Other Mortgage Data

The primary source of reliable mortgage data for establishing the affordable housing goals is the HMDA data reported by originators. Enterprise mortgage purchase data are compared to HMDA data to evaluate the Enterprises' performance with respect to leading or lagging the housing market under specific goals.

FHFA also uses other reliable data sources including the American Housing Survey (AHS), Census demographics, commercial sources such as Moody's,[54] and other industry and trade research sources, *e.g.,* Mortgage Bankers Association (MBA),[55] Inside Mortgage Finance Publications,[56] NAR,[57] National Association of Home Builders (NAHB),[58] and the Commercial Mortgage Securities Association.[59] The FHFA MIRS,[60] previously administered by the Federal Housing Finance Board, a predecessor agency to FHFA, is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of HMDA mortgage data. In the development of economic forecasts, FHFA uses data and information from Wells Fargo, PNC, Fannie Mae, Freddie Mac, The Wall Street Journal Survey and Forcast.org. In addition, FHFA uses market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.[61]

6. Market Size

In general, the single-family mortgage market environment of 2009 is expected to extend to 2010, with modest improvements in 2011. Much of FHFA's estimates of the mortgage market rely on the Federal Reserve continuing to support low interest rates.[62] Other quantifiable factors influencing FHFA's outlook for the mortgage market include general growth in the economy, employment and inflation. Other factors that are less easily quantified include the effect of the extension and expansion of the homebuyer tax credit on the mortgage market. Activity in the subprime market is expected to be minimal through 2011.

The composition of the mortgage market will be influenced by FHA's market share, which rose significantly in 2008–2009 and continues to be high, and by the rate of refinancing. Given that underwriting standards are expected to be tight in 2010 and 2011, FHA will most likely continue to have a much larger presence in the mortgage market. In addition, rising interest rates or a combination of depressed housing prices and high LTV ratios could push down the number of homeowners refinancing their mortgages, lowering the refinance rate.

The outlook for the housing and mortgage markets over the 2010–2011 period remains guarded. Both of these markets will be heavily influenced by general economic factors as well as internal market forces. In developing its Economic and Mortgage Outlook (*see* Table 5, below) FHFA uses an average of forecasted values for key economic indicators drawn from several industry

[52] S. Rep. No. 102–282, at 10–11 (1992).

[53] Address by Edward DeMarco, Acting Director of the Federal Housing Finance Agency, New England Mortgage Bankers 22nd Annual Conference, Oct. 1, 2009 at 5.

[54] *http://www.moodys.com/.*

[55] *http://www.mbaa.org/.*

[56] *http://www.imfpubs.com/.*

[57] *http://www.realtor.org/.*

[58] *http://www.nahb.org/.*

[59] *http://www.cmsaglobal.org/CMSA_Resources/Research/Market_Statistics/Market_Statistics/.*

[60] *http://www.fhfa.gov/Default.aspx?Page=250.*

[61] *http://www.fedstats.gov/other.html.*

[62] "The [Federal Open Market] Committee will maintain the target range for the Federal funds rate at 0 to ¼ percent and continues to anticipate that economic conditions, including low rates of resource utilization, subdued inflation trends, and stable inflation expectations, are likely to warrant exceptionally low levels of the Federal funds rate for an extended period." Board of Governors of the Federal Reserve System, Press Release, Nov. 4, 2009.

sources.[63] On average, industry forecasters project the economy to rebound in 2010 and 2011, with real Gross Domestic Product (GDP) growing at a rate of 2.6 and 2.8 percent, respectively. Industry assessments on housing markets are generally reserved. If unemployment remains high, at approximately 10 percent, it would have a negative impact on the housing market. There are also concerns over the impact of the overall economy on housing markets. According to the MBA, "[h]ousing markets are beginning to slowly recover from the worst recession in decades, but are vulnerable to additional macroeconomic shocks." [64] Industry forecasters expect that inflation will remain low, and the minutes of the November 2009 meeting of the Federal Open Market Committee (FOMC) indicate that the FOMC expects core inflation to slow somewhat further over the next two years and inflation to be subdued for some time. The FOMC has also concluded that "economic conditions were likely to warrant exceptionally low [Federal funds rates] for an extended period." [65] Mortgage interest rates are currently dependent on Federal policies and somewhat independent of the Federal funds rate, but for the period between 2010 and 2011, FHFA is not assuming a substantial increase in mortgage interest rates.

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[63] These forecasts include those by the Mortgage Bankers Association, Fannie Mae, Freddie Mac, the National Association of Realtors, Wells Fargo, Wall Street Journal Forecast Survey, PNC Financial and forecast.org.

[64] Mortgage Bankers Association, *Mortgage Finance Commentary,* Nov. 10, 2009.

[65] *See* Federal Open Market Committee of the Federal Reserve System, *Minutes of the Federal Open Market Committee,* Nov. 3–4, 2009. Accessed at *http://www.federalreserve.gov/monetarypolicy/fomcminutes20091104.htm.*

Table 5

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011
Real GDP Growth	3.6%	3.1%	2.7%	2.1%	0.4%	-2.4%	2.6%	2.8%
Unemployment Rate	5.5%	5.1%	4.6%	4.6%	5.8%	9.3%	10.1%	9.4%
Inflation Rate[1]	1.8%	2.2%	2.5%	2.3%	2.3%	1.7%	1.1%	1.0%
1-Year Treasury Yield	1.9%	3.6%	4.9%	4.5%	1.8%	0.5%	0.8%	1.5%
10-Year Treasury Yield	4.3%	4.3%	4.8%	4.6%	3.7%	3.3%	4.0%	4.6%
30-Year Mortgage Fixed Rate[2]	5.8%	5.9%	6.4%	6.3%	6.0%	5.0%	5.5%	6.2%
Housing Starts[3]	1,951	2,071	1,810	1,341	899	552	726	1,010
Home Sales[3]	7,929	8,356	7,563	6,437	5,375	5,558	5,924	6,467
Single-Family Originations[4]	$2,919	$3,120	$2,980	$2,430	$1,500	$1,922	$1,315	$1,415
Change in Housing Prices[5]	9.3%	9.3%	3.6%	-1.1%	-8.2%	-0.2%	0.0%	0.6%
Housing Affordability Index[6]	126	114	108	114	135	168	149	132
Refinance Mortgage Share	54%	49%	48%	51%	51%	67%	46%	37%
FHA Market Share	7%	4%	4%	6%	25%	30%	30%	30%
Median Sales Price - New Homes[7]	$218	$234	$243	$244	$230	$213	$214	$219
Median Sales Price - Existing Homes[7]	$193	$218	$222	$217	$197	$173	$174	$178

Note: Shaded area indicates forecasted values. 2009 includes actual (YTD) and forecast values. Forecasts are an average forecast of Mortgage Bankers Association, Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, Wall Street Journal Forecast Survey, PNC Financial, forecast.org, Standard and Poor's and the National Association of Home Builders.

[1] Annual change in Core CPI (less food and energy)

[2] Freddie Mac, Primary Mortgage Market Survey

[3] Thousands of units

[4] Billions of dollars

[5] FHFA House Price Index, 4th quarter over 4th quarter change

[6] National Association of Realtors

[7] Thousands of dollars

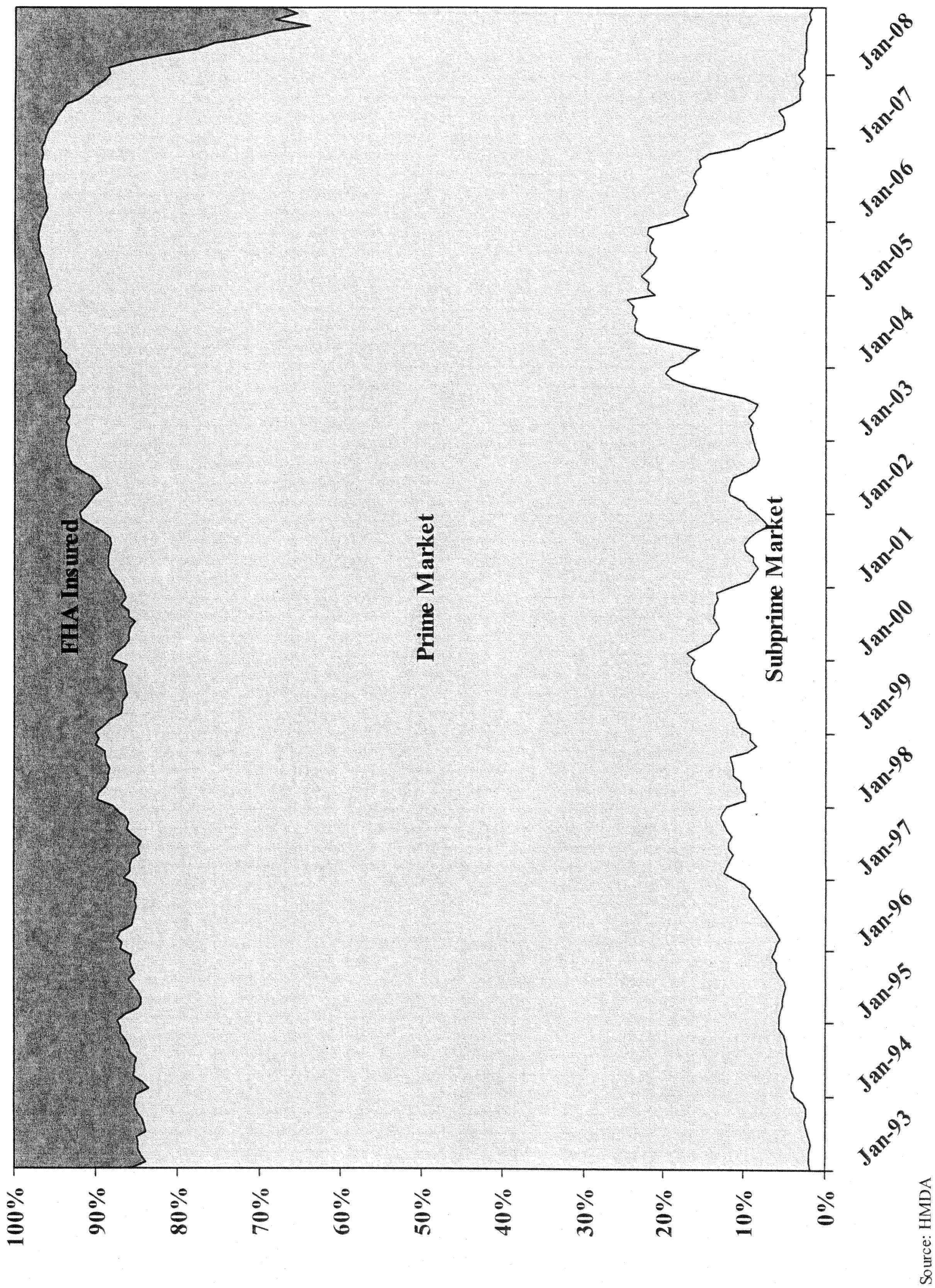
Mortgages insured by FHA are likely to continue to represent a significant share of the mortgage market in 2010 and 2011. These loans generally are pooled into mortgage-backed securities guaranteed by GNMA. Purchases of mortgages insured by FHA and VA ordinarily do not receive affordable housing goals credit.

As shown in Figure 1, the market share of all mortgages insured by FHA increased dramatically, from a low of 2.5 percent in 2005 to a high of 32 percent in December 2008. A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs. Since FHA's market share increase appears to coincide with the demise of the subprime market, it would be easy to conclude that for high-risk borrowers, FHA loans are replacing loans from subprime lenders. However, FHA's internal data indicate that the average riskiness of the loans they insure has actually decreased, *i.e.,* credit risk scores increased, since late 2007.[66]

[66] *See* FHA Outlook, a monthly statistical summary of application insurance endorsement, delinquency and claim information on FHA single family programs. Available at *http://www.hud.gov/offices/hsg/comp/rpts/ooe/olmenu.cfm.*

Figure 1

Market Distribution by Mortgage Type



With the increase in the FHA loan limit in 2008, FHA is able to endorse larger mortgages. These mortgages would otherwise have been originated as conventional mortgages. In 2008, nearly 80 percent of FHA's endorsements of refinancing mortgages came from mortgages that were previously conventional mortgages, and this share increased throughout the year.[67] FHA's market share for home purchase mortgages increased from 3.8 percent in January 2007 to 32 percent in December 2008. The share of FHA endorsed refinancing loans increased from 4 percent in 2007 to 15 percent of the conforming market in 2008. As expected, these additional mortgages reduced the share of FHA mortgages that were for low- and very low-income borrowers. While the share of FHA loans for lower-income borrowers decreased, the share of lower-income borrower loans increased in the conventional conforming market between 2007 and 2008 (*see* Table 6).

Table 6

Enterprise Housing Goals Market Estimates 2009 - 2011

Year	Low-Income Borrower PMM Goal	Very Low-Income Borrower PMM Goal	Low-Income Area PMM Goal	Low-Income Borrower Refinance Goal
2004	27.1%	6.8%	16.3%	27.0%
2005	24.8%	5.8%	17.2%	25.6%
2006	23.5%	5.6%	18.4%	23.7%
2007	25.4%	6.2%	17.8%	23.3%
2008	26.5%	7.1%	15.4%	24.1%
2009 *	28.0% ± 1.1%	8.4% ± 0.5%	12.4% ± 0.7%	20.8% ± 3.4%
2010 *	28.2% ± 2.2%	8.3% ± 1.0%	12.2% ± 1.6%	24.9% ± 5.5%
2011 *	27.1% ± 2.8%	7.6% ± 1.3%	13.1% ± 2.3%	26.1% ± 6.6%

*Estimated (95% confidence)

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The experience for the low-income areas goal is different. While FHA endorsed more loans on properties located in low-income areas, it endorsed an even larger number of loans in higher-income areas. As a result, the low-income areas share of FHA's mortgages decreased. However, unlike the borrower-income based goals, the low-income area share of the conventional market also decreased. While the volume of conventional conforming mortgages in 2008 was 50 percent of that in 2007, the volume of conventional conforming mortgages from low-income areas in 2008 was only 40 percent of the level in 2007. The low-income area share of the conventional conforming market fell by 240 basis points between 2007 and 2008. As shown in Table 5, FHA market share is expected to be 30 percent in 2009, 2010 and 2011.

The impact from the first-time homebuyer tax credit is unclear. Additional first-time homebuyers taking advantage of the $8,000 tax credit will likely have a positive impact on the housing goals. The additional repeat homebuyers who qualify for the $6,500 tax credit (there is a five-year occupancy requirement) will likely have a negative impact on the housing goals. For the proposed rule, FHFA has assumed that the homebuyer tax credit will have no significant impact on the share of conventional loans to low- and moderate-income borrowers or on the share of conventional loans that support housing purchases in lower-income areas.

FHFA's estimates of the market performance for the three single-family owner-occupied property purchase money mortgage housing goals and the refinancing mortgage housing goal are provided in Table 6. FHFA estimates that the low-income and very low-income borrower mortgage shares of the home purchase mortgage market will be 24 percent to 30 percent and 6 percent to 9 percent, respectively, in 2010 and 2011. The share of goal-qualifying mortgages in low-income areas in the home purchase mortgage market is estimated to be 11 percent to 15 percent in 2010 and 2011. With a projected refinance rate of 46 percent in 2010 (down from 67 percent in 2009), FHFA estimates that 19 percent to 30 percent of refinance mortgages will be made to low-income borrowers. The refinance rate is expected to fall to 37 percent in 2011, resulting in an estimate that the low-income borrower mortgage share of the refinance mortgage market will be 19 percent to 33 percent in that year. To arrive at these estimates, FHFA used econometric methods to extend the trends of the market performance for each goal, based on a monthly time series database provided by the Federal Financial Institutions Examination Council (FFIEC) and the Federal Reserve Board.

A detailed description of FHFA's analysis of the mortgage market for 2010 and 2011 market model methodology, is contained in a document entitled "Market Estimates for the 2010 and 2011 Enterprise Single-Family Housing Goals," which is available at *http://www.fhfa.gov.*

[67] *Id.* 2008 was the first year FHA reported refinance endorsements by whether they were a refinance of a conventional mortgage or an FHA mortgage.

Sustainable Mortgages

An alternative to defining the market for determining whether a mortgage is eligible to count toward the housing goals would be to focus on the sustainability of the mortgage. Under this approach, the housing goals would be defined in such a way that only mortgages that support sustainable home ownership would count toward the goals. This would require a standard to differentiate between mortgages that are sustainable and mortgages that are likely not to be sustainable.

One approach would be to use historical data on the cumulative default rates (CDRs) of mortgages acquired by the Enterprises and make a determination, based on statistical models that predict CDR, whether mortgages with specific characteristics promote sustainable homeownership. The higher the predicted CDR of a mortgage with specific characteristics, the higher the probability the mortgage will default sometime within its life. FHFA would determine that mortgages with expected CDRs above some point did not promote sustainable homeownership. It might also be possible to establish a statistical correlation between a mortgage's expected CDR and the spread between the yield on the loan and some benchmark interest rate. If so, it might be possible to use that spread as a basis for determining whether mortgages promoted sustainable homeownership.

Both Enterprises use statistical models to calculate expected CDR as part of their business decision strategy. FHFA could rely on Enterprise statistical models or develop its own models to estimate CDRs for the purpose of determining whether mortgages acquired by the Enterprises had estimated CDRs above a specified threshold. FHFA would also have to develop estimates of the share of single-family mortgages originated each year that had estimated CDRs above and below that threshold. To develop its own statistical models, FHFA could use loan-level mortgage data obtained from the Enterprises and leased from private vendors. Data obtained through the mortgage market survey required by section 1324(c) of the Safety and Soundness Act, as amended by HERA, might also be useful.

FHFA invites comments on this alternative to estimating the market and counting single-family mortgages toward the housing goals.

7. Financial Condition of the Enterprises

In the first two full years of the current housing crisis—from July 2007 through the first half of 2009—combined losses at the Enterprises totaled $165 billion. In the first half of 2009, the Enterprises reported combined losses of $47 billion. The financial performance of both Enterprises is dominated by credit-related expenses and losses that stem principally from purchases of PLS and purchases and guarantees of mortgages originated in 2006 and 2007. Since the establishment of the conservatorship for the Enterprises in September 2008, the combined losses of the two Enterprises depleted their capital and required them to draw from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements.

FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. Given the importance of the Enterprises to the housing market, any goal-setting must be closely linked to putting the Enterprises in sound and solvent condition. Over the long term, such actions will assist homeowners and neighborhoods while saving the Enterprises money. In 2009, FHFA attempted to align the Enterprises' affordable housing goals with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

B. Single-Family Housing Goal Levels

Based on the factors described above, proposed § 1282.12 would establish the benchmark levels for the single-family housing goals for 2010 and 2011 as follows:

Housing goals for low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families would be 27 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for families in low-income areas. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income areas would be 13 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for very low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for very low-income families would be 8 percent of the total number of such mortgages purchased by that Enterprise.

Housing goals for refinancing mortgages. The benchmark level of the annual goal for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing for low-income families would be 25 percent of the total number of such mortgages purchased by that Enterprise.

VI. Analysis of Multifamily Housing Goals

Section 1333(a)(4) of the Safety and Soundness Act, as amended by HERA, requires FHFA to consider the following six factors in setting multifamily special affordable housing goals:

(1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;

(3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

(5) The availability of public subsidies;

(6) The need to maintain the sound financial condition of the Enterprise.[68]

A. Analysis of Factors for Multifamily Housing Goals

FHFA's analysis of each of the factors is set forth below.

1. National Multifamily Mortgage Credit Needs

Due to the credit crisis, traditional sources of multifamily credit, primarily commercial mortgage-backed securities (CMBS), life insurance companies, commercial banks, and thrifts, have significantly reduced lending or stopped lending completely. This has left Freddie Mac and Fannie Mae as the principal sources of financing for most multifamily mortgages. FHA, another active source of multifamily credit, has capacity constraints that limit its ability to significantly expand lending through its insured programs.

With multifamily property prices having fallen by almost 34 percent from the third quarter of 2008 to the third quarter of 2009,[69] many properties that

[68] 12 U.S.C. 4563(a)(4).

[69] Moody's/Real CPPI Report, Jan. 2010.

would have been eligible for refinance through Enterprise programs lack enough equity to meet Enterprise loan underwriting standards. Declining multifamily property prices will adversely affect owners who financed with interest-only loans over the past decade. As these loans become due, properties with non-amortizing loans will not have accumulated sufficient additional equity over the term of the loan to counter the effects of declining property values.

While obtaining multifamily credit is difficult for most owners, demand for new multifamily housing credit has also waned. According to the U.S. Census Bureau, multifamily housing starts plummeted by 47 percent from September 2008 to December 2009.[70] Sales of multifamily properties are far below normal levels in part because property owners are waiting for property values to stabilize. Many other multifamily property owners, unable to refinance, have been granted extensions by lenders, or in the case of loans securitized through CMBS, by the servicer. On the positive side, the maturations of multifamily loans acquired by the Enterprises and backing CMBS issuances are unlikely to begin to increase significantly until after 2010.

While the Enterprises have primarily purchased the highest-rated CMBS tranches, they may be indirectly affected by increasing CMBS delinquency rates. According to a March 2009 report by Deutsche Bank, delinquencies on CMBS issuances began to accelerate in late 2008, and should peak at 6 to 7 percent in late 2010.[71] According to December 2009 data released by the MBA,[72] delinquencies on CMBS issuances rose slightly from 3.89 percent to 4.06 percent in the third quarter of 2009. The CMBS delinquency rate in the third quarter of 2008 was 0.63 percent. As properties collateralizing CMBS issuances become delinquent, foreclosures and workouts will increase, further depressing prices of all commercial properties, including multifamily properties. This will make refinancing maturing multifamily loans more challenging for the Enterprises.

While multifamily delinquencies remain relatively low for both Fannie Mae[73] and Freddie Mac,[74] 0.062 percent and 0.014 percent respectively, there is growing concern among multifamily property owners and investors about properties that are overleveraged or generating negative cashflows. Depending on the magnitude of distressed properties requiring restructuring, both Fannie Mae's and Freddie Mac's multifamily activity could exceed FHFA forecasts.

2. Past Performance

HUD established dollar-based multifamily subgoals for the Enterprises for the years 1996 through 2008. HERA extended the 2008 subgoals through 2009, subject to review by FHFA, and in its August 10, 2009 final rule on the housing goals, FHFA increased these 2009 subgoals modestly, from $5.49 billion to $6.56 billion for Fannie Mae, and from $3.92 billion to $4.60 billion for Freddie Mac.

HERA changed the structure of the multifamily housing goal for 2010 and beyond. The multifamily housing goal for 2009 is set in terms of units for very low-income families and low-income families in low-income areas. The scope of the goal is broader for 2010–2011, covering units affordable to all low-income families (those with incomes no greater than 80 percent of AMI) regardless of property location.

Section 1333(a)(2) of the Safety and Soundness Act, as revised by HERA, requires the Director to establish "additional requirements for the purchase by each enterprise of mortgages on multifamily housing that finance dwelling units affordable to very low-income families," with "very low-income" families defined as those with incomes no greater than 50 percent of AMI.[75] To implement this provision, FHFA is proposing to establish a multifamily housing subgoal for very low-income families. FHFA invites comment on this proposed requirement.

Section 1333(a)(3) of the Safety and Soundness Act, as revised by HERA, provides that the Director shall require each Enterprise to report on its purchases of mortgages on multifamily housing "of a smaller or limited size that is affordable to low-income families." The provision defines small multifamily projects as those containing 5 to 50 units or as those with mortgages of up to $5,000,000. The Director may adjust the definition to include projects containing different numbers of units or with mortgages of different amounts. The provision further states that the Director may establish additional requirements related to such units by regulation.[76]

FHFA proposes to define such small multifamily properties as those containing 5 to 50 units, which is consistent with industry standards. FHFA already requires reporting by the Enterprises for purchases of mortgages secured by such properties. FHFA invites comments on whether additional requirements for small multifamily properties should be considered.

Multifamily special affordable housing goal. Both Enterprises played major roles in funding multifamily units for low-income families between 2001 and 2008, as shown in Table 7. Fannie Mae financed an average of 417,000 such units over this period, peaking at 538,000 units in 2003, while Freddie Mac financed an average of 364,000 units, peaking at 492,000 units in 2007. However, as discussed elsewhere in the proposed rule, the Enterprises followed different approaches to the multifamily market, with Freddie Mac relying to a significant extent on the purchase of CMBS, while Fannie Mae depended to a greater extent on the direct purchase of multifamily loans originated by its Delegated Underwriting and Servicing (DUS) lenders.

As indicated in Table 7, Fannie Mae's financing of low-income multifamily units fell by 16 percent, from 532,000 units in 2007 to 448,000 in 2008 units. Financing fell more sharply at Freddie Mac, by 44 percent, from 492,000 units in 2007 to 276,000 units in 2008. This difference reflects the drop in CMBS purchases by Freddie Mac. As a result, Freddie Mac's financing of such units was 62 percent of Fannie Mae's financing, the lowest ratio of the 2001–08 period.

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[70] "New Residential Construction in December 2009." U.S. Census Bureau, Joint Release, U.S. Department of Housing and Urban Development, Jan. 20, 2009.

[71] *Commercial Real Estate Outlook Q1 2009,* Deutsche Bank, Mar. 2009.

[72] *MBA Commercial/Multifamily Mortgage Delinquency Report,* Dec. 7, 2009.

[73] Fannie Mae: *Monthly Summary, November 2009,* Table 9.

[74] Freddie Mac: *Monthly Volume Summary: November 2009,* Table 6.

[75] 12 U.S.C. 4563(a)(2).

[76] 12 U.S.C. 4563(a)(3).

Table 7
GSE Funding of Low-Income Multifamily Units, 2001-08
(Performance if 2010 goal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE Fannie Mae	GSE Freddie Mac	Ratio
Number of Low-Income Multifamily Units Financed	2008	448,075	275,683	0.62
	2007	531,941	492,077	0.93
	2006	423,674	422,421	1.00
	2005	342,152	382,613	1.12
	2004	316,133	398,711	1.26
	2003	538,042	419,543	0.78
	2002	344,833	255,947	0.74
	2001	393,615	264,693	0.67
	Average	417,308	363,961	0.87
Dollar Volume (in billions) of Low-Income Multifamily Units Financed	2008	$19.04	$12.82	0.67
	2007	$26.57	$24.15	0.91
	2006	$18.66	$19.24	1.03
	2005	$12.93	$18.07	1.40
	2004	$10.90	$15.43	1.42
	2003	$18.50	$13.80	0.75
	2002	$11.31	$9.14	0.81
	2001	$12.32	$8.67	0.70
	Average	$16.28	$15.17	0.93

Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).

Very low-income multifamily subgoal. HERA revised the definition of "very low-income" families as it pertains to the Enterprises' housing goals. Under the housing goals established by HUD for 1993–2008, "very low-income" referred to borrowers with incomes no greater than 60 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size. This definition was changed by HERA to refer to borrowers with incomes no greater than 50 percent of AMI, or for rental units, to units affordable to families with incomes in this range, with adjustments for family size.[77] The new definition of "very low-income" families is consistent with that used in some other housing programs.

Enterprise financing of rental units for very low-income families over the 2001–08 period is reported in Table 8. On average, Fannie Mae funded 94,000 such units each year, and Freddie Mae funded 86,000 such units. The same general pattern prevailed over time as that shown in Table 7, with a modest drop in funding by Fannie Mae and a substantial drop (55 percent) by Freddie Mac. As a result, the number of such units financed by Freddie Mac in 2008 was 49 percent of the number financed by Fannie Mae, the lowest ratio of this period.

[77] 12 U.S.C. 4502(24).

Table 8
GSE Funding of Very Low-Income Multifamily Units, 2001-08
(Performance if a 2010 subgoal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE: Fannie Mae	GSE: Freddie Mac	GSE: Ratio
Number of Very Low-Income Multifamily Units Financed	2008	92,622	45,822	0.49
	2007	115,251	102,415	0.89
	2006	118,585	136,023	1.15
	2005	93,605	103,884	1.11
	2004	72,520	101,902	1.41
	2003	106,297	91,316	0.86
	2002	82,197	49,862	0.61
	2001	71,318	54,218	0.76
	Average	94,049	85,680	0.91
Dollar Volume (in billions) of Very Low-Income Multifamily Units Financed	2008	$2.91	$1.44	0.50
	2007	$4.12	$3.77	0.91
	2006	$3.90	$4.55	1.17
	2005	$2.71	$3.86	1.42
	2004	$1.81	$2.88	1.59
	2003	$2.74	$2.26	0.82
	2002	$2.01	$1.33	0.66
	2001	$1.63	$1.18	0.72
	Average	$2.73	$2.66	0.97

Source: FHFA analysis of GSE loan-level data. "Very Low-income" refers to multifamily rental units affordable to families with incomes no greater than 50 percent of Area Median Income (AMI).

Financing of low-income units in small multifamily properties. As discussed above, HERA recognizes the important role played by small multifamily housing as a source of affordable rental housing. According to the 2007 AHS, multifamily properties containing 5–49 units (a slightly different definition than the 5–50 unit definition in HERA) constituted 77 percent of all multifamily units and 74 percent of multifamily units constructed in the previous 4 years. Table 9 reports additional information on small multifamily properties affordable to low-income families.

Both Enterprises increased their financing of low-income multifamily units between 2001 and 2003, from 24,000 units to 155,000 units for Fannie Mae, and from 44,000 units to 138,000 units for Freddie Mac. This increase was motivated at least in part by the favorable counting treatment that HUD allowed for financing goal-qualifying units in small multifamily properties over the 2001–03 period. Under this counting treatment, each goal-qualifying unit counted twice in the numerator and once in the denominator in calculating goal performance.

As indicated in Table 9, both Enterprises decreased their roles in the small multifamily market after the expiration of the favorable HUD counting treatment—for Fannie Mae, an average of 49,000 units for 2004–07, and for Freddie Mac, an average of 24,000 such units. Fannie Mae financed 44,000 low-income small multifamily units in 2008, approximately equal to the average for 2004–07, while Freddie Mac financed only 2,078 such units in 2008, a decrease of 91 percent from its 2004–07 average. FHFA is concerned about Freddie Mac's virtual exit from this business and seeks comment on whether small multifamily low-income housing subgoals should be established for future years.

Table 9

GSE Funding of Low-Income Units in Small Multifamily Properties, 2001-08

("Small multifamily properties" are defined as those with 5-50 units)

Performance Measure	Year of Purchase	GSE Fannie Mae	GSE Freddie Mac	GSE Ratio
Number of Low-Income Units in Small Multifamily Properties Financed	2008	43,979	2,078	0.05
	2007	65,348	23,744	0.36
	2006	44,816	23,471	0.52
	2005	53,842	11,408	0.21
	2004	33,085	37,062	1.12
	2003*	155,105	138,858	0.90
	2002*	42,394	35,340	0.83
	2001*	23,852	44,340	1.86
	Average	57,803	39,538	0.68
Dollar Volume (in billions) of Low-Income Units in Small Multifamily Properties Financed	2008	$2.09	$0.12	0.06
	2007	$3.33	$1.54	0.46
	2006	$2.20	$1.04	0.47
	2005	$2.23	$0.62	0.28
	2004	$1.30	$1.31	1.01
	2003*	$6.14	$4.59	0.75
	2002*	$1.44	$1.29	0.90
	2001*	$0.67	$1.41	2.10
	Average	$2.42	$1.49	0.61

Source: FHFA analysis of GSE loan-level data. "Low-income" refers to multifamily rental units affordable to families with incomes no greater than 80 percent of Area Median Income (AMI).

*For 2001-03, HUD "bonus points" (double credit) for funding goal-qualifying units in small multifamily properties were in effect.

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3. Market Size

The multifamily mortgage market is likely to remain relatively unchanged in 2010 as compared to 2009, and the dollar amount of multifamily loans financed in 2010 will likely be similar to that of 2009, approximately $40–45 billion. Poor property fundamentals, especially declines in property value, will affect the type of properties and owners that can access multifamily credit. If the multifamily market begins to recover in 2011, multifamily originations may increase. Projections of such activity, however, are uncertain. Accordingly, for purposes of this rulemaking, the multifamily goals for both 2010 and 2011 are based on the overall multifamily market for 2009 and Enterprise multifamily performance in the years 2004–2008, taking into account the average percent of very low-income and low-income purchases by the Enterprises in those years. As in prior years, the multifamily goals are set separately for each Enterprise. Unlike prior years, the multifamily goals are measured in units rather than dollar volume.

The proportion of multifamily affordable units available for financing in 2010 and 2011 will likely be below historical levels due to weakness in the multifamily housing market. Steep declines in multifamily property prices since mid-2007 have caused a significant loss of equity for owners, many of whom can no longer qualify for Enterprise financing without placing substantial cash into the property. The loss of equity for most owners has meant that only financially strong properties and borrowers will qualify for Enterprise financing. These properties often have a much lower proportion of affordable units.

Another factor that will likely constrain Enterprise multifamily loan production in 2010 and 2011 will be the relatively small dollar amount of loans maturing in the Enterprise portfolios in 2010 and 2011. The MBA expects only $26 billion in total maturing multifamily mortgages in 2010. However, the volume of maturing loans is expected to increase from 2011 onward.[78]

For well over a decade, Freddie Mac relied upon purchases of CMBS and structured deals involving large portfolios of affordable multifamily loans to meet applicable affordable housing goals. Beginning in 2006 and 2007, CMBS made up a significant portion of Fannie Mae's affordable multifamily purchases. These sources of affordable units are now either

[78] *Multifamily Housing News:* MBA Says Large Amounts of Multifamily Loans Will Mature in 2011 and After, Feb. 11, 2009.

unavailable or do not meet Enterprise standards. Therefore, based on the factors discussed above, multifamily affordable purchases in the very low-income category are likely to be near historical lows in 2009 overall. The effect, though, will be more pronounced at Freddie Mac. The percentage of very low-income multifamily purchases in 2010 for Freddie Mac will be below its average for 2004 to 2008. Fannie Mae is expected to have a very low-income purchase volume near its average for the past several years.

4. Ability of the Enterprise To Lead the Market in Making Multifamily Mortgage Credit Available

As described above in the context of the single-family goals, Congress in enacting the Safety and Soundness Act was concerned that the Enterprises were lagging behind market originations of mortgages for the benefit of low- and moderate-income households. FHFA has been cognizant of that concern in setting goals for the Enterprises.

With the current credit crisis negatively affecting the commercial real estate market, the Enterprises have become market leaders by default. The disciplined underwriting and credit standards they bring to the industry have contributed to relatively low delinquency rates. Compared to the industry, the Enterprises have relatively conservative multifamily underwriting parameters. With the fundamentals of multifamily real estate very weak (*e.g.,* high vacancy rates, stagnant rents and falling property values), the Enterprises have enhanced their credit standards to reduce risk exposure, which has meant that owners of the strongest performing properties are more likely to obtain credit from lenders selling to the Enterprises. As noted previously, Fannie Mae and Freddie Mac comprise a large portion of the multifamily market. As a result, in 2009 they not only led the multifamily market, they effectively were the market.

5. Availability of Public Subsidies

Public subsidies for multifamily housing have been affected by the mortgage credit crisis. Low-income housing tax credits (LIHTCs), an important source of equity for new low-income housing, have fallen in value. However, on October 19, 2009, FHFA announced, in conjunction with the Treasury Department and HUD, an initiative to support State and local housing finance agencies (HFAs) through a new bond purchase program that will support new lending by HFAs, and a temporary credit and liquidity program that will improve the access of HFAs to liquidity for outstanding HFA bonds. Fannie Mae and Freddie Mac each played critical roles in this program, which helped support low mortgage rates and expand resources for low- and middle-income borrowers who want to purchase or rent homes that are affordable over the long term. On January 13, 2010, the Treasury Department, FHFA and HUD announced the completion of all transactions under the initiative, which involved more than 90 HFAs.

The Enterprises actively purchase mortgages on properties with HUD Housing Assistance Plan (HAP) contracts. Newly constructed or rehabilitated properties usually receive forward commitments from the Enterprises with part of the new equity coming from LIHTCs. The remaining Section 8 properties are refinancings where the property owners sign long-term use agreements with HUD and receive a HAP contract in return. The Enterprises can also assist State and local HFAs by credit enhancing HFA bonds, and by offering permanent financing for properties rehabilitated through the Neighborhood Stabilization Program and other HUD grants.

6. Financial Condition of Enterprises

As previously discussed, in the first two full years of the current housing crisis—from July 2007 through the first half of 2009—combined losses at the Enterprises totaled $165 billion. In the first half of 2009, the Enterprises reported combined losses of $47 billion. The financial performance of both Enterprises is dominated by credit-related expenses and losses stemming principally from purchases of PLS and purchases and guarantees of mortgages originated in 2006 and 2007. Since the establishment of the conservatorship for the Enterprises in September 2008, the combined losses of the two Enterprises depleted their capital and required them to draw from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements.

FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. Given the importance of the Enterprises to the housing market, any goal setting must be closely linked to putting the Enterprises in sound and solvent condition. Over the long term, such actions will assist homeowners and neighborhoods while saving the Enterprises money. In 2009, FHFA attempted to align the Enterprises' affordable housing goals with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

B. Multifamily Housing Goal Levels

As a result of the changes in HERA, the proposed rule would establish the multifamily affordable housing goals for each Enterprise separately from the single-family housing goals beginning in 2010. Qualifying multifamily units previously had been included with single-family affordable purchases in the overall goals. Additional requirements for multifamily housing were imposed under a multifamily special affordable subgoal. The multifamily affordable goals for each Enterprise in 2010 and 2011 would be established in terms of low-income and very low-income units financed annually.

Estimates of Enterprise multifamily purchase volume in 2009 were used by FHFA as a proxy for 2010 volumes. With uncertainty as to the path of the economy's recovery, FHFA's estimation for 2011 origination volume is unchanged from 2010.

The proposed rule would set the multifamily goal levels using the average percentage of very low-income and low-income purchases in 2008 for both Enterprises. The year 2008 was chosen, rather than the average for 2004–2008, because 2008 performance more closely reflects current market conditions. Multifamily loan purchase volumes for 2010 were estimated using 2009 part-year volumes. The average low- and very low-income origination rates were multiplied by the expected origination volumes for 2010 and 2011 to derive low- and very low-income unit volumes for the Enterprises.

Freddie Mac multifamily volume has not kept pace with Fannie Mae's volume since the beginning of the credit crisis in 2008, especially for very low-income units, due in part to Freddie Mac's reliance on CMBS and structured purchases from banks and thrifts. Those sources of mortgages are not now readily available and are likely to reappear in only limited volumes in the near term.

Fannie Mae, on the other hand, is better positioned than Freddie Mac to purchase affordable units through its flow business. For example, Fannie Mae has a group dedicated to purchasing mortgages on small multifamily properties (5 to 50 units). Smaller properties, in general, have higher percentages of affordable units than larger properties. Furthermore, Fannie Mae's DUS program allows it to share credit losses with lenders. Mortgages on small multifamily properties, however, are often more at risk of delinquency and default than other multifamily mortgage property types. Perhaps more importantly, mortgages on small properties are usually more expensive to originate and underwrite than mortgages on large properties because the costs, mostly fixed, are spread over fewer units.[79] The DUS program helps Fannie Mae mitigate some of that credit risk of purchasing affordable multifamily units.

Since Fannie Mae will likely purchase significantly more multifamily units in 2010 than Freddie Mac, based on 2009 data, the proposed rule would set different goals for each of the Enterprises, as was done in previous years. Based on 2008 Enterprise affordable housing performance, FHFA anticipates that for low-income units and very low-income units, multifamily mortgages acquired by Freddie Mac will finance fewer units than multifamily mortgages acquired by Fannie Mae in 2010 and 2011. The disparity will be even greater for very low-income units. Freddie Mac will likely purchase multifamily loans that finance about half as many very low-income units as will be financed by multifamily loans acquired by Fannie Mae in 2010 and 2011. While in conservatorship, FHFA expects Freddie Mac's board of directors and new senior management team to assess Freddie Mac's business model with respect to multifamily housing.

Proposed § 1282.13 would establish the multifamily special affordable housing goals and subgoals as follows. Unlike with the single-family goals described above, FHFA has not defined these goals as prospective targets, with compliance to be assessed by reference to actual market data. Rather, because the availability of the necessary market data is less certain for the multifamily market, FHFA has set goals in the traditional prospective manner, but these goals remain subject to the statutory provisions enabling them to be adjusted, or providing relief from enforcement, if market conditions so require.

Multifamily low-income housing goals. The annual goal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to low-income families would be at least 237,000 dwelling units for each of 2010 and 2011. The annual goal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to low-income families would be at least 215,000 such dwelling units for each of 2010 and 2011.

Multifamily very low-income housing subgoals. The annual subgoal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to very low-income families would be at least 57,000 dwelling units for each of 2010 and 2011. The annual subgoal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to very low-income families would be at least 28,000 such dwelling units for each of 2010 and 2011.

These proposed multifamily goals reflect the financial and operational condition of the Enterprises in conservatorship.

VII. Section-by-Section Analysis

A. Definitions—Proposed § 1282.1

Proposed § 1282.1 would set forth definitions applicable to the housing goals provisions. The proposed rule includes a number of technical amendments to conform the definitions to the statutory definitions in the Safety and Soundness Act, as amended by HERA.

The proposed rule would remove a number of definitions that were used in regulatory provisions that have been revised or eliminated based on HERA's amendments of the Safety and Soundness Act. Proposed § 1282.1 would no longer include definitions for "central city," "ECOA," "government-sponsored enterprise, or GSE," "home purchase mortgage," "New England," "ongoing program," "other underserved area," "owner-occupied unit," "portfolio of loans," "real estate mortgage investment conduit (REMIC)," "rural area," "underserved area," and "wholesale exchange."

Proposed § 1282.1 would add new definitions of "extremely low-income," "low-income," and "moderate-income," and it would revise the income levels in the definition of "very low-income." The proposed rule would also replace the definition of "low-income area" with a new definition for "families in low-income areas." Each of these definitions is revised to be substantially the same as the corresponding definition in section 1303 of the Safety and Soundness Act, as amended by HERA.[80]

Proposed § 1282.1 would add new definitions for "borrower income," "FEMA," "HMDA," "minority census tract," "mortgage revenue bond," "non-metropolitan area," "owner-occupied housing," "private label security," and "purchase money mortgage." The new definitions are intended to reflect common usage and provide certainty in interpreting the terms as used in new and existing regulatory provisions.

Proposed § 1282.1 would also make minor conforming revisions to several definitions. The definition of "contract rent" would be revised to make clear that the market rent for similar units in the neighborhood, as used by the lender or appraiser in underwriting a property, may be used as the anticipated rent for unoccupied units. The proposed rule would add language to the definition of "utilities" clarifying that charges for cable or telephone service shall not be included. Proposed § 1282.1 would clarify that Metropolitan Divisions are included in the definition of "metropolitan area" to facilitate comparisons with census and HMDA information. Unnecessary references to the form of payment would be eliminated from the definition of "mortgage purchase." Proposed § 1282.1 would remove the definition of "refinancing" and incorporate those provisions in a new definition of "refinancing mortgage." In order to avoid confusion about whether a transaction should be treated as a loan modification or a refinancing, proposed § 1282.1 would exclude workout agreements from the definition. The definition of "mortgage" in proposed § 1282.1 would not include references to personal property manufactured housing loans pending further review of the appropriate treatment of such loans under the Enterprise and Bank housing goals.

The definitions for "mortgages contrary to good lending practices" and "mortgages with unacceptable terms or conditions or resulting from unacceptable practices" would be deleted, with their substantive provisions revised and consolidated into a single new definition of "mortgage with unacceptable terms or conditions." The definition of "HOEPA mortgage" would be revised to conform FHFA's definition to the coverage in HOEPA itself. The definition of "mortgage with unacceptable terms or conditions" in proposed § 1282.1 would include a new provision regarding mortgages with annual percentage rates (APRs) above a certain level. The new provision is intended to cover mortgages that were formerly included in the definition of "HOEPA mortgage." The provision in the definition of "mortgage with unacceptable terms or conditions" relating to a borrower's ability to pay would be replaced with a provision incorporating interagency guidance on nontraditional and subprime mortgages. This change is intended to cover similar types of mortgages while providing greater consistency between the

[79] "Why do Small Multifamily Properties Bedevil Us?" Shekar Narasimhan, The Brookings Institution, Nov. 2001, *http://www.brookings.edu/articles/2001/11metropolitanpolicy_narasihan.aspx.*

[80] 12 U.S.C. 4502.

provisions of the housing goals and other regulatory provisions.

Designated disaster areas. The new definition of "families in low-income areas" includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." The proposed rule would define "designated disaster areas" as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by the Federal Emergency Management Agency (FEMA), exceeds $1,000 per household for that census tract.

Disaster areas are declared when an area is adversely affected by some unforeseen event. However, not all disasters impact housing to the same degree, and the severity of the impact varies within the declared area. Presidential Major Disaster Declarations are defined by FEMA at the county level in the area affected by the major disaster and can be declared to be eligible for public assistance, individual assistance or both. Public assistance is available to local governments for the repair, replacement or clean-up of public infrastructure. Individual assistance is broken down further into two categories, housing needs and "other than housing needs." [81] Housing needs include repair, replacement and construction of homeowner residences. The proposed rule would limit the definition of "designated disaster areas" to those counties eligible for individual assistance, and it would establish a minimum average real property damage severity.

For purposes of complying with the Community Reinvestment Act (CRA), regulators have made the determination that "[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended." [82] To accommodate the Enterprises' business planning requirements, for purposes of the low-income areas housing goal, the proposed rule would treat a designated disaster area as effective beginning no later than January 1 of the year following the FEMA designation and continuing through December 31 of the third full calendar year following the FEMA designation. If data is available in a particular case to support treatment as a designated disaster area from an earlier date, FHFA may provide for such treatment.

FHFA welcomes comments on the proposed changes to the definitions under § 1282.1.

B. Housing Goals—Proposed §§ 1282.11 Through 1282.13

As required by sections 1331(a) and 1333(a)(2) of the Safety and Soundness Act, as amended by HERA, this subpart establishes four single-family housing goals and one multifamily special affordable housing goal for 2010 and 2011. The subpart would also establish one multifamily special affordable housing subgoal for 2010 and 2011. The single-family housing goals would be based both on the proposed benchmark levels and on an evaluation of the Enterprise's performance relative to the market for each housing goal in each year. Proposed § 1282.11(b) would require the Director to establish housing goals for a particular year by December 1 of the previous year.[83] Although the initial final rule establishing the new housing goals under the Safety and Soundness Act, as amended by HERA, will not be published for effect until early 2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

Proposed § 1282.12(b) would establish criteria for determining the size of the market based on HMDA data. The criteria for establishing the size of the market reflect the types of mortgages that would be counted for purposes of the housing goals and that would typically be eligible for purchase by an Enterprise. Additional details regarding the housing goals are discussed above, along with the factors considered by FHFA in establishing the proposed housing goals.

C. Discretionary Adjustment of Housing Goals—Proposed § 1282.14

Consistent with the requirements of section 1334 of the Safety and Soundness Act, as amended by HERA, proposed § 1282.14 would provide for an Enterprise to petition the Director to reduce the level of any goal or subgoal.[84] Proposed § 1282.14 would set forth the standards and procedures for consideration by the Director in determining whether to reduce a goal or subgoal level.

D. General Counting Requirements—Proposed § 1282.15

Proposed § 1282.15 would set forth general requirements for the counting of Enterprise mortgage purchases toward the achievement of the housing goals. Performance under the single-family housing goals would be evaluated based on the percentage of all single-family, owner-occupied mortgages purchased by an Enterprise that meet a particular goal. Performance under the multifamily housing goals would be evaluated based on the total number of units that meet a particular goal and are financed by mortgages purchased by an Enterprise.

The data estimation methodologies in this section would be revised to reflect changes in the affordable housing goals for 2010. The methodology for estimating affordability for single-family rental properties would be eliminated as unnecessary because the single-family housing goals are measured in terms of mortgages rather than units. The option to exclude single-family owner-occupied units with missing data up to one percent of the total number of single-family owner-occupied units backing mortgages purchased by an Enterprise would also be removed because it is no longer in use by either Enterprise. The option to request approval of alternative methodologies would also be removed. In light of the shorter time period for which the affordable housing goals are being established, it should not be necessary to make changes to the rules for missing data prior to FHFA's proposal of new housing goals for later years.

E. Special Counting Requirements—Proposed § 1282.16

Proposed § 1282.16 would set forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals. A number of clarifying and conforming changes would be made to this section to ensure consistent application of the counting rules among the Enterprises. Proposed § 1282.16(b) would make clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage should be excluded even if it otherwise would fall within one of the special counting rules in proposed § 1282.16(c). For example, a non-conventional mortgage that would

[81] Federally declared disaster areas are managed by FEMA and can be tracked at FEMA's Web site. *See http://www.fema.gov/news/disasters.fema.*

[82] The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice,* 74 FR 509 (Jan. 6, 2009).

[83] *See* 12 U.S.C. 4561(b).

[84] 12 U.S.C. 4564.

be excluded from consideration pursuant to proposed § 1282.16(b)(3) could not be counted even if it otherwise would be counted as a seasoned mortgage under proposed § 1282.16(c)(6). Proposed § 1282.16(c) would also make clear that where a transaction falls under more than one of the special counting rules in § 1282.16(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the affordable housing goals.

Proposed § 1282.16(b) would eliminate the current exclusion of jumbo conforming loans from consideration for purposes of the affordable housing goals.[85] These loans had been excluded from consideration in the past because the goals had been established based on market estimates that preceded the increases in the conforming loan limits. Because the higher loan limits have been considered in the evaluation of the market for this proposed rule, it is no longer necessary to exclude such loans from consideration for purposes of the affordable housing goals.

Proposed § 1282.16(b)(1) would be revised to refer more specifically to equity investments in low-income housing tax credits, which are consistent with the Charter Acts of the Enterprises. Proposed § 1282.16(b)(11) would make explicit the existing prohibition on counting mortgages toward performance under the affordable housing goals if the mortgage has previously been counted for purposes of the performance of either Enterprise under the housing goals. In order to limit excessively burdensome recordkeeping that could result, the rule would make clear that this limitation only extends back for five years.

Proposed § 1282.16(b)(12) would exclude purchases of mortgages secured by properties that have not been certified as ready for occupancy from consideration for purposes of the affordable housing goals. Proposed § 1282.16(b)(14) would reflect the statutory limitation on housing goals credit for mortgages receiving assistance under the Housing Trust Fund and the Capital Magnet Fund established by HERA.[86]

Proposed § 1282.16(c) would no longer include real estate mortgage investment conduits (REMICs) as mortgage purchases for purposes of the housing goals, consistent with the general exclusion of PLS under proposed § 1282.16(b)(13). Proposed § 1282.16(c) would also eliminate consideration of expiring assistance contracts, reflecting the changes under HERA to the former special affordable housing goal. Proposed § 1282.16(c)(5) would amend the provisions regarding cooperative housing and condominiums to reflect HERA's treatment of single-family housing and multifamily housing under separate goals. Proposed § 1282.16(c)(8) would remove current limitations on counting mortgage revenue bonds related to the source of funds for repayment and the presence of additional credit enhancements. The proposed rule would require that an Enterprise have sufficient information available to determine the eligibility of any underlying mortgages before counting such mortgages or units for purposes of the housing goals. Proposed § 1282.16(c)(10) would reflect the accepted terminology for the Administration's Making Home Affordable program.

Proposed § 1282.16(d) would relocate existing provisions regarding HOEPA mortgages and mortgages with unacceptable terms or conditions from current § 1282.16(c). Placing these provisions in a separate paragraph reflects the fact that unlike other types of mortgage purchases, HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but can never be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria. The proposed treatment is consistent with past practice and with section 1332(i) of the Safety and Soundness Act, as amended by HERA, which provides that no credit may be given for mortgages that FHFA determines are "unacceptable or contrary to good lending practices."[87]

Proposed § 1282.16(e) would clarify that FHFA may provide guidance on the treatment of any transactions under the affordable housing goals. Such guidance may be provided in response to a request from one or both Enterprises, or it may be provided at the initiation of FHFA.

Private Label Securities. Proposed § 1282.16(b)(13) would exclude PLS from counting for purposes of the affordable housing goals. Historically, the Enterprises—particularly Freddie Mac—relied on PLS purchases to help them achieve certain affordable housing goals. Freddie Mac met the 2005 and 2006 affordable housing goals and subgoals in part through its purchases of AAA-rated tranches of PLS backed by subprime mortgages that were targeted to satisfy goals and subgoals. As house price appreciation and rising interest rates reduced housing affordability, PLS proliferated as the subprime share of the market grew to more than 20 percent. Fannie Mae and Freddie Mac began to follow suit in response to declining market share and in pursuit of higher profits. The Enterprises not only modified their own underwriting standards, but they also bought hundreds of billions of dollars' worth of AAA-rated tranches of subprime and Alt-A PLS for the yield and, in certain instances, to satisfy specific housing goals and subgoals.

The results of providing large-scale funding for such loans were adverse for borrowers who entered into mortgages that did not sustain homeownership and for the Enterprises themselves. Although Fannie Mae and Freddie Mac have a combined 57 percent share of mortgages outstanding in their guaranteed portfolio, the mortgages in that portfolio account for only 25 percent of serious delinquencies. However, while PLS account for 12 percent of all mortgages outstanding, PLS account for 34 percent of serious delinquencies. As delinquencies in PLS portfolios triggered downgrades, 90 percent of the PLS holdings of the Enterprises experienced a downgrade. In light of that record, FHFA proposes to exclude PLS from consideration under the housing goals.

In addition to the recent dismal performance of PLS, it is reasonable to separate any future growth of the PLS market from the Enterprises' housing goals. The housing goals reflect Congress' concern that the Enterprises' charter mission to support the stability, liquidity and affordability of the secondary market not be managed to the detriment or neglect of goal-eligible mortgages. In this way the goals may be seen as a mechanism to ensure that each Enterprise serves all segments of the mortgage market available to it. Even to the extent that a non-GSE secondary mortgage market returns, loans backing new or seasoned PLS would not count in either the numerator or the denominator for purposes of assessing housing goals.

FHFA invites comment on the proposed exclusion of PLS and on alternatives to not counting PLS mortgages in meeting the housing goals. For example, mortgages backing such securities could be counted if an appropriate senior Enterprise officer certified that the mortgages are compliant with all existing regulations regarding good mortgage practices, and with the interagency guidance on subprime lending and non-traditional

[85] *See* 12 CFR 1282.16(b)(10).

[86] *See* 12 U.S.C. 4568, 4569.

[87] 12 U.S.C. 4562(i).

loans. Such certification, for example, could be required to include a description of the methods used to determine that loans included in such PLS met those conditions. The certification could also require regular and ongoing review of PLS purchases to ensure that they meet existing requirements regarding good mortgage practices and recent interagency regulatory guidance on non-traditional and subprime loans.

Commercial Mortgage Backed Securities (CMBS) would also be excluded from counting toward the affordable housing goals under the proposed rule. FHFA invites comment on whether CMBS should be treated differently than other PLS for purposes of the affordable housing goals.

Home Equity Conversion Mortgages and Subordinate Liens. Proposed § 1282.16(b)(3) would exclude the purchases of all non-conventional single-family mortgages, including HECMs, from counting towards the Enterprises' housing goals. Certain non-conventional mortgages, including HECMs, have been counted toward the goals in the past. HERA, however, amended section 1332(a) of the Safety and Soundness Act to restrict the single-family housing goals to include only conventional mortgages.[88] This restriction does not preclude the Enterprises' purchase of Charter-compliant non-conventional single-family mortgages, including HECMs, but such purchases would not count toward the housing goals—that is, such purchases would be excluded from both the numerator and denominator in calculating goal performance.

Proposed § 1282.16(b)(10) would also exclude the purchases of subordinate lien mortgages (second mortgages) from counting towards the Enterprises' housing goals. This exclusion would reflect the fact that, under section 1331 of the Safety and Soundness Act, as amended, the single-family housing goals are limited to purchase money or refinancing mortgages. This would exclude "piggy-back" liens that may be acquired by an Enterprise along with the corresponding first lien mortgage and subordinate lien mortgages, such as home equity loans, acquired separately by an Enterprise where the Enterprise does not also acquire the corresponding first lien mortgage. This provision would not preclude the Enterprises' purchase of Charter-compliant subordinate lien mortgages, but as with HECMs, such purchases would not count toward the housing goals. FHFA seeks comments on this provision.

[88] 12 U.S.C. 4562(a).

F. Affordability Definitions—Proposed §§ 1282.17 Through 1282.19

Proposed § 1282.17 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on area median income for owners and tenants of rental units where the family size and income are known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.17, this section would include an additional paragraph (e) for extremely low-income borrowers and tenants with income at or below 30 percent of AMI with adjustments for family size. Although the Enterprise housing goals do not specifically target extremely low-income borrowers or tenants, the proposed rule would establish cutoffs for determining such affordability to facilitate any reporting or analysis of such data that is required.

Proposed § 1282.18 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where the family size is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.18, this section would include an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

Proposed § 1282.19 would set forth definitions and establish cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI for tenants of rental units where tenant income is not known to the Enterprise. In addition to the levels of affordability that currently appear at § 1282.19, this section would include an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

G. Housing Goals Enforcement—Proposed §§ 1282.20 and 1282.21

Proposed § 1282.20 would provide that the Director shall determine whether an Enterprise has met the affordable housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA. If the Director determines that an Enterprise has failed to meet any housing goal, the Director shall provide notice to the Enterprise in accordance with 12 U.S.C. 4566(b). The determination of compliance with the single-family housing goals would be based both on the size of the market for that year and the benchmark levels established in this subpart. The provision formerly found at § 1282.20 referenced the obligation of the Enterprises under the Safety and Soundness Act to engage in certain kinds of activities in meeting the affordable housing goals. The regulatory provision did not add to or expand the requirements of the statute and would be removed as unnecessary, but the statutory obligation remains in effect.[89]

Proposed § 1282.21 would include requirements for submission of a housing plan by an Enterprise for failure or substantial probability of failure to meet any housing goal that was or is feasible. The requirement to submit a housing plan would be at the discretion of the Director.

H. Reporting Requirements—Proposed Subpart D

Proposed subpart D would relocate existing reporting requirements from part 81, subpart E of title 24 of the Code of Federal Regulations. Proposed § 1282.65 would relocate an existing regulatory provision on data certification from 24 CFR 81.102. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the reporting requirement and Enterprise data integrity provisions in 24 CFR part 81 will no longer be in effect.

The proposed rule would make various conforming changes throughout subpart D. Proposed § 1282.62(b) would require the Enterprises to submit loan-level mortgage data on a quarterly basis. Previously such submissions were required only semi-annually. Advances in technology limit the burden of more frequent submissions, and the additional data provided will facilitate FHFA's monitoring of performance under the housing goals. Proposed §§ 1282.62(c) and 1282.63 would revise the time periods for submission to FHFA of the required Mortgage Reports and Annual Housing Activities Reports (AHARs), respectively. The shorter time periods will permit FHFA to evaluate the performance of the Enterprises on a more timely basis. Proposed § 1282.63 would also require that the Enterprises make their AHARs available to the public online. FHFA does not expect that the requirement to make available online information that is already publicly available will be burdensome to the Enterprises. Proposed § 1282.64 would eliminate the requirement for the Enterprises to submit information that is typically made publicly available by each Enterprise. The Director may

[89] *See* 12 U.S.C. 4565(b).

continue to request such reports, information and data as the Director deems necessary. Proposed subpart D would not include the provisions regarding submission of additional data or reports and the addresses for submission of information that were formerly found at 24 CFR 81.65 and 81.66. Proposed § 1282.64 is sufficiently broad to encompass any requests for additional data or reports that the Director deems necessary.

Proposed § 1282.65 would simplify the detailed procedures laid out in the previous data integrity provision found at 24 CFR 81.102. FHFA will implement the data integrity process pursuant to its general regulatory authority over the Enterprises. FHFA expects that the Enterprises will continue to work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA. The proposed provision would maintain the most important aspects of the data integrity process in the regulation, including the requirement that the Enterprises certify the accuracy of their submissions.

I. Book-Entry Procedures—Proposed Part 1249

Proposed part 1249 would relocate existing regulatory provisions on book-entry procedures from part 81, subpart H of title 24 of the Code of Federal Regulations. These provisions have continued in effect pursuant to section 1302 of HERA. Upon the effective date of the final housing goals rule, the book-entry procedures in 24 CFR part 81 will no longer be in effect. The proposed rule would also relocate definitions that are currently found in § 1282.2 and that are applicable only to the book-entry procedures in proposed part 1249 to a new section 1249.10 in that part. The proposed rule would make conforming changes throughout the part, including a clarification that the waiver provision in proposed § 1249.17 applies only to the book-entry provisions in part 1249. Section 1249.15 would be amended to reflect the transfer of authority from the Secretary of HUD to the Director. The proposed rule would not make any changes to the substance of the book-entry provisions.

VIII. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 1249

Federal Reserve System, Securities.

12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4526, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulations by adding part 1249 and revising part 1282 to read as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

PART 1249—BOOK-ENTRY PROCEDURES

Sec.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526.

§ 1249.10 Definitions.

(a) *General.* Unless the context requires otherwise, terms used in this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the Enterprises.

(b) *Other terms.* As used in this part, the term:

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

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Enterprises, on which Book-entry Enterprise Securities are issued, recorded, transferred and maintained in book-entry form.

Definitive Enterprise Security means an Enterprise Security in engraved or printed form, or that is otherwise represented by a certificate.

Eligible Book-entry Enterprise Security means a Book-entry Enterprise 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.

Enterprise Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security.

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

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry Enterprise Securities) and transfers book-entry Securities (including Book-entry Enterprise Securities).

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

Person, as used in this part, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, an Enterprise, or a Federal Reserve Bank.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

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

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security".

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry Enterprise Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 1249.11 Maintenance of Enterprise Securities.

An Enterprise Security may be maintained in the form of a Definitive Enterprise Security or a Book-entry Enterprise Security. A Book-entry Enterprise Security shall be maintained in the Book-entry System.

§ 1249.12 Law governing rights and obligations of United States, Federal Reserve Banks, and Enterprises; rights of any person against United States, Federal Reserve Banks, and Enterprises; 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 part, the Securities Documentation, and Federal Reserve Bank Operating Circulars (but not including any choice of law provisions in the Securities Documentation to the extent such provisions conflict with the Book-entry regulations contained in this part):

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

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

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

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

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

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

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1249.13(c)(1), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part, and notwithstanding any provision in the Securities Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and shall be read as though modified to effectuate the application of 31 CFR 357.11 to the Enterprises.

§ 1249.13 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Enterprise Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) An Enterprise and the Federal Reserve Banks have 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. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, an Enterprise, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1249.12(b) or (d). The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1249.14 Obligations of Enterprises; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1249.13(c)(1), for the purposes of this part, the Enterprise and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Enterprise Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor an Enterprise is liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry Enterprise Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Enterprise Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Enterprise to make payments (including payments of interest and principal) with respect to Book-entry Enterprise Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry Enterprise Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Enterprise Securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both redemption proceeds, where applicable, to a Funds Account at such Federal Reserve Bank or otherwise paying such redemption proceeds as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry Enterprise Security.

§ 1249.15 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Enterprises to perform the following functions with respect to the issuance of Book-entry Enterprise Securities offered and sold by an Enterprise to which this part applies, in accordance with the Securities Documentation, Federal Reserve Bank Operating Circulars, this part, and any procedures established by the Director consistent with these authorities:

(1) To service and maintain Book-entry Enterprise Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by the Enterprise;

(3) To effect transfer of Book-entry Enterprise Securities between Participants' Securities Accounts as directed by the Participants;

(4) To effect conversions between Book-entry Enterprise Securities and Definitive Enterprise Securities with respect to those securities as to which conversion rights are available pursuant to the applicable Securities Documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Enterprise.

(b) Each Federal Reserve Bank may issue Federal Reserve Bank Operating Circulars not inconsistent with this part, governing the details of its handling of Book-entry Enterprise Securities, Security Entitlements, and the operation of the Book-entry System under this part.

§ 1249.16 Withdrawal of Eligible Book-entry Enterprise Securities for conversion to definitive form.

(a) Eligible Book-entry Enterprise Securities may be withdrawn from the Book-entry System by requesting delivery of like Definitive Enterprise Securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw Eligible Book-entry Enterprise Securities from book-entry in the Book-entry System, convert such securities into Definitive Enterprise Securities and deliver them in accordance with such instructions. No such conversion shall affect existing interests in such Enterprise Securities.

(c) All requests for withdrawal of Eligible Book-entry Enterprise Securities must be made prior to the maturity or date of call of the securities.

(d) Enterprise Securities which are to be delivered upon withdrawal may be issued in either registered or bearer form, to the extent permitted by the applicable Securities Documentation.

§ 1249.17 Waiver of regulations.

The Director reserves the right, in the Director's discretion, to waive any provision(s) of this part in any case or class of cases for the convenience of an Enterprise, the United States, or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Director is satisfied that such action will not subject an Enterprise or the United States to any substantial expense or liability.

§ 1249.18 Liability of Enterprises and Federal Reserve Banks.

An Enterprise and the Federal Reserve Banks may rely on the information provided in a Transfer Message, and are not required to verify the information. An Enterprise and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, or evidence submitted in support thereof.

§ 1249.19 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under these regulations, an Enterprise may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Enterprise be necessary for the protection of the interests of the Enterprise.

(b) *Notice of attachment for Enterprise Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

* * * * *

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

1282.19 Affordability—Rent level definitions—tenant income is not known.
1282.20 Determination of compliance with housing goals; notice of determination.
1282.21 Housing plans.

Subpart C—[Reserved]

Subpart D—Reporting Requirements

1282.61 General.
1282.62 Mortgage reports.
1282.63 Annual Housing Activities Report.
1282.64 Periodic reports.
1282.65 Enterprise data integrity.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566, 4603.

Subpart A—General

§ 1282.1 Definitions.

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term:

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Borrower income means the total gross income relied on in making the credit decision.

Charter Act means the Fannie Mae Charter Act, as amended, or the Freddie Mac Act, as amended.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.,* contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies. Anticipated rent for unoccupied units may be the market rent for similar units in the neighborhood as determined by the lender or appraiser for underwriting purposes.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Designated disaster area means any census tract (1) that is located in a county designated by FEMA as adversely affected by a declared major disaster, (2) where individual assistance payments were authorized by FEMA, and (3) where average damage severity, as reported by FEMA, exceeds $1,000 per household in the census tract. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

Enterprise means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

Extremely low-income means:

(i) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(ii) In the case of rental units, income not in excess of 30 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Families in low-income areas means:

(i) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(ii) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(iii) Any family with an income that does not exceed area median income that resides in a designated disaster area.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

Fannie Mae Charter Act means the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1715 *et seq.*).

FEMA means the Federal Emergency Management Agency.

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act, as amended (12 U.S.C. 1451 *et seq.*).

Ginnie Mae means the Government National Mortgage Association.

HMDA means the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*).

HOEPA mortgage means a mortgage covered by section 103(aa) of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1602(aa)), as implemented by the Board of Governors of the Federal Reserve System.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income means:

(i) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(ii) In the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(i) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and

South America (including Central America), and who maintains Tribal affiliation or community attachment;

(ii) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(iii) Black or African American—a person having origins in any of the black racial groups of Africa;

(iv) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(v) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority census tract means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means:

(i) In the case of owner-occupied units, income not in excess of area median income; and

(ii) In the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families in accordance with this part.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under section 309(m) of the Fannie Mae Charter Act and section 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired a mortgage or an interest in a mortgage for portfolio, resale, or securitization.

Mortgage revenue bond means a tax-exempt bond or taxable bond issued by a State or local government or agency where the proceeds from the bond issue are used to finance residential housing.

Mortgage with unacceptable terms or conditions means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(i) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of $1,000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(A) For purposes of this definition, points and fees include:

(*1*) Origination fees;

(*2*) Underwriting fees;

(*3*) Broker fees;

(*4*) Finder's fees; and

(*5*) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party;

(B) For purposes of this definition, points and fees do not include:

(*1*) Bona fide discount points;

(*2*) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(*3*) The cost of mortgage insurance or credit-risk price adjustments;

(*4*) The costs of title, hazard, and flood insurance policies;

(*5*) State and local transfer taxes or fees;

(*6*) Escrow deposits for the future payment of taxes and insurance premiums; and

(*7*) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(ii) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(iii) Prepayment penalties, except where:

(A) The mortgage provides some benefit to the borrower (*e.g.,* a rate or fee reduction for accepting the prepayment premium);

(B) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(C) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(D) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(iv) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(v) Underwriting practices contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by Federal banking agencies;

(vi) Failure to comply with fair lending requirements; or

(vii) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

Owner-occupied housing means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

Participation means a fractional interest in the principal amount of a mortgage.

Private label security means any mortgage-backed security that is neither issued nor guaranteed by Fannie Mae, Freddie Mac, Ginnie Mae, or any other government agency.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Purchase money mortgage means a mortgage given to secure a loan used for the purchase of a single-family residential property.

Refinancing mortgage means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(i) A renewal of a single payment obligation with no change in the original terms;

(ii) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), with a corresponding change in the payment schedule;

(iii) An agreement involving a court proceeding;

(iv) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(v) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(vi) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means, for a dwelling unit:

(i) When the contract rent includes all utilities, the contract rent; or

(ii) When the contract rent does not include all utilities, the contract rent plus:

(A) The actual cost of utilities not included in the contract rent; or

(B) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4501 *et seq.*).

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for cable or telephone service.

Utility allowance means either:

(i) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued periodically by FHFA; or

(ii) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very low-income means:

(i) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(ii) In the case of rental units, income not in excess of 50 percent of area median income, with adjustments for smaller and larger families in accordance with this part.

Working day means a day when FHFA is officially open for business.

Subpart B—Housing Goals

§ 1282.11 General.

(a) *General.* Pursuant to the requirements of the Safety and Soundness Act (12 U.S.C. 4561 through 4566), this subpart establishes:

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family refinancing mortgage housing goal, a multifamily special affordable housing goal and a multifamily special affordable housing subgoal;

(2) Requirements for measuring performance under the goals; and

(3) Procedures for monitoring and enforcing the goals.

(b) *Annual goals.* Each housing goal shall be established by regulation no later than December 1 of the preceding year, except that any housing goal may be adjusted by regulation to reflect subsequent available data and market developments.

§ 1282.12 Single-family housing goals.

(a) *Single-family housing goals.* An Enterprise shall be in compliance with a single-family housing goal if its performance under the housing goal meets or exceeds either:

(1) The share of the market that qualifies for the goal, or

(2) The benchmark level for the goal.

(b) *Size of market.* The size of the market for each goal shall be established annually by FHFA based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest $1,000) shall be excluded;

(5) All mortgages with rate spreads of 300 basis points or more above the applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income Families Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 27 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) *Very Low-income Families Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 8 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(e) *Low-income Areas Housing Goal.* The percentage share of each Enterprise's total purchases of purchase money mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 13 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(f) *Refinancing Housing Goal.* The percentage share of each Enterprise's total purchases of refinancing mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed either:

(1) The share of such mortgages in the market as defined in paragraph (b) of this section in each year; or

(2) The benchmark level, which for 2010 and 2011 shall be 25 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

§ 1282.13 Multifamily special affordable housing goal and subgoal.

(a) *Multifamily housing goal and subgoal.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal.

(b) *Multifamily Low-income Housing Goal.* For the years 2010 and 2011, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 237,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 215,000 such dwelling units in each year.

(c) *Multifamily Very low-income Housing Subgoal.* For the years 2010 and 2011, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 57,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise in each year, and for Freddie Mac, at least 28,000 such dwelling units in each year.

§ 1282.14 Discretionary adjustment of housing goals.

(a) An Enterprise may petition the Director in writing during any year to reduce any goal or subgoal for that year.

(b) The Director shall seek public comment on any such petition for a period of 30 days.

(c) The Director shall make a determination regarding the petition within 30 days after the end of the public comment period. If the Director requests additional information from the Enterprise after the end of the public comment period, the Director may extend the period for a final determination for a single additional 15-day period.

(d) The Director may reduce a goal or subgoal pursuant to a petition for reduction only if:

(1) Market and economic conditions or the financial condition of the Enterprise require such a reduction; or

(2) Efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Charter Acts (12 U.S.C. 1716; 12 U.S.C. 1451 note).

§ 1282.15 General counting requirements.

(a) *Calculating the numerator and denominator for single-family housing goals.* Performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Enterprise transactions or activities that are not mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1282.16(b).

(1) *The numerator.* The numerator of each fraction is the number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for single-family housing goals.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular single-family housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in this paragraph (b).

(1) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level, *i.e.,* low- or very low-income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2) When the income of the mortgagor(s) is not available to determine whether a mortgage purchase counts toward achievement of a particular single-family housing goal, an Enterprise's performance with respect to such mortgage purchase may be evaluated using estimated affordability information by multiplying the number of mortgage purchases with missing borrower income information in each census tract by the percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available.

(3) The estimation methodology in paragraph (b)(2) of this section may be used up to a nationwide maximum that shall be calculated by multiplying, for each census tract, the percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of Enterprise mortgage purchases secured by single-family owner-occupied properties for each census tract, summed up over all census tracts. Separate nationwide maximums shall be calculated for purchase money mortgages and for refinancing mortgages. If the nationwide maximum is exceeded, then the estimated number of goal-qualifying mortgages will be adjusted by the ratio of the applicable nationwide maximum to the total number of mortgage purchases secured by single-family owner-occupied properties for the Enterprise in that year. Mortgage purchases in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the

denominator of the respective goal calculation.

(c) *Counting dwelling units for multifamily housing goal and subgoal.* Performance under the multifamily housing goal and subgoal shall be measured by counting the number of dwelling units that count toward achievement of a particular housing goal or subgoal in all multifamily properties financed by mortgages purchased by an Enterprise in a particular year. Only dwelling units that are financed by mortgage purchases, as defined by FHFA, and that are not specifically excluded as ineligible under § 1282.16(b), may be counted for purposes of the multifamily housing goal and subgoal.

(d) *Counting rental units.* For purposes of counting rental units toward achievement of the multifamily housing goal and subgoal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.,* known to a lender.

(1) *Use of income.* Each Enterprise shall require lenders to provide to the Enterprise tenant income information, but only when such information is known to the lender. When the income of actual tenants is available, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

(i) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use rent levels for comparable units in the property to determine affordability, except as provided in paragraph (d)(1)(ii) of this section.

(ii) When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(2) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under the multifamily housing goal and subgoal will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal and subgoal. A rent is affordable if the rent does not exceed the maximum income levels as provided in § 1282.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(3) *Model units and rental offices.* A model unit or rental office in a multifamily property may be counted for purposes of the multifamily housing goal and subgoal only if an Enterprise determines that the number of such units is reasonable and minimal considering the size of the multifamily property.

(4) *Timeliness of information.* In evaluating affordability under the multifamily housing goal and subgoal, each Enterprise shall use tenant and rental information as of the time of mortgage acquisition.

(e) *Missing data or information for multifamily housing goal and subgoal.* (1) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the multifamily housing goal or subgoal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information by multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal, as determined by FHFA based on the most recent decennial census.

(2) The estimation methodology in paragraph (e)(1) of this section may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. Multifamily rental units in excess of this maximum, and any units for which estimation information is not available, shall not be counted for purposes of the multifamily housing goal and subgoal.

(f) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(g) *Application of median income.* (1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and the definitions in § 1282.1, the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State non-metropolitan median income is higher than the county's median income, the area is the State non-metropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(h) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases (or dwelling units) for that year; a sampling of such purchases (or dwelling units) is not acceptable.

(i) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase (or dwelling unit) counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating either Enterprise's performance under the housing goals, even if the transaction or activity would otherwise be counted pursuant to paragraph (c) of this section:

(1) Equity investments in low-income housing tax credits;

(2) Purchases of State and local government housing bonds except as provided in paragraph (c)(8) of this section;

(3) Purchases of non-conventional single-family mortgages;

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single-family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of subordinate lien mortgages (second mortgages);

(11) Purchases of mortgages or interests in mortgages that were previously counted by either Enterprise under any current or previous housing goal within the five years immediately preceding the current performance year;

(12) Purchases of mortgages where the property has not been approved for occupancy;

(13) Purchases of private label securities;

(14) Enterprise contributions to the Housing Trust Fund (12 U.S.C. 4568) and the Capital Magnet Fund (12 U.S.C. 4569), and mortgage purchases funded with such grant amounts; and

(15) Any combination of factors in paragraphs (b)(1) through (b)(14) of this section.

(c) *Other special rules.* Subject to FHFA's determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages (or dwelling units, for the multifamily housing goals) from each such transaction or activity shall be included in the denominator in calculating the Enterprise's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Credit enhancements.* (i) Mortgages (or dwelling units) financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency); and

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) [Reserved.]

(3) *Risk-sharing.* Mortgages purchased under risk-sharing arrangements between an Enterprise and any Federal agency under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases for purposes of the housing goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominiums.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals. Such a purchase shall be counted in the same manner as a mortgage purchase of single-family owner-occupied units.

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a blanket loan or a condominium project mortgage shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

(iii) Where an Enterprise purchases both a blanket loan on a cooperative building and share loans for units in the same building, both the blanket loan and the share loan(s) shall be treated as mortgage purchases for purposes of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units shall be treated as mortgage purchases for purposes of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of the housing goals, except where the Enterprise has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(7) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by an Enterprise shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(8) *Mortgage revenue bonds.* The purchase or guarantee by an Enterprise of a mortgage revenue bond issued by a State or local housing finance agency shall be treated as a purchase of the underlying mortgages for purposes of the housing goals only to the extent the Enterprise has sufficient information to determine whether the underlying mortgages or mortgage-backed securities qualify for inclusion in the numerator for one or more housing goal.

(9) [Reserved.]

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Home Affordable program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved.]

(12) [Reserved.]

(13) [Reserved.]

(14) *Seller dissolution option.* (i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases for purposes of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1282.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable where income information (and family size, for rental housing) is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income (80%)* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Low-income (60%)* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

*60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Very low-income* means:

(1) In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35
2	40
3	45
4	50
5 or more	*

*50% plus (4% multiplied by the number of persons in excess of 4).

(e) *Extremely low-income* means:

(1) In the case of owner-occupied units, income not in excess of 30 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	21
2	24
3	27
4	30
5 or more	*

*30% plus (2.4% multiplied by the number of persons in excess of 4).

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income,* the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72

Unit size	Percentage of area median income
3 bedrooms or more	*

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	*

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income,* maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income (80%),* maximum affordable rents to count as housing for low-income (80%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For low-income (60%),* maximum affordable rents to count as housing for low-income (60%) families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) *For very low-income,* maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	*

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *For extremely low-income,* maximum affordable rents to count as housing for extremely low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	6.3
1 bedroom	6.75
2 bedrooms	8.1
3 bedrooms or more	*

*9.36% plus (1.08% multiplied by the number of bedrooms in excess of 3).

(f) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(1).

§ 1282.20 Determination of compliance with housing goals; notice of determination.

(a) *Single-family housing goals.* The Director shall evaluate each Enterprise's performance under the Low-income Families Housing Goal, the Very Low-income Families Housing Goal, the Low-income Areas Housing Goal, and the Refinancing Mortgages Housing Goal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail to meet a single-family housing goal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(b) *Multifamily housing goal and subgoal.* The Director shall evaluate each Enterprise's performance under the Multifamily Low-income Housing Goal and the Multifamily Very Low-income Housing Subgoal on an annual basis. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail to meet a multifamily housing goal or subgoal established by this subpart, the Director shall notify the Enterprise in writing of such preliminary determination.

(c) Any notification to an Enterprise of a preliminary determination under this section shall provide the Enterprise with an opportunity to respond in writing in accordance with the procedures at 12 U.S.C. 4566(b).

§ 1282.21 Housing plans.

(a) General. If the Director determines that an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

(i) To achieve the goal for the next calendar year; and

(ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

Subpart C—[Reserved]

Subpart D—Reporting Requirements

§ 1282.61 General.

This subpart establishes data submission and reporting requirements to carry out the requirements of the Enterprises' Charter Acts and the Safety and Soundness Act.

§ 1282.62 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Enterprises' housing goal activities, each Enterprise shall collect and compile computerized loan-level data on each mortgage purchased in accordance with 12 U.S.C. 1456(e) and 1723a(m). The Director may, from time to time, issue a list entitled "Required Loan-level Data Elements" specifying the loan-level data elements to be collected and maintained by the Enterprises and provided to the Director. The Director may revise the list by written notice to the Enterprises.

(b) *Quarterly Mortgage Reports.* Each Enterprise shall submit to the Director a quarterly Mortgage Report. The fourth quarter Mortgage Report shall serve as the Annual Mortgage Report and shall be designated as such. Each Mortgage Report shall include:

(1) Aggregations of the loan-level mortgage data compiled by the Enterprise under paragraph (a) of this section for year-to-date mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of mortgages on owner-occupied and rental properties purchased by the Enterprise that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of Reports.* The Enterprises shall submit the Mortgage Report for each of the first 3 quarters of each year within 45 days of the end of the quarter. Each Enterprise shall submit its Annual Mortgage Report within 60 days after the end of the calendar year.

(d) *Revisions to Reports.* At any time before submission of its Annual Mortgage Report, an Enterprise may revise any of its quarterly reports for that year.

(e) *Format.* The Enterprises shall submit to the Director computerized loan-level data with the Mortgage Report, in the format specified in writing by the Director.

§ 1282.63 Annual Housing Activities Report.

To comply with the requirements in sections 309(n) of the Fannie Mae Charter Act and 307(f) of the Freddie Mac Act and assist the Director in preparing the Director's Annual Report to Congress, each Enterprise shall submit to the Director an AHAR including the information listed in those sections of the Charter Acts. Each Enterprise shall submit such report within 60 days after the end of each calendar year, to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Each Enterprise shall make its AHAR available to the public online and at its principal and regional offices. Before making any such report available to the public, the Enterprise may exclude from the report any information that the Director has deemed proprietary.

§ 1282.64 Periodic reports.

Each Enterprise shall provide to the Director such reports, information and data as the Director may request from time to time.

§ 1282.65 Enterprise data integrity.

(a) *Certification.* (1) The senior officer of each Enterprise who is responsible for submitting the fourth quarter Annual Mortgage Report and the AHAR under sections 309(m) and (n) of the Fannie Mae Charter Act or sections 307(e) and (f) of the Freddie Mac Act, as applicable, or for submitting any other report(s), data or information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: "To the best of my knowledge and belief, the information provided herein is true, correct and complete."

(b) *Adjustment to correct errors, omissions or discrepancies in AHAR data.* FHFA shall determine the official housing goal performance figure for each Enterprise under the housing goals on an annual basis. FHFA may resolve any error, omission or discrepancy by adjusting the Enterprise's official housing goal performance figure. If the Director determines that the year-end data reported by an Enterprise for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages (or dwelling units) that the Director determines were overstated in the prior year's goal performance.

Dated: February 16, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

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