FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1249, 1282

RIN 2590–AA26

2010–2011 Enterprise Housing Goals; Enterprise Book-entry Procedures

AGENCY: Federal Housing Finance Agency.

ACTION: Final 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 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 one single-family refinancing mortgage goal. Section 1333(a) of the Safety and Soundness Act requires FHFA to establish one multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing subgoal. This final rule establishes new housing goals for 2010 and 2011, consistent with the Safety and Soundness Act, as amended. The final rule also revises and updates the rules for counting mortgages for purposes of the housing goals to ensure clarity and consistency with the new goals. In addition, the final rule includes provisions regarding reporting requirements and book-entry procedures.

DATES: This rule is effective October 14, 2010.

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SUPPLEMENTARY INFORMATION:

I. 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 specific authority to establish, monitor and enforce affordable housing 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, as amended, 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 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]

[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.*

[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.

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.

Although the Enterprises' substantial market presence has been a key step to restoring market stability, neither company would be capable of serving the mortgage market today without the ongoing financial support provided by the U.S. Department of Treasury. Fannie Mae has drawn $85.1 billion and Freddie Mac has drawn $63.1 billion in Treasury support under the Senior Preferred Stock Purchase Agreements, over $148 billion in total. Under the terms of the Senior Preferred Stock Purchase Agreements, the Enterprises will be shrinking their retained mortgage portfolio by ten percent per year. The Administration has announced its intention to develop and present to Congress a plan for the future of the nation's housing finance system that will include a proposal for the ultimate resolution of the Enterprises in conservatorship. Administration and congressional leadership have each pointed to the coming year as likely to see action affecting the Enterprises' future form and function. While reliance on the Treasury Department's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk and exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on their books.

II. Proposed Rule

On February 26, 2010, FHFA published in the **Federal Register** a proposed rule to establish new housing goals for the Enterprises. The 45-day comment period closed April 12, 2010. *See* 75 FR 9034 (Feb. 26, 2010). FHFA received a total of 29 comment letters on the proposed rule. Eight of the comment letters were from real estate professionals and addressed seller concessions in real estate transactions, an issue that is not applicable to this rulemaking. The remaining 21 comment letters were from 11 trade associations, two not-for-profit organizations, two policy advocacy groups, one corporation, one government entity, one financial research organization, one individual, and both Enterprises.

In the proposed rule, FHFA proposed measuring the Enterprises' single-family performance against specified benchmark levels and against the primary mortgage market. FHFA received 11 comment letters on this proposal, all in support of the two-part approach. Most of the trade associations, as well as the Enterprises, recognized the difficulty of forecasting the mortgage market in the current economic environment and were receptive to the alternative measurements.

Seven commenters supported the proposed benchmark levels for the single-family home purchase goals. These commenters also supported the new separate low-income families refinancing goal. The Enterprises did not object to the mortgage purchase goal levels, but were concerned that the low-income refinancing goal was set too high. One trade association stated that the mortgage purchase goal levels were set at only 50 to 60 percent of Enterprise purchases in 2008 and should be higher.

The multifamily housing goal levels were supported generally by four commenters, although two commenters noted that the multifamily market may be difficult to measure. Eight commenters did not support the multifamily housing goal levels. Six commenters stated that the goal levels were too low, and that the Enterprises should be required to provide more assistance to the multifamily market. On the other hand, the Enterprises commented that demand for multifamily financing is too weak to support the proposed goal levels, and that they should be set lower.

The proposed rule invited comment on whether there should be housing goals established for mortgages secured by small multifamily properties, in addition to reporting requirements. Five commenters supported the proposed reporting requirements, and urged FHFA to also establish small multifamily housing goals. The commenters stated that the small multifamily market is an underserved market segment, and assistance is needed in smaller communities. Three commenters, including both Enterprises, stated that reporting on small multifamily properties was appropriate, but they discouraged a small multifamily housing goal at this time given the state of the multifamily market and the financial condition of the Enterprises.

Eight commenters addressed the proposed standards for exclusion of certain mortgage purchases from counting toward achievement of the housing goals. Five commenters were in favor of excluding private label securities from the housing goals, although Freddie Mac favored inclusion if due diligence is conducted. A few other commenters suggested the use of Regulation Z and the Home Ownership and Equity Protection Act (HOEPA) rather than interagency guidance to determine goals eligibility. Commenters also suggested that FHFA explicitly exclude from the housing goals mortgages with other characteristics such as low teaser rates, interest-only options, negative amortization, reduced documentation, and second liens. One commenter expressed support for the provision that allows FHFA discretion to enumerate additional unacceptable terms and conditions that constitute unacceptable mortgages.

FHFA has considered all of the comments on the proposed rule and has determined to adopt a final rule that makes certain revisions to the proposed rule, as described in detail below. Comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule, but may be considered by FHFA at a future date.

III. Summary of Final Rule

A. Modification of Housing Goal Structure

The final rule modifies the structure of the housing goals in accordance with HERA's revisions to the Safety and Soundness Act. HUD established overall housing goals for 2005–2008 that combined an Enterprise's purchases of mortgages on single-family housing, multifamily housing, purchase money mortgages, and refinancing mortgages. FHFA adjusted the levels of these overall goals for 2009. These goals are revised for 2010 and 2011 to include four separate goals and one subgoal for purchases of single-family mortgages and one goal and one subgoal for purchases of multifamily mortgages. To carry out the requirements of HERA regarding designated disaster areas while continuing to provide a focus on low-income and high minority concentration census tracts, the final rule establishes both a low-income areas home purchase goal and subgoal. As in the proposed rule, the final rule provides for a retrospective, market-based assessment of the achievement by the Enterprises of their housing goals as well as the traditional prospective, benchmark goals approach. These changes are described in more detail below.

B. Adjustment of Home Purchase and Refinancing Goal Levels, and Multifamily Goal and Subgoal Levels

Consistent with the proposed rule, the final rule provides that Enterprise goal performance under each of the single-family housing goals shall be 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 are specifically excluded as ineligible under § 1282.16(b). The final rule establishes separate single-family goals for home purchase mortgages and refinancing mortgages. This differs from previous treatment, which combined Enterprise purchases of home purchase and refinancing mortgages for the overall goals.

Consistent with the proposed rule, the final rule bases the 2010–2011 multifamily goals on the numbers of affordable dwelling units financed, rather than specifying such goals in minimum dollar terms. The special affordable 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 is targeted to households with significantly lower incomes. The qualifying household income for purposes of the 2010–2011 multifamily subgoal is at or below 50 percent of AMI.

Consistent with the proposed rule, the final rule provides that the 2010–2011 low-income home purchase and refinancing goals target households with lower incomes than the previous low- and moderate-income goal. The previous low- and moderate-income goal included families with incomes at or below 100 percent of AMI. Under the final rule, the low-income home purchase goal and refinancing goal include only families with incomes no greater than 80 percent of AMI.

Consistent with the proposed rule, the final rule provides that the 2010–2011 low-income areas home purchase goal includes families in census tracts with incomes up to 80 percent of AMI, while the previous underserved areas home purchase subgoal included families in census tracts with incomes up to 90 percent of AMI.

Although this final rule establishing the new housing goals is effective in mid-2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

C. New Counting Requirements

In accordance with HERA, and consistent with the proposed rule, the final rule counts only conventional loans for purposes of the single-family housing goals. This means that certain Federal Housing Administration (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, will now be excluded from counting for purposes of the single-family and multifamily housing goals.

Consistent with the proposed rule, the final rule provides that mortgages financing rental units in investor-owned single-family properties, which were previously included in the goals, are no longer counted for purposes of the housing goals. Rental units in 2–4 unit owner-occupied single-family properties will continue to 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.

IV. Analysis of Final Rule

A. Definitions—§ 1282.1

As in the proposed rule, the final 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.

Consistent with the proposed rule, § 1282.1 of the final rule removes a number of definitions that were used in regulatory provisions that were revised or eliminated based on HERA's amendments of the Safety and Soundness Act. Specifically, § 1282.1 of the final rule no longer includes 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."

As in the proposed rule, § 1282.1 of the final rule adds new definitions of "extremely low-income," "low-income," and "moderate-income," and revises the income levels in the definition of "very low-income." The final rule also replaces 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.[13]

Consistent with the proposed rule, § 1282.1 of the final rule adds 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.

The definition of "contract rent," consistent with the proposed rule, is 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. As in the proposed rule, the final rule adds language to the definition of "utilities" clarifying that charges for cable or telephone service shall not be included. In addition, the final rule adopts the proposed clarification that Metropolitan Divisions are included in the definition of "metropolitan area" to facilitate comparisons with census and HMDA information. As in the proposed rule, the final rule removes unnecessary references to the form of payment from the definition of "mortgage purchase."

Consistent with the proposed rule, the final rule removes the definition of "refinancing" and incorporates those provisions in a new definition of "refinancing mortgage." The final rule also provides for the exclusion of most workout agreements from the definition of "refinancing." The proposed rule omitted this provision to avoid confusion over whether a transaction should be treated as a loan modification or a refinancing. The final rule includes the provision to maintain consistency with the prior definition of "refinancing" under the housing goals.

Mortgage. Consistent with the proposed rule, the final rule removes personal property (chattel) loans on manufactured housing from the definition of "mortgage," with the result that such purchases would not qualify for credit under the housing goals.

[13] 12 U.S.C. 4502.

Two trade associations, both for the manufactured housing industry, maintained that the Enterprises should be more active in the area of personal property loans. One commented that Enterprise purchases of these loans provide much-needed liquidity to lenders, lower borrowing costs, and ensure the continued availability of this form of affordable housing. The other commented that the unavailability of purchase-money financing effectively discriminates against manufactured homes and consumers, and also contravenes federal housing policy contained in the Manufactured Housing Improvement Act of 2000.

The final rule does not revise the proposed definition of "mortgage" to include personal property loans on manufactured housing. The Enterprises have minimal experience with chattel financing, and the high level of defaults related to such financing creates significant credit and operational risks. The depreciation in the value of the manufactured home could result in greater loss to the Enterprise in the event of default on the loan. The role of the Enterprises in the market for personal property loans on manufactured housing is the subject of FHFA final rulemaking on the duty to serve requirements of HERA. FHFA may revise the definition of "mortgage" in future rulemaking to ensure conformance with the final regulation on duty to serve. Until that time, purchases of personal property loans on manufactured housing will not be counted as mortgage purchases for purposes of the housing goals.

Mortgage with unacceptable terms or conditions. Consistent with the proposed rule, the final rule removes the definitions for "mortgages contrary to good lending practices" and "mortgages with unacceptable terms or conditions or resulting from unacceptable practices," and revises and consolidates their substantive provisions into a single new definition of "mortgage with unacceptable terms or conditions." The definition of "mortgage with unacceptable terms or conditions" includes 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 definition of "HOEPA mortgage" is revised to conform FHFA's definition to the coverage in HOEPA itself. The provision in the definition of "mortgage with unacceptable terms or conditions" relating to a borrower's ability to pay is 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 provisions of the housing goals and other regulatory provisions.

FHFA received several comments on the proposed definition of "mortgages with unacceptable terms or conditions," both supporting and opposing particular terms or conditions. One commenter noted that the definition does not explicitly exclude subprime loans. One trade association objected to the inclusion of prepaid single-premium credit life insurance products, and recommended that the rule specifically allow mortgages where the insurance premiums are calculated and paid on a monthly basis and are not financed by the lender. Another trade association commented that FHFA should strengthen the terms and conditions that constitute unacceptable mortgages, and recommended the use of Regulation Z and HOEPA rather than interagency guidance. A policy advocacy group supported requiring the Enterprises to follow interagency guidance, but noted that the current regulatory guidance may not be sufficient. This commenter cautioned that FHFA should not surrender its independent authority to restrict the Enterprises from engaging in abusive and unsafe lending practices. One trade association supported the provision that allows FHFA to determine other additional unacceptable terms and conditions because markets and abusive practices evolve. Fannie Mae noted that its single-family underwriting guidelines are already consistent with the interagency guidance.

In the final rule, the definition of "mortgages with unacceptable terms or conditions" does not explicitly exclude all subprime loans, but loans with any of the listed terms or conditions are excluded from counting towards the goals. Mortgages with prepaid single-premium credit life insurance products, for example, which have adverse effects on borrowers, continue to be excluded from counting, as they have in the past. While the final rule specifically references interagency guidance on subprime and nontraditional loans, FHFA expects the Enterprises to ensure that mortgage loans they acquire comply with Regulation Z and HOEPA, as well as any federal law related to minimum standards for mortgages and predatory lending. While compliance with these and other applicable laws is expected, FHFA retains its independent authority to restrict the Enterprises from engaging in abusive and unsafe lending practices. Accordingly, as markets and abusive practices evolve, FHFA may determine additional terms and conditions to be unacceptable.

Families in low-income areas. Consistent with the proposed rule, the new definition of "families in low-income areas" in the final rule includes families with incomes at or below 100 percent of AMI who reside in "designated disaster areas." The proposed rule defined "designated disaster areas" as areas at the census tract level and included 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.

Fannie Mae commented that the rule language should reflect the Community Reinvestment Act (CRA) criteria for designated disaster areas. For purposes of complying with the CRA, regulators have determined 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." [14]

In response to this comment and to ensure efficiency in implementation, the final rule draws on the CRA criteria for designated disaster areas. Section 1282.1 of the final rule provides that a designated disaster area will include (1) any county designated by the federal government as adversely affected by a declared major disaster under FEMA's administration, (2) where individual assistance payments were authorized by FEMA. Section 1282.12(e) of the final rule establishes an overall low-income areas goal that includes families in low-income census tracts, moderate-income families in minority census tracts, and moderate-income families in designated disaster areas. Section 1282.12(f) of the final rule also establishes a low-income areas subgoal that includes only families in low-income census tracts and moderate-income families in minority census tracts. Both the overall goal and the subgoal include a benchmark level and a market-based assessment. The

[14] 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).

benchmark levels for both the overall goal and the subgoal are set based on a market analysis that is similar to the analysis that was used for the proposed rule. The benchmark level for the subgoal is set at 13 percent. The benchmark level for the overall goal will be set annually by FHFA notice based on the subgoal benchmark level plus an amount that reflects the impact of designated disaster areas in the most recent year for which data is available. The market-based assessment for both the overall goal and the subgoal will use the designated disaster areas from the year for which performance is measured, as will the measurement of the Enterprises' performance each year.

To accommodate the Enterprises' business planning requirements, for purposes of the low-income areas housing goal, the final rule, consistent with the proposed rule, treats a designated disaster area as effective beginning on the January 1 after the FEMA designation of the county 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 or for a longer period of time, FHFA may provide for such treatment by notice to the Enterprises.

B. Housing Goals—§§ 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, and consistent with the proposed rule, this subpart of the final rule establishes, for 2010 and 2011, four single-family housing goals, one single-family housing subgoal, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal. As under the proposed rule, the single-family housing goals in the final rule are based both on the benchmark levels and on an evaluation of the Enterprise's performance relative to the market for each housing goal in each year. Section 1282.11(b) requires the Director to establish housing goals for a particular year by December 1st of the previous year.[15]

1. Prospective and Market-Based Approach

As discussed in the proposed rule, following passage of the Safety and Soundness Act, HUD established housing goals for Fannie Mae and Freddie Mac in October 1993,[16] and revised and expanded those goals in 1995,[17] 2000,[18] and 2004.[19] Multi-year goals were established 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.[20]

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 for purchases of goal-qualifying loans. In the 2004 final rule, HUD added three single-family home purchase subgoals, which were similarly established 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 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 goal-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 goal-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 goal-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.

As measured after the fact, HUD's market estimates often differed significantly from the actual goal-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 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. However, the fact

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

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

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

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

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

[20] *See* 75 FR 9034–9036 (Feb. 26, 2010).

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 may have contributed 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, the final rule adopts the approach in the proposed rule to measure the Enterprises' single-family goal performance relative to benchmark levels for the goal-qualifying shares of the Enterprises' mortgage purchases, as well as relative to the *actual* goal-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 goal-qualifying shares of the current single-family primary market is not available until the release of HMDA data in late summer of the following year, approximately nine months after the rating period. However, FHFA believes that this market-based approach is an appropriate measure of mission achievement under the housing goals, especially while the Enterprises are operating in conservatorship, and that the overall advantages of this approach outweigh the disadvantages.

FHFA received 11 comments on the proposal to calculate goals performance based on the eligible market share and the benchmark level. All 11 commenters supported this approach. One trade association cautioned that FHFA should carefully reassess this approach for accuracy after actual data is available to compare with forecasts. A policy advocacy group agreed with the proposed approach, and stated that it would help FHFA more effectively match Enterprise performance to actual market conditions. This commenter added that the benchmark should be considered the floor. Fannie Mae supported the proposed approach, but expressed concern about the time delay between submission of goals performance data and the availability of HMDA data, which could cause regulatory uncertainty. Regarding § 1282.11(b), one commenter stated that setting the housing goals annually, based upon the most recent data, would be an improvement over the HUD projection of five or so years into the future.

Nine commenters supported the proposed single-family housing goal benchmark levels. One policy advocacy group commented that the goals are an improvement over previous years because they target the same populations as the CRA. This commenter also supported the inclusion of minorities in the low-income areas housing goal. Both Enterprises commented that the proposed purchase money mortgage goal benchmark levels were reasonable. One trade association opposed the proposed single-family housing goal benchmark levels, stating that the proposed levels would be 50 to 60 percent of Enterprise purchases in 2008, which the commenter believed is too low to realize HERA's objectives.

Two commenters specifically supported the separate refinancing housing goal. One trade association commented that a separate refinancing goal is important because of the cyclical nature of refinancing. The other commenter stated that refinance volume can vary, from less than the volume of home purchase mortgages to over three times the volume of home purchase mortgages, depending upon interest rates, which makes a combined goal unworkable. The Enterprises did not oppose the separate refinancing housing goal, but stated that the proposed refinancing housing goal benchmark level was too high. Fannie Mae noted that non-HAMP (Home Affordable Modification Program) loan modifications are not goal-eligible, and there is also a reluctance to refinance when the labor market is weak. Freddie Mac commented that the current low interest rate environment is not favorable for a high share of low-income qualifying refinance mortgages.

As in the proposed rule, the final rule establishes 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 housing goals. An Enterprise would fail to meet a housing goal if its annual performance fell below both the benchmark level and the actual share of the market that met the criteria for a particular housing goal for that year. An Enterprise would not fail to meet a goal if it achieved the benchmark level for that goal, even if the actual market size for the year was higher than the benchmark level. In order to plan their operations, the Enterprises must be able to rely on the benchmark levels that FHFA has set.[21]

This approach to setting the goals, involving both the setting of a prospective target and an assessment of actual market opportunity, is a departure from the approach used by HUD and FHFA in the past. FHFA has determined that this approach is appropriate because of the difficulties of predicting the market, especially in light of recent market turmoil and the difficulty of making accurate projections even in more stable economic environments. This approach is consistent with Congressional intent, as Congress authorized FHFA to establish the goal levels for the Enterprises. In addition, several provisions of the Safety and Soundness Act, as amended, authorize the Director to set or adjust the goal levels in light of changing market conditions. These provisions include: the requirement that FHFA 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;[22] the authority to adjust previously established goal levels based on current market conditions;[23] the authority to adjust goal levels in response to a petition by an Enterprise based, in part, on market conditions and the risk of "over-investment";[24] and relief from enforcement if the goal levels are determined to be infeasible.[25]

FHFA will carefully assess the approach of using both prospective targets and assessments of actual market opportunity for accuracy after actual data is available to compare with forecasts. The benchmark level, however, will not be considered the floor in assessing whether an Enterprise achieved a particular housing goal. The time delay between submission of goals performance data and the availability of HMDA data, while not optimal, is also unavoidable for this market-based approach.

FHFA notes that because HERA mandates separate single-family home purchase and refinance low-income goals, each goal level is set individually, based on projected market conditions.

[21] *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."

[22] 12 U.S.C. 4562(e)(2)(A).

[23] 12 U.S.C. 4562(e)(3).

[24] 12 U.S.C. 4564(b)(1), (2).

[25] 12 U.S.C. 4566(b).

Prior to HERA, the home purchase and refinance components of the income-based goals (both the low- and moderate-income and the special affordable goals) provided cumulative effects toward the overall goal, including a cumulative impact from the Enterprises' multifamily acquisitions. This is no longer the case under the separate HERA single-family home purchase and refinance low-income goals.

2. Retrospective Measurement of the Market

Consistent with the proposed rule, § 1282.12(b) of the final rule sets forth specific criteria for determining the size of the market based on HMDA data. This retrospective measurement of the size of the market will be used to evaluate the performance of each Enterprise on each single-family housing goal. The specific criteria for establishing the size of the market reflect the types of mortgages that are counted for purposes of the housing goals and that are typically eligible for purchase by an Enterprise. The retrospective measurement of the size of the market is defined under the limitations of HMDA data. The market includes only originations of conventional conforming first-lien non-HOEPA single-family mortgages on owner-occupied properties. Only home purchase mortgages are included in the market estimates for the three home purchase mortgage goals and the home purchase mortgage subgoal, and only refinance mortgages are included in the market estimates for the refinance mortgage goal. Mortgages with rate spreads of 150 basis points or more above the applicable Average Prime Offer Rate (APOR) reported in HMDA would be excluded, as would mortgages that are missing information that would be necessary to determine the appropriate counting treatment under the housing goals. Additional details regarding the housing goals are discussed above, along with the factors considered by FHFA in establishing the housing goals.

FHFA received five comments on the proposed criteria for establishing the size of the market. One commenter from the manufactured housing sector noted that many manufactured housing loans are personal property loans for affordable housing, and questioned the prudence of excluding higher interest rate loans (300 basis points over prime) from the market size. One trade association urged FHFA to make public its goal calculation methodology as technical guidance, and expressed concerns that excluding FHA and other government loans from the market calculation would distort the market measurement. Another trade association was concerned that tighter underwriting standards and lower loan-to-value requirements were not fully factored into the market size. Another commenter stated that FHFA's monthly survey of single-family mortgage originations will provide a more timely and in-depth addition to HMDA data. Freddie Mac recommended that the definition of higher-priced loan used to establish market size conform to the definition set by the Federal Reserve Board, which is 150 basis points or more above APOR for first loans.

To the extent possible, the market estimates are based on the universe of goal-eligible mortgages. Manufactured housing loans that are not higher-cost loans are included in the market estimates, to the extent that they are included in the HMDA data. Manufactured housing loans make up two percent of the single-family originations reported in the HMDA data, and approximately 60 percent of those manufactured housing loans are higher-cost loans, which FHFA is using as a proxy for personal property loans, not eligible for goals credit under this rule. FHFA also determined that subprime loans should not be included in the market estimates. Therefore, the final rule excludes higher-priced loans (150 basis points or more above APOR) as a proxy for subprime loans. Because most government-insured mortgages are ineligible under HERA to qualify for the housing goals, FHA and other government loans are not included in the market estimates.

3. Sustainable Mortgages

The proposed rule requested comments on an alternative to defining the market for determining whether a mortgage is eligible to count toward the housing goals that would 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 homeownership would count toward the goals. This would require a standard to differentiate between mortgages that are sustainable and mortgages that are not likely to be sustainable.

Four commenters supported an alternative discussed in the proposed rule that would use historical data on the cumulative default rate (CDR) of mortgages acquired by the Enterprises for defining the sustainable mortgage market, while one commenter opposed this approach. A trade association urged deferral of the use of CDR until final Congressional and regulatory action on risk retention and the exemption of certain qualified mortgages from the risk retention requirements. A policy advocacy group favored the use of CDR to define the market, but cautioned that the use of particular features to define a market would be useful only to the extent the models are reliable and reflect likely market conditions over some length of time. A trade association favored the use of CDR. Both Enterprises supported the use of CDR to define the market, but expressed reservations. Fannie Mae stated that its systems already filter out loans with the most risk, and given the considerations that must go into determining whether a loan is sustainable, it stated that it would be difficult to develop a system that appropriately removes unsustainable loans from the market sizing analysis. Freddie Mac stated that the use of CDR should help FHFA and the Enterprises align and maintain appropriate balance between affordability, sustainability, and safety and soundness, but cautioned that any methodology to develop market share estimates must be aligned with the proprietary models used by the Enterprises so that inconsistency can be avoided.

FHFA has considered the comments on this alternative approach to determining whether a mortgage is eligible to count toward the housing goals. Because the sustainable mortgage approach raises multiple policy and technical issues that require further consideration, the final rule does not implement this approach. FHFA may solicit further public comments regarding a sustainable mortgage approach toward the housing goals in the future.

4. Monthly Mortgage Survey

As described in the proposed rulemaking, FHFA is conducting a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and will make data collected under that survey available to the public. Release of that data will provide additional information on home mortgage lending activity. FHFA will use the survey data in its monitoring of Enterprise housing goals performance.

C. Analysis of Factors for 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 the 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.[26]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goal-qualifying mortgages under each housing goal, as calculated based on HMDA data for the three most recent years for which data is available.[27] FHFA's analysis of each of the factors, which has been updated since the proposed rulemaking, 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. In 2009, the Enterprises' mortgage purchase and guarantee activity represented more than 76 percent of conforming single-family originations. 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. 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 an average rate of 69 percent in 2004. In the second quarter of 2010, the homeownership rate was 66.9 percent, down from 67.4 percent in the second quarter of 2009. The homeownership rate for Black households in the second quarter of 2010 was 46.2 percent, down from 46.5 percent in the second quarter of 2009. The homeownership rate for Hispanic households in the second quarter of 2010 was 47.8 percent, down from 48.1 percent in the second quarter of 2009.[28]

In 2008, the most recent year in which HMDA data is publicly available, applications from Black borrowers fell by 48 percent, and applications from Hispanic borrowers fell by 55 percent.[29] 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 Home Price Index rose by approximately 105 percent, only to fall dramatically since then. The less volatile FHFA House Price Index, which reflects the book of business of the Enterprises, peaked later and also showed a decline.

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 loan-to-value (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. According to that report, 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.[30]

With the decline in house prices over the 2007–2009 period and historically low mortgage interest rates, new homebuyers encountered a much more affordable housing market in 2009 and continue to do so in 2010. As measured by the National Association of Realtors' composite housing affordability index, which reports the ratio of median household income to the income that would be required to buy a median-priced home (where 100 indicates the exact amount of income required to buy a median-priced home), affordability continued to increase in 2009. That index rose from 166.3 in December 2008 to 171.5 one year later. The higher value of the index mainly reflected the decline in the median price of existing single-family homes and lower mortgage interest rates. The index dipped to 158.9 in June 2010 as a result of an increase in the median price of existing single-family homes between December 2009 and June 2010, but affordability is still at a very high level by historical standards.

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)

[26] 12 U.S.C. 4562(e)(2).

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

[28] U.S. Census Bureau, "Residential Vacancies and Homeownership in the Second Quarter 2010," tables 4 and 7, July 27, 2010.

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

[30] *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/LockhartcommendsENTERPRISEsreSubprime91007.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).

companies; (3) increased role of FHA in the marketplace; (4) collapse of the private label mortgage-backed securities (PLS) market; and (5) high unemployment. These developments contribute to a decrease in the overall number of single-family loans likely to qualify for housing goals credit.

Tightened credit underwriting practices. In general, more conservative underwriting standards in the mortgage market will likely result in fewer goal-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, have tightened considerably 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.[31] If the DU 8.0 revisions had been in effect for all of 2009, substantially fewer goal-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.

Mortgage underwriting standards in the near term at the Enterprises will be decidedly more conservative than earlier in the decade. During the first quarter of 2010, for example, less than two percent of Fannie Mae's purchases were interest-only loans, and Freddie Mac purchased none. Similarly, Alt-A loans were less than one percent of acquisitions for both Enterprises. This is significant because interest-only loans previously purchased by the Enterprises have serious delinquency rates of more than 18 percent, and Alt-A loans have serious delinquency rates of more than 12 percent. During the first quarter of 2010, Alt-A loans already on the books were responsible for 37 percent of Fannie Mae's losses for the quarter and 42 percent of Freddie Mac's losses for the quarter. Due to the Enterprises' focus on improved purchase quality and underwriting standards, the loans that the Enterprises have purchased since conservatorship in late 2008 have had much lower rates of serious delinquency. Serious delinquencies for 2009 were a fraction of the serious delinquency rates for the 2006–2008 vintages for comparable periods after origination.[32]

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, private MI providers implemented major changes in the types of risk they were able to insure. Insurers that had experienced substantial ratings downgrades acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs and implementing measures in "declining markets" that have sharply limited the insurability of certain higher-LTV mortgage loans.

As with the Enterprises, the steps taken by mortgage insurers to strengthen their financial condition, while necessary to improving mortgage sustainability, may 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 have not received goals credit in the past and will not generally receive credit going forward. 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 goal-qualifying characteristics.

The market share of mortgages insured by FHA and mortgages guaranteed by the VA has risen dramatically. Loans insured by FHA increased to 21 percent of single-family mortgages insured in 2009, up from 17 percent in 2008, spurred by the continuation of favorable lending programs. VA's share of originations also increased, rising to 4 percent in 2009. Both types of mortgages backed by the federal government accounted for a combined 25 percent of single-family originations in 2009, up from just 4 percent two years earlier.[33] 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. Borrowers without substantial down payments are increasingly utilizing government insurance and guaranty programs. Nearly 80 percent of FHA's purchase-loan borrowers in 2009 were first-time homebuyers.[34] To ensure long-term actuarial soundness, FHA announced several policy changes on January 20, 2010 that could reduce borrower eligibility for FHA, including: (1) Reducing the maximum permissible seller concession from the current six percent to three 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 down payment 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.[35]

Legislative changes which exempt FHA, VA and Rural Housing Service loans from certain risk retention requirements could have the effect of increasing the loan volume for these federally-insured and guaranteed mortgages.[36]

Collapse of private label securities market. In the middle part of the decade—the period covered by the prior HUD rule on the housing goals—Fannie Mae and Freddie Mac were major

[31] 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.

[32] Statement of Edward J. DeMarco, Acting Director, Federal Housing Finance Agency, House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises. May 26, 2010 at 3.

[33] "Report to Congress 2009." Federal Housing Finance Agency at 10.

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

[35] "FHA Announces Policy Changes to Address Risk and Strengthen Finances." HUD Press Release No. 10–016. Jan. 20, 2010.

[36] "Free Pass on Risk Retention Could Boost FHA Loan Volume." American Banker, June 28, 2010.

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.[37]

At year-end 2009, Freddie Mac's $175.6 billion private label MBS and commercial MBS portfolio reflected deteriorating credit performance. Although substantially all of these securities were rated triple-A at purchase, $84.2 billion were rated below investment grade at year-end 2009. In the same year, Fannie Mae's $89.8 billion private label MBS, commercial MBS and mortgage revenue bond portfolios also reflected deteriorating credit performance. Although almost all of these securities were rated triple-A at purchase, $42.2 billion were rated below investment grade at year-end 2009.

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 mortgage. The civilian unemployment rate was 9.5 percent in June and July 2010, down from 9.7 percent in May 2010 and a high of 10.1 percent in October 2009.[38] However, the unemployment rate is still historically high and will likely remain above eight percent in the 2010 to 2011 period. To the extent that lower-income jobs are affected more by unemployment than higher-income jobs, the affordable home purchase market is affected.

NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation counseling, has estimated that the two leading causes of mortgage default rates as of January 31, 2010 were a reduction in income (37 percent of defaults) and loss of income (21 percent of defaults).[39] 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. 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 July 1, 2010 Primary Mortgage Market Survey indicated had fallen to 4.58 percent for a 30-year, fixed-rate mortgage. Even under favorable interest rate conditions, however, refinancings may not mirror previous years.

For homeowners with a current LTV ratio between 80 and 125 percent, the Enterprises will refinance mortgages without requiring additional mortgage insurance. Of the 2.5 million borrowers who refinanced their mortgages with Fannie Mae financing in 2009, 329,000 refinanced through Fannie Mae's streamlined process, including 105,000 Fannie Mae borrowers who refinanced through HARP. Of the 1.7 million borrowers who refinanced their mortgages with Freddie Mac financing in 2009, 169,000 refinanced through Freddie Mac's streamlined process, including 86,000 Freddie Mac borrowers who refinanced through HARP.

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.[40] 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. 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 2001–09 period.

Low-Income Families Housing Goal. The 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 adjusted 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 home purchase goal applies to mortgages made to "low-income families," defined as families with incomes no greater than 80 percent of AMI.[41] Past performance on this goal, if it had been in effect in previous years, is shown in Table 1. Performance is shown excluding units

[37] 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).

[38] Bureau of Labor Statistics, News Release: *The Employment Situation—July 2010.* August 6, 2010.

[39] NeighborWorks, *National Foreclosure Mitigation Counseling Program, Congressional Update, Activity Through January 31, 2010.* May 28, 2010.

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

[41] 12 U.S.C. 4502(14).

financed by Enterprise purchases of PLS; as discussed elsewhere in this final rule, FHFA has decided to exclude such units from the numerator and the denominator in calculating goal performance for 2010 and 2011, although the PLS market has declined markedly. As indicated, Fannie Mae's performance (excluding PLS) 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 in 2008, at 23.1 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 in 2008 would have been 24.3 percent, also the lowest of the period.

Total Enterprise home purchase loan volume fell sharply in 2008 and 2009—for Fannie Mae, from 1.5 million mortgages in 2007 to 978,000 in 2008 and 723,000 in 2009, and for Freddie Mac, from 1.0 million mortgages in 2007 to 655,000 in 2008 and 482,000 in 2009, due to the turmoil and tightened underwriting standards in the mortgage market. However, the low-income share of home purchase loans rose for both Enterprises, from 23.1 percent in 2008 to 25.5 percent in 2009 for Fannie Mae, and from 24.3 percent in 2008 to 25.4 percent in 2009 for Freddie Mac. Possible explanations for this include the greater affordability of housing and a decrease in the role of investors in the home purchase market.

In setting the goals for the Enterprises for 2010 and 2011, FHFA recognizes the impact that counting loan modifications of home purchase mortgages would have had on the home purchase goals in prior years. Data on the volume and shares of loan modifications counting toward the low-income home purchase goal in 2009 are also shown in Table 1. As indicated, 67.2 percent of Fannie Mae's modifications of home purchase mortgages and 65.3 percent of Freddie Mac's modifications were for lower-income families. Combined performance on this goal, including both home purchase mortgages and modifications, would have been 33.5 percent for Fannie Mae and 30.9 percent for Freddie Mac in 2009, as shown in Table 1. However, as discussed elsewhere in this final rule, modifications of mortgages will be treated differently for purposes of the housing goals in 2010–2011. Specifically, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income home purchase goal performance figure in Table 1 reflects performance excluding loan modifications.

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Table 1

GSE Past Performance on the Low-Income Home Purchase Goal, 2001 -09

(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

		Fannie Mae			Freddie Mac			HMDA Market
Year	Type of Activity	Low-Income	Total	Low-Inc. %	Low-Income	Total	Low-Inc. %	Share
2009	Home Purchase Mortgages	148,423	582,673	25.5%	105,719	415,897	25.4%	NA
	HP Loan Modifications	93,681	139,374	67.2%	43,144	66,054	65.3%	NA
	Total	242,104	722,047	33.5%	148,863	481,951	30.9%	NA
2008	Home Purchase Mortgages	226,290	977,852	23.1%	158,896	655,156	24.3%	26.9%
2007	Home Purchase Mortgages	383,129	1,471,242	26.0%	248,434	1,008,064	24.6%	27.6%
2006	Home Purchase Mortgages	359,609	1,295,986	27.7%	197,900	895,049	22.1%	25.8%
2005	Home Purchase Mortgages	352,344	1,270,461	27.7%	230,057	912,355	25.2%	25.9%
2004	Home Purchase Mortgages	389,210	1,354,503	28.7%	193,308	788,967	24.5%	27.9%
2003	Home Purchase Mortgages	506,449	1,675,440	30.2%	199,220	763,798	26.1%	
2002	Home Purchase Mortgages	371,418	1,385,982	26.8%	255,657	978,684	26.1%	
2001	Home Purchase Mortgages	344,720	1,331,681	25.9%	237,253	966,088	24.6%	

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).

Notes: Figures differ from those in Table 1 of the proposed rule (*Federal Register*, 2/26/10, p. 9041) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only.
As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.

Very Low-Income Families Housing Goal. The Safety and Soundness Act, as amended 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.[42] Past performance on this home purchase 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 6.1 percent in 2001 to 7.9 percent in 2003, and then generally decreased, to 5.5 percent in 2008, the lowest in the period. With the exception of 2006, Freddie Mac's performance on this goal would have changed little over the 2001–08 period, remaining in the range of 6.0 percent to 6.7 percent.

[42] 12 U.S.C. 4502(24).

The very low-income share of home purchase loans rose for both Enterprises, from 5.5 percent in 2008 to 7.3 percent in 2009 for Fannie Mae, and from 6.1 percent in 2008 to 7.2 percent in 2009 for Freddie Mac.

Data on the volume and shares of modifications counting toward the very low-income home purchase goal are also shown in Table 2. As indicated, 27.5 percent of Fannie Mae's modifications of home purchase mortgages and 26.0 percent of Freddie Mac's modifications were for very low-income families. Thus, combined performance on this goal, including both home purchase mortgages and modifications, would have been 11.2 percent for Fannie Mae and 9.8 percent for Freddie Mac in 2009, as shown in Table 2. However, as discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 very low-income home purchase goal performance figure in Table 2 reflects performance excluding loan modifications.

Table 2

GSE Past Performance on the Very Low-Income Home Purchase Goal, 2001-09

(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

		Fannie Mae			Freddie Mac			HMDA Market
Year	Type of Activity	Very Low-Inc.	Total	VLI %	Very Low-Inc.	Total	VLI %	Share
2009	Home Purchase Mortgages	42,571	582,673	7.3%	29,870	415,897	7.2%	NA
	HP Loan Modifications	38,332	139,374	27.5%	17,193	66,054	26.0%	NA
	Total	80,903	722,047	11.2%	47,063	481,951	9.8%	NA
2008	Home Purchase Mortgages	54,263	977,852	5.5%	40,009	655,156	6.1%	7.2%
2007	Home Purchase Mortgages	93,543	1,471,242	6.4%	60,549	1,008,064	6.0%	7.0%
2006	Home Purchase Mortgages	100,148	1,295,986	7.7%	47,008	895,049	5.3%	6.6%
2005	Home Purchase Mortgages	91,658	1,270,461	7.2%	59,236	912,355	6.5%	6.4%
2004	Home Purchase Mortgages	100,360	1,354,503	7.4%	48,589	788,967	6.2%	7.2%
2003	Home Purchase Mortgages	132,250	1,675,440	7.9%	50,872	763,798	6.7%	
2002	Home Purchase Mortgages	91,843	1,385,982	6.6%	65,753	978,684	6.7%	
2001	Home Purchase Mortgages	81,803	1,331,681	6.1%	58,757	966,088	6.1%	

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).

Notes: Figures differ from those in Table 2 of the proposed rule (*Federal Register*, 2/26/10, p. 9042) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only.
As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.

Low-Income Areas Housing Goal and Subgoal. 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 amended 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, and it includes families with incomes not greater than 100 percent of AMI who reside in minority census tracts or in designated disaster areas.[43] 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.[44]

According to the 2000 census, of the 66,145 census tracts, there were 18,615 low-income tracts. There were 25,254 tracts with a minority population of at least 30 percent, of which 5,710 had a tract income greater than 80 percent of AMI but less than 100 percent of AMI. Accordingly, based on the 2000 census, there were 24,325 tracts that would be targeted by this goal, excluding tracts in designated disaster areas, but only families with incomes no greater than 100 percent of AMI would be included in the 5,710 high-minority, moderate-income tracts.

Past performance on the low-income areas housing goal, if it had been in effect in previous years, including designated disaster areas, is shown in Table 3A. This measurement corresponds to the overall low-income areas housing goal. The inclusion of designated disaster areas would have had a significant impact on the performance of each Enterprise under this goal. The impact of the designated disaster areas would also have changed significantly from year to year. As discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income areas home purchase goal performance figure in Table 3A reflects performance excluding loan modifications.

Table 3A

GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2007-09

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; includes loans on properties in disaster areas declared in the previous three years; excludes loans with missing borrower income from the denominator; excludes loans financed by purchases of private-label mortgage-backed securities [PLS] from the numerator and the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2009	Low-Inc./High Min. Tract HP Mtgs.*	77,499	48,397	
	Disaster Area HP Mortgages**	79,255	55,565	
	Subtotal	156,754	103,962	
	Total HP Mortgages	582,673	415,897	
	Subtotal % of Mortgages	26.9%	25.0%	NA
	Low-Inc./High Min. Tract Loan Mods*	39,694	18,402	
	Disaster Area HP Loan Mods**	32,153	14,767	
	Subtotal	71,847	33,169	
	Total HP Loan Mods	139,374	66,054	
	Subtotal % of HP Loan Mods	51.5%	50.2%	
	Low-Inc./High Min. Tract Total	117,193	66,799	
	Disaster Area Total**	111,408	70,332	
	Subtotal	228,601	137,131	
	Total HP Mortgages and Loan Mods	722,047	481,951	
	Subtotal % of Total	31.7%	28.5%	
2008	Low-Inc./High Min. Tract HP Mtgs.*	148,120	99,448	
	Disaster Area HP Mortgages**	100,822	67,776	
	Subtotal	248,942	167,224	
	Total HP Mortgages	977,852	655,156	
	Subtotal % of Mortgages	25.5%	25.5%	25.5%
2007	Low-Inc./High Min. Tract HP Mtgs.*	249,404	159,898	
	Disaster Area HP Mortgages**	221,654	146,027	
	Subtotal	471,058	305,925	
	Total HP Mortgages	1,471,242	1,008,064	
	Subtotal % of Mortgages	32.0%	30.3%	31.4%

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 is less than 100 percent of AMI.

*Breakdown between low-income tracts and high-minority tracts contained in Table 3B.

**Increment of Disaster Area HP Mortgages not already qualifying under low-income/high minority designation.

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only.

As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.

Past performance on the new low-income areas housing subgoal if it had been in effect in previous years, excluding designated disaster areas, is shown in Table 3B. The exclusion of designated disaster areas corresponds to the new low-income areas housing subgoal. As indicated, Fannie Mae's performance would have varied over

[43] 12 U.S.C. 4502(28).

[44] 12 U.S.C. 4502(29).

time. It would have reached its highest level, 19.1 percent, in 2002, and its lowest level, 15.1 percent, in 2008. Freddie Mac's performance would have peaked at 18.6 percent in 2002, then fallen sharply to 12.1 percent in 2003, and would have been 15.2 percent in 2008. As discussed above, modifications of mortgages will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This means that, in order to be comparable, the 2009 low-income areas home purchase goal performance figure in Table 3B reflects performance excluding loan modifications.

Table 3B

GSE Past Performance on the Low-Income Areas Home Purchase Goal, 2001-09

(Performance if 2010 goal had been in effect; mortgages on all single-family owner-occupied properties; excludes loans on properties in disaster areas from the numerator, but see Table 3B for 2007-09; excludes loans with missing borrower income from the denominator; excludes loans financed by purchases of private-label mortgage-backed securities [PLS] from the numerator and the denominator.)

Year	Type of Home Purchase (HP) Mortgages	GSE Fannie Mae	GSE Freddie Mac	HMDA Market Share
2009	Low-Income Tract HP Mortgages	59,150	37,138	
	High-Minority Tract HP Mortgages	18,349	11,259	
	Subtotal Goal-Qualifying Mortgages	77,499	48,397	
	Total HP Mortgages	582,673	415,897	
	Low-Inc. Area % of Mortgages	13.3%	11.6%	NA
	Low-Income Tract HP Loan-Mods	25,255	11,701	
	High-Minority Tract HP Loan Mods	14,439	6,701	
	Subtotal Goal-Qualifying HP Loan Mods	39,694	18,402	
	Total HP Loan Mods	139,374	66,054	
	Low-Inc. Area % of HP Loan Mods	28.5%	27.9%	NA
	Low-Income Tract Total	84,405	48,839	
	High-Minority Tract Total	32,788	17,960	
	Subtotal Goal-Qualifying Total	117,193	66,799	
	Total HP Mortgages and Loan Mods	722,047	481,951	
	Low-Inc. Area % of Total	16.2%	13.9%	NA
2008	Low-Income Tract HP Mortgages	118,875	80,288	
	High-Minority Tract HP Mortgages	29,245	19,160	
	Subtotal Goal-Qualifying Mortgages	148,120	99,448	
	Total HP Mortgages	977,852	655,156	
	Low-Inc. Area % of Mortgages	15.1%	15.2%	14.3%
2007	Low-Income Tract HP Mortgages	203,454	131,181	
	High-Minority Tract HP Mortgages	45,950	28,717	
	Subtotal Goal-Qualifying Mortgages	249,404	159,898	
	Total HP Mortgages	1,471,242	1,008,064	
	Low-Inc. Area % of Mortgages	17.0%	15.9%	16.2%
2006	Low-Income Tract HP Mortgages	171,485	101,208	
	High-Minority Tract HP Mortgages	40,140	19,577	
	Subtotal Goal-Qualifying Mortgages	211,625	120,785	
	Total HP Mortgages	1,295,986	895,049	
	Low-Inc. Area % of Mortgages	16.3%	13.5%	15.8%
2005	Low-Income Tract HP Mortgages	160,234	100,824	
	High-Minority Tract HP Mortgages	39,090	21,596	
	Subtotal Goal-Qualifying Mortgages	199,324	122,420	
	Total HP Mortgages	1,270,461	912,355	
	Low-Inc. Area % of Mortgages	15.7%	13.4%	15.3%
2004	Low-Income Tract HP Mortgages	166,966	76,456	
	High-Minority Tract HP Mortgages	46,559	18,774	
	Subtotal Goal-Qualifying Mortgages	213,525	95,230	
	Total HP Mortgages	1,354,503	788,967	
	Low-Inc. Area % of Mortgages	15.8%	12.1%	16.7%
2003	Low-Income Tract HP Mortgages	201,095	73,670	
	High-Minority Tract HP Mortgages	64,476	18,968	
	Subtotal Goal-Qualifying Mortgages	265,571	92,638	
	Total HP Mortgages	1,675,440	763,798	
	Low-Inc. Area % of Mortgages	15.9%	12.1%	
2002	Low-Income Tract HP Mortgages	203,075	145,703	
	High-Minority Tract HP Mortgages	61,800	36,394	
	Subtotal Goal-Qualifying Mortgages	264,875	182,097	
	Total HP Mortgages	1,385,982	978,684	
	Low-Inc. Area % of Mortgages	19.1%	18.6%	
2001	Low-Income Tract HP Mortgages	185,670	122,252	
	High-Minority Tract HP Mortgages	53,112	31,745	
	Subtotal Goal-Qualifying Mortgages	238,782	153,997	
	Total HP Mortgages	1,331,681	966,088	
	Low-Inc. Area % of Mortgages	17.9%	15.9%	

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 is less than 100 percent of AMI. This goal also includes home purchase loans made to families in designated disaster areas; such mortgages are not included in this table, but they are included in Table 3A for 2007-09

Notes: Figures differ from those in Table 3 of the proposed rule (*Federal Register*, 2/26/10, p. 9043) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs, purchased by Fannie Mae.)

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only. As discussed in the rule, for 2010-11 credit will be given toward the low-income refinance goal for permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11.

Refinancing Housing Goal. Under the Safety and Soundness Act, as amended 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 or home purchase 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 (again, excluding units financed by purchases of PLS) would have peaked in 2005 at 28.4 percent, following the 2001–03 refinance boom, and declined thereafter over the 2006–08 period to a low of 23.1 percent in 2008. Freddie Mac's performance would also have peaked in 2005 at 26.3 percent, and then also declined to 26.0 percent in 2006, 25.2 percent in 2007, and 23.2 percent in 2008.

Performance on the refinancing goal is also shown in Table 4 for 2009. As indicated, performance exclusive of loan modifications fell to the lowest levels of this period—19.9 percent for Fannie Mae and 19.1 percent for Freddie Mac. However, 67.9 percent of Fannie Mae's modifications of refinance mortgages pursuant to HAMP and 67.7 percent of Freddie Mac's modifications of refinance mortgages pursuant to HAMP were for low-income families. As a result, total performance on the goal, including modifications pursuant to HAMP, would have been 23.0 percent for Fannie Mae and 21.7 percent for Freddie Mac.

However, as discussed elsewhere in this rule, the treatment of loan modifications for purposes of the housing goals will be different in 2010–2011 than it was in 2009, in two respects. First, only permanent modifications of mortgages will be counted as mortgage purchases—that is, for 2010, only modifications initiated and made permanent in 2010 will be counted, and for 2011, only modifications made permanent in 2011 will be counted. Second, loan modifications will be counted only under the refinancing housing goal, not under the housing goals for home purchase mortgages. This differs from the treatment of loan modifications in 2009, when loan modifications were treated as either refinancing loans or home purchase loans, depending on the original purpose of the loan that was modified. The data in Table 4 indicate what performance under the low-income refinancing housing goal would have been in 2009 under the 2009 provisions for counting loan modifications. Performance excluding all loan modifications would have been 19.9 percent for Fannie Mae and 19.1 percent for Freddie Mac. Performance including initial loan modifications of low-income refinancing mortgages would have been 23.0 percent for Fannie Mae and 21.7 percent for Freddie Mac. FHFA estimates that approximately 25 percent of all loan modifications initiated by the Enterprises in 2009 were actually made permanent in 2009. Thus, 2009 performance under the low-income refinancing housing goal, based on the 2010 provisions for counting loan modifications, would have been less than the performance figures including initial loan modifications, but greater than the performance figures excluding all loan modifications. Assuming that the low-income shares of permanent modifications in 2009 were the same as the low-income shares of initial modifications in 2009, FHFA estimates that performance on the low-income refinancing housing goal in 2009 would have been approximately 21.3 percent for Fannie Mae and 20.2 percent for Freddie Mac.

Table 4

GSE Past Performance on the Low-Income Refinance Goal, 2001-09

(Performance if 2010 goal had been in effect, excluding mortgages financed by the purchase of private-label securities [PLS]; mortgages on all single-family owner-occupied properties; excludes loans with missing borrower income from the denominator.)

		Fannie Mae			Freddie Mac			HMDA Market
Year	Type of Activity	Low-Income	Total	Low-Inc. %	Low-Income	Total	Low-Inc. %	Share
2009	Refinance Mortgages	479,631	2,415,169	19.9%	326,912	1,708,676	19.1%	NA
	Refinance Loan Modifications	114,390	168,437	67.9%	63,708	94,062	67.7%	NA
	Total	594,021	2,583,606	23.0%	390,620	1,802,738	21.7%	NA
2008	Refinance Mortgages	335,864	1,455,287	23.1%	215,016	927,816	23.2%	24.7%
2007	Refinance Mortgages	351,739	1,421,342	24.7%	252,889	1,005,519	25.2%	25.4%
2006	Refinance Mortgages	301,995	1,133,684	26.6%	217,882	838,104	26.0%	26.2%
2005	Refinance Mortgages	403,366	1,421,340	28.4%	310,234	1,179,812	26.3%	26.8%
2004	Refinance Mortgages	525,853	1,857,975	28.3%	337,617	1,331,491	25.4%	27.6%
2003	Refinance Mortgages	1,575,054	6,194,685	25.4%	818,225	3,785,945	21.6%	
2002	Refinance Mortgages	773,838	3,253,383	23.8%	602,547	2,733,601	22.0%	
2001	Refinance Mortgages	561,901	2,323,628	24.2%	388,502	1,712,138	22.7%	

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).

Notes: Figures differ from those in Table 4 of the proposed rule (*Federal Register*, 2/26/10, p. 9044) because the data in the proposed rule included mortgages financed by the purchase of private-label securities (PLS) and because those figures included Enterprise purchases of FHA-insured loans (primarily FHA Home Equity Conversion Mortgages, or HECMs purchased by Fannie Mae.)

Performance on this goal including trial HAMP loan modifications in 2009 is shown for information only.
As discussed in the rule, for 2010-11 credit will be given toward this goal for all permanent HAMP loan modifications for low-income families; loan modifications will not be counted toward any of the single-family home purchase goals in 2010-11. As indicated in the rule, FHFA has increased this goal for 2010-11 by two percentage points above the level that would have applied if no credit were awarded for loan modifications.

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. In recent years, for example, the Enterprises purchased PLS primarily due to anticipated profitability, to maintain market share, and because some PLS, especially those containing subprime mortgages, helped achieve the housing goals. Elsewhere in this final rule is a more detailed discussion regarding the exclusion of mortgages included in PLS from counting toward the housing goals in 2010–2011. The performance data in Tables 1–4 show performance excluding the effects of these PLS purchases.

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 in underwriting standards will affect goal performance as compared to the past goal performance of the Enterprises.

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.[45] FHFA shares that concern and has defined the Enterprise housing goals in part against that history. FHFA believes that, in fact, the Enterprises, directly supported by the Treasury Department, 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 different 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 (MHA) 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, lead the market. In the first quarter of 2010, they had a combined purchase market share of nearly 100 percent.[46]

From 1997–2003, the Enterprises' share of purchases 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 mortgage purchase and guarantee activity represented more than 76 percent of total conforming single-family originations in 2009.[47]

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 they have been sustained only by multi-billion dollar infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. In this environment, with FHFA as conservator 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 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 housing goals.

FHFA also uses other reliable data sources including the American Housing Survey (AHS), Census demographics, commercial sources such as Moody's,[48] and other industry and trade research sources, *e.g.,* Mortgage Bankers Association (MBA),[49] Inside Mortgage Finance Publications,[50] NAR,[51] National Association of Home Builders (NAHB),[52] and the CRE Finance Council.[53] The FHFA MIRS,[54] 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, Standard and Poor's, The Conference Board and the Federal Open Market Committee. 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.[55]

6. Market Size

In general, the single-family mortgage market environment of 2009 is expected to extend to 2010, with modest improvements in 2011. 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 homebuyer tax credit on the mortgage market. Also, activity in the subprime market is expected to be minimal through 2011.

In particular, the following factors have a direct or indirect impact on the affordability of home purchases or the refinancing of mortgages:

Interest Rates. To a large extent, FHFA's estimates of affordability in the mortgage market rely on a continuing low interest rate environment. Interest rates are expected to remain low in the near future and possibly through 2011 as the Federal Reserve expects to continue its low interest rate policy.[56] Mortgage interest rates reached an all-time low in August 2010, with the national average interest rate on a 30-year fixed-rate mortgage reaching 4.42 percent.[57] Lower interest rates directly affect the affordability of buying a home or refinancing a mortgage.

Unemployment. In addition to being an indicator of the health of the economy in general, the employment situation impacts the housing market more directly in that buying a house is a large investment and a long-term commitment of mortgage payments. Private-sector payroll employment edged up by 71,000 and the unemployment rate remained at 9.5

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

[46] The combined purchase market share of Fannie Mae, Freddie Mac and Ginnie Mae was 98 percent, down slightly from 99 percent in the prior year. "Fannie, Freddie GNMA At Nearly 100% Share." National Mortgage News, May 31, 2010.

[47] Statement of Edward DeMarco, Acting Director of the Federal Housing Finance Agency, U.S. House of Representatives House Financial Services Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises." May 26, 2010.

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

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

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

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

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

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

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

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

[56] "The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent." Minutes of the Federal Open Market Committee, June 22–23, 2010, p. 10.

[57] Freddie Mac. *Primary Mortgage Market Survey.* August 19, 2010.

percent in July.[58] The unemployment rate is still historically high and will likely remain above eight percent in the 2010 to 2011 period. To the extent that lower-income jobs are affected more by the employment situation, the affordable home purchase market is affected.

House Prices. The price of housing has a direct impact on the affordability of home mortgages. The housing and mortgage markets are also influenced by trends in house prices. In periods of house price appreciation, home sales and mortgage originations increase as the expected return on investment rises. In periods of price depreciation or price uncertainty, home sales and mortgage originations decrease as risk-adverse homebuyers are reluctant to enter the market. Between May 2009 and May 2010, FHFA's purchase-only House Price Index shows prices down 1.2 percent, compared to a 5.8 percent price decline between May 2008 and May 2009. While price declines appear to be moderating, and while the S&P/Case Shiller Home Price Index actually shows prices increased 5.4 percent over the May 2009 to May 2010 period, prices are expected to decline further during the third quarter of 2010.[59] An analysis by Wells Fargo Securities Economics Group states that "[t]he combination of high inventories and declining home sales means prices should turn down again this summer."[60]

Housing Market. A robust housing market is generally good for the affordable home market. Home sales, after increasing 8.4 percent in March and 8.2 percent in April, have decreased 4.6 percent in June and another 3.8 percent in July. Both the increase and the subsequent decrease in home sales may be attributed to the homebuyers' tax credit program and its expiration. Many industry observers expect that home sales will remain near recent lows during the remainder of 2010. According to an analysis by Wells Fargo Securities Economics Group, "[s]ales of existing homes fell 5.1 percent in June to a still relatively robust 5.37 million-unit pace. Sales continue to be supported by tax credits. Delays in the closing process have led to an extension of the closing deadline which will likely smooth the adjustment to the post-tax credit environment."[61]

The 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. The repeat homebuyers who qualify for the tax credit include a greater proportion of older and thus higher income borrowers.

FHA Market Share. The composition of the affordable conventional mortgage market is also influenced by FHA's market share, which rose significantly in 2008–2009 and continues to be high. 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 housing goals credit.

As shown in Figure 1, the market share of all mortgages insured by FHA has increased dramatically. 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. Borrowers without substantial down payments are increasingly utilizing 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 FHA loans are now assisting the types of borrowers who previously were served by subprime products. However, FHA's internal data indicate that the average riskiness of the loans they insure has actually decreased, *i.e.,* credit scores increased, since late 2007.[62]

[58] Bureau of Labor Statistics, *News Release: The Employment Situation—July 2010.* August 8, 2010.

[59] S&P/Case Shiller. *Press Release,* July 27, 2010.

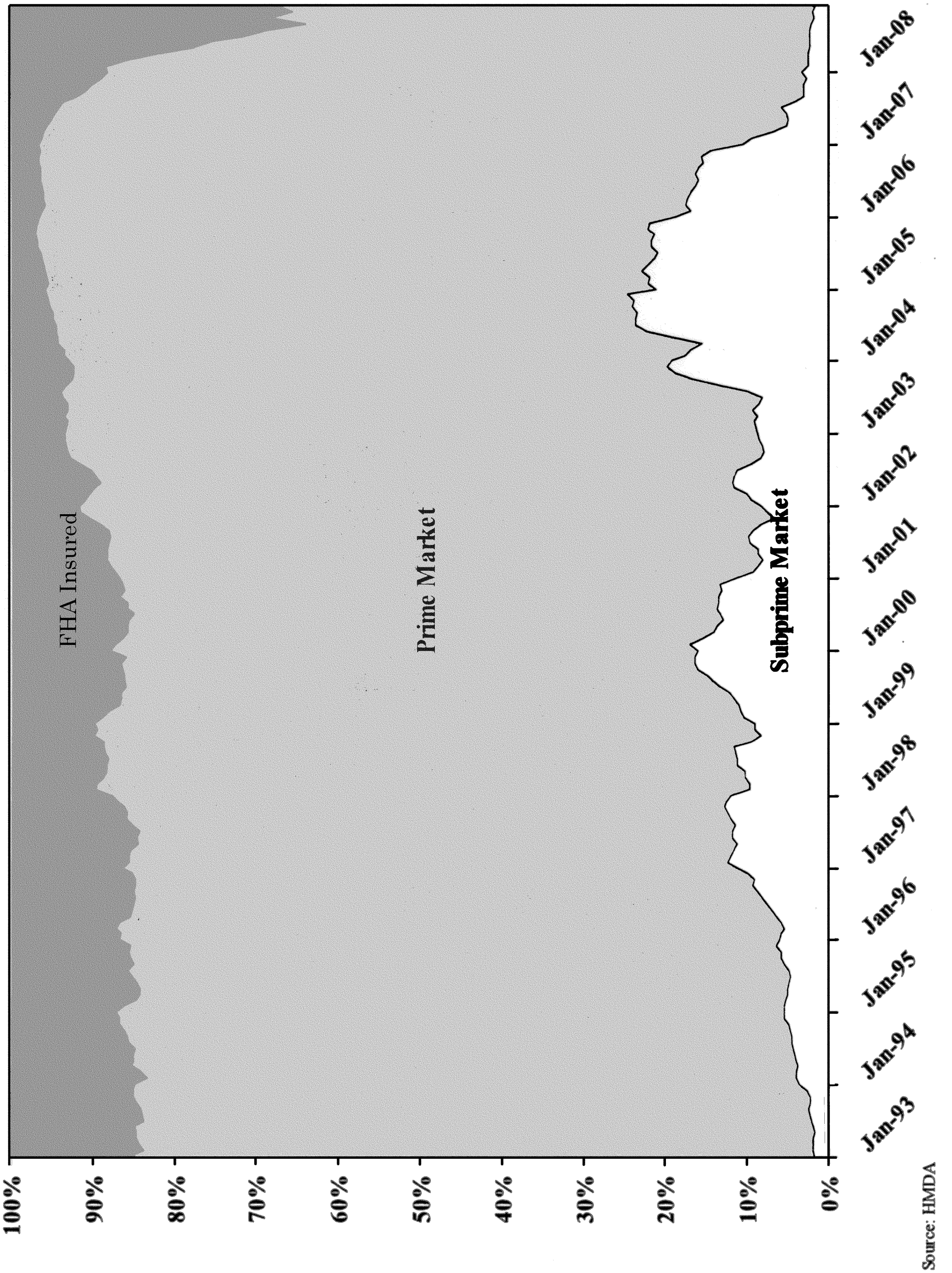
[60] Wells Fargo Securities Economics Group. *Existing Home Sales Slip in June,* July 22, 2010, p. 1.

[61] Wells Fargo Securities Economics Group. *Existing Home Sales Slip in June.* July 22, 2010, p. 1.

[62] *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



Refinance Rate. The share of the mortgage market that is from refinancing existing mortgages has an impact on the share of affordable refinance mortgages. Specifically, when the refinancing of mortgages is motivated by low interest rates, the market is dominated by higher income borrowers. In addition, a combination of depressed housing prices and high LTV ratios could disproportionately decrease the number of low-income homeowners refinancing their mortgages.

Manufactured Housing Loans. During 2004 to 2008, 57 percent of manufactured housing loans were higher cost, according to the HMDA data. Only 8.5 percent of manufactured housing loans, with most being refinance loans, were from lenders who specialized in serving riskier borrowers. To adjust the market estimates of the housing goals to account for the effect from chattel loans on manufactured housing, FHFA weighted the average 2004 to 2008 manufactured housing contribution to the goals market estimates by 60 percent for the home purchase mortgage goals and 50 percent for the refinance mortgage goal. The market estimates were adjusted downward by that amount. This resulted in the market estimate for the low-income home purchase housing goal being adjusted by −0.9 percent, the very low-income home purchase housing goal by −0.3 percent, the low-income areas home purchase housing goal by −0.4 percent, and the low-income borrower refinance housing goal by −0.3 percent. The projected market estimates in Table 6 reflect these adjustments.

Given all of the influences on the housing and mortgage markets, the outlook for the 2010–2011 period remains guarded. 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 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 3.0 and 2.7 percent, respectively. Industry assessments of housing markets generally are conservative. The unemployment rate is expected to remain above eight percent during 2010 and 2011. As uncertainty in the job market remains, it will continue to have a negative impact on the housing market. "Employment stability and job growth are keys to a housing recovery. In addition to alleviating worker's fears about their next paycheck, improving employment measures help boost the confidence of households that are considering buying a home." [64] Mortgage interest rates are currently dependent on federal policies, somewhat independent of the federal funds rate and influenced by the economic situation in Europe. The Federal Open Market Committee is committed to a low federal funds rate policy (at 0 to 0.25 percent) as it "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." [65] For the 2010 and 2011 period, the forecasts polled by FHFA show that interests rates will remain near recent levels.

Table 5

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011
Real GDP Growth	3 6%	3.1%	2.7%	1.9%	0.0%	-2.6%	3.0%	2.7%
Unemployment Rate	5 5%	5.1%	4.6%	4.6%	5.8%	9.3%	9.6%	9.1%
Inflation Rate	2.7%	3.4%	3.2%	2.9%	3.8%	-0.4%	1.7%	1.3%
Core Inflation Rate[1]	1.8%	2.2%	2.5%	2.3%	2.3%	1.7%	1.0%	1.0%
1-Year Treasury Yield	1.9%	3.6%	4.9%	4.5%	1.8%	0.5%	0.3%	0.8%
10-Year Treasury Yield	4.3%	4.3%	4.8%	4.6%	3.7%	3.3%	3 4%	3.5%
30-Year Mortgage Fixed Rate[2]	5.8%	5.9%	6.4%	6.3%	6.0%	5.0%	4.8%	5.1%
Housing Starts[3]	1,951	2,071	1,810	1,341	899	554	620	857
Home Sales (New and Existing)[3]	7,929	8,356	7,563	6,437	5,375	5,535	5,465	5,934
Single-Family Originations[4]	$2,772	$3,026	$2,725	$2,306	$1,508	$1,815	$1,501	$1,249
Change in Housing Prices[5]	9.3%	9.3%	3.5%	-1.2%	-8.3%	-1.3%	-2.6%	0.4%
Housing Affordability Index[6]	126	114	108	117	139	171	170	149
Refinance Mortgage Share	54%	49%	48%	51%	51%	65% [p]	62%	40%
FHA Home Purchase Market Share	7%	4%	4%	6%	25%	30% [p]	29%	25%
Median Sales Price - New Homes[7]	$218	$234	$243	$244	$230	$215	$214	$215
Median Sales Price - Existing Homes[7]	$193	$218	$222	$217	$197	$173	$171	$173

Note: 2010-2011 values are forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial,the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

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

[2]Freddie Mac, Primary Mortgage Market Survey

[3]Thousands of units

[4]FHFA and MBA, Billions of dollars

[5]FHFA House Price Index, Purchase Only (4th quarter over 4th quarter change)

[6]National Association of Realtors

[7]Thousands of dollars

[a]Advance estimate.

[p]Preliminary estimate.

[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, National Association of Home Builders, Standard and Poor's, The Conference Board and The Federal Reserve Board's Federal Open Market Committee.

[64] National Association of Home Builders. *Eye on the Economy—Private Sector Job Growth Slows in May,* June 10, 2010.

[65] Board of Governors of the Federal Reserve System. *Press Release of the Federal Open Market Committee,* June 23, 2010.

FHFA's estimates of the market performance for the two single-family owner-occupied home purchase housing goals and one subgoal, and the refinancing mortgage housing goal, are provided in Table 6. For 2010 and 2011, FHFA estimates that the low-income and very low-income borrower shares of the home purchase mortgage market will be 27 percent and 8 percent, respectively. Comparing these market estimates in Table 6 with the corresponding estimates in Table 6 of the proposed rule shows that the estimates have not changed. The estimated share of goal-qualifying mortgages in low-income areas in the home purchase mortgage market, excluding designated disaster areas, in 2010 and 2011, remained at the 13 percent of home purchase mortgages estimate that was published in the proposed rule. While changes in expected economic conditions had an impact on the market for these three housing goals, that impact is insignificant. The market for the low-income areas housing goal is influenced by the level of home sales. During periods when home sales are increasing, a smaller share of the additional home sales take place in low-income areas. Home sales are expected to fall slightly in 2010 and then rebound in 2011.[66]

Table 6

Enterprise Single-Family Housing Goals
Market Estimates 2009 - 2011

Year [1]	Low-Income Borrower Home Purchase Goal	Very Low-Income Borrower Home Purchase Goal	Low-Income Area Home Purchase Subgoal	Low-Income Borrower Refinance Goal
2004	27.3%	6.6%	16.7%	28.1%
2005	24.4%	5.7%	15.3%	26.1%
2006	24.2%	5.9%	15.8%	24.8%
2007	26.1%	6.2%	16.2%	24.3%
2008	25.5%	6.5%	14.3%	23.4%
2009 [2]	27.4% ± 1.1%	8.1% ± 0.6%	11.7% ± 0.7%	20.1% ± 3.7%
2010 [2]	27.7% ± 2.4%	8.6% ± 1.2%	12.7% ± 1.8%	18.1% ± 7.4%
2011 [2]	26.0% ± 4.8%	8.1% ± 2.3%	13.6% ± 3.5%	20.4% ± 10.3%

[1]Historical market performance is based historical HMDA data for first-lien, conventional, ARRA-equivalent conforming limit loans, excluding higher-cost and HOEPA loans.

[2]Estimated (95% confidence)

The refinance share of the market, as measured by the Mortgage Bankers Association, was 65 percent during the first quarter of 2010. With interest rates projected to be at historical lows during the remainder of 2010, there is real potential for refinance rates to be higher than currently anticipated. With a projected refinance rate of 62 percent in 2010 (down from 65 percent in 2009), FHFA estimates that 18 percent of refinance mortgages will be made to low-income borrowers in 2010. The refinance rate is expected to fall to 40 percent in 2011, resulting in an estimate that the low-income borrower mortgage share of the refinance mortgage market will be 20 percent in 2011.

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. For the low-income areas goal, this model produced only the market estimates for the subgoal. The remainder of the market estimates for this goal relates to the designated disaster areas. FHFA estimates that 11 percent of home purchase mortgages originated in 2010 will qualify for the low-income areas goal because the properties associated with these mortgages are located in designated disaster areas that are not already classified as low-income or high minority. The methodology used in FHFA's analysis of the mortgage market for 2010 and 2011 is contained in a document entitled "Market Estimation Model for the 2010 and 2011 Enterprise Single-Family Housing Goals," which is available at *http://www.fhfa.gov.*

FHFA used all relevant information when determining the benchmark levels for the 2010 and 2011 housing goals. While the tightening of underwriting standards is not included in the market estimates calculation, it was considered in the determination of the benchmark levels. FHFA attempts to use the most current data possible when estimating market size, including information from the Monthly Interest Rate Survey (MIRS) to extend HMDA goal performance data. To extend the series for the three single-family home purchase goals through 2009, FHFA supplements the HMDA series with estimated market series of goal-qualifying shares provided by Freddie Mac that are based on MIRS data. Guidance for calculating market

[66] The average industry January forecast for home sales during 2010 and 2011 was 5.9 and 6.5 million units respectively. This is compared to the 5.5 and 6.0 million units from Table 5.

size using historical HMDA data is provided in the "Market Estimation Model for the 2010 and 2011 Enterprise Single-Family Housing Goals" published by FHFA. The market estimation methodology for estimating current and future market size is provided in that market estimation model document. As noted above, FHFA will use the Federal Reserve Board's new guidelines of 150 basis points or more above APOR to identify higher-cost loans.

7. Financial Condition of the Enterprises

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. Fannie Mae has drawn $85.1 billion and Freddie Mac has drawn $63.1 billion in Treasury support under the Senior Preferred Stock Purchase Agreements, over $148 billion in total.

As discussed above, FHFA's duties as conservator require the conservation and preservation of the assets of the two Enterprises. While reliance on the Treasury Department's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on the books. 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 adjusted the Enterprises' housing goal levels to align them with safe and sound practices and market reality, and the housing goals requirements for 2010 and 2011 must be similarly aligned.

D. Single-Family Housing Goal Levels

Based on the factors described above, § 1282.12 of the final rule establishes the benchmark levels for the single-family housing goals for 2010 and 2011 as follows:

Housing goal 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 is 27 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

Housing goal and subgoal 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 will be set annually by notice from FHFA. The benchmark level will be based on the benchmark level for the low-income areas subgoal, plus an adjustment factor that reflects the incremental percentage share that mortgages for low- and moderate-income families in designated disaster areas had in the most recent year for which data is available. The benchmark level of the annual subgoal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income census tracts and for low- and moderate-income families in minority census tracts is 13 percent of the total number of such mortgages purchased by that Enterprise.

Housing goal 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 is 8 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

Housing goal 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 is 21 percent of the total number of such mortgages purchased by that Enterprise, an adjustment downward from the 25 percent level in the proposed rule to reflect current market conditions.

E. Analysis of Factors for 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; and

(6) The need to maintain the sound financial condition of the Enterprise.[67]

FHFA's analysis of each of the factors, which has been updated since the proposed rulemaking, is set forth below.

1. National Multifamily Mortgage Credit Needs

At the onset of the mortgage credit crisis, traditional sources of multifamily credit, primarily commercial mortgage-backed securities (CMBS), life insurance companies, commercial banks, and thrifts, significantly reduced lending or stopped lending completely. This contraction left Freddie Mac and Fannie Mae as the principal sources of financing for most multifamily owners and investors. Although FHA has increased significantly its non-healthcare, non-new construction endorsements in fiscal year 2010 as compared to fiscal year 2009, it remains a relatively small player in the multifamily refinance market. Data on initial endorsements for the first eight months of fiscal year 2010 show more than a four-fold increase in initial FHA endorsements of non-healthcare, non-new construction multifamily loans to over $3.7 billion.[68] While this number is much less than Enterprise purchases over the same period, FHA has managed to increase its business, in part, because its underwriting parameters are less stringent than those of the Enterprises.[69] Life insurance companies appear to be returning to the multifamily market. According to data from the MBA, life insurance companies have increased originations of commercial property loans, including multifamily loans, by

[67] 12 U.S.C. 4563(a)(4).

[68] Source: FHA Multifamily Data Base available at: *http://www.hud.gov/offices/hsg/mfh/fhamie/iecompiled10.pdf.*

[69] FHA permits LTVs up to 85 percent and DSCR ratios as low as 1.176 on its primary market rent refinance program Section 223(f). This compares to Enterprise maximum LTVs of 80 percent and a minimum DSCR of 1.25. Earlier in 2010, FHA announced plans to raise the DSCR for Section 223(f) loans to 1.2 from 1.176.

131 percent in the first quarter of 2010, compared to the same period in 2009.[70]

With multifamily property prices having fallen by almost 31 percent from the third quarter of 2008 to the first quarter of 2010,[71] many properties that would have been eligible for refinance through Enterprise programs lack enough equity to meet Enterprise loan underwriting standards. The decline in 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 may not have sufficient equity to counter the effects of declining property values.

Demand for new multifamily housing credit has also waned due to the credit crunch and the existing oversupply of multifamily units. According to the U.S. Census Bureau, multifamily housing starts plummeted by two-thirds from April 2008 to April 2010.[72] Sales of multifamily properties are far below normal levels in part because 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.

In the CMBS portion of the multifamily market, while the Enterprises have primarily purchased the highest-rated CMBS tranches, they may be indirectly affected by increasing CMBS delinquency rates. According to May 2010 data released by TREPP,[73] delinquencies on multifamily properties financed by CMBS issuances rose to 13.34 percent from 5.17 percent a year earlier. 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[74] and Freddie Mac,[75] there is growing concern among multifamily property owners and investors about properties that are overleveraged or generating negative cash flows.

2. Past Performance

HUD established dollar-based multifamily housing subgoals for the Enterprises for the years 1996 through 2008. HERA extended the 2008 subgoals through 2009, subject to review by FHFA, and 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 goals for 2010 and beyond. The multifamily housing subgoals for 2009 were set in terms of units for very low-income families and low-income families in low-income areas. The scope of the goals is broader for 2010–11, 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 amended 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. To implement this provision, consistent with the proposed rule, FHFA is establishing a multifamily subgoal for very low-income families.

Section 1333(a)(3) of the Safety and Soundness Act, as amended 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.

As in the proposed rule, FHFA is defining smaller multifamily properties as those containing 5 to 50 units, which is consistent with industry standards. FHFA already requires reporting by the Enterprises on purchases of mortgages on such properties.

Multifamily special affordable housing goals. Both Enterprises played major roles in funding multifamily units for low-income families between 2001 and 2009, as shown in Table 7. Fannie Mae financed an average of 410,000 such units over this period, peaking at 599,000 units in 2003, while Freddie Mac financed an average of 331,000 units, peaking at 493,000 units in 2007. However, as discussed elsewhere in the final 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. Data on low-income multifamily units financed, excluding CMBS purchases, are shown in the last two columns of Table 7.

As indicated in Table 7, Fannie Mae's financing of low-income multifamily units fell by 16 percent in 2008, from 542,000 units in 2007 to 456,000 units in 2008, and by an additional 46 percent in 2009, to 235,000 units. Such financing fell more sharply at Freddie Mac, by 44 percent, from 493,000 units in 2007 to 276,000 units in 2008, and by an additional 40 percent in 2009, to 167,000 units. This difference reflects the drop in CMBS purchases by Freddie Mac. As a result, Freddie Mac's financing of such units was 61 percent of Fannie Mae's financing in 2008, the lowest ratio of the period.

[68] Source: FHA Multifamily Data Base available at: *http://www.hud.gov/offices/hsg/mfh/fhamie/iecompiled10.pdf.*

[69] FHA permits LTVs up to 85 percent and DSCR ratios as low as 1.176 on its primary market rent refinance program Section 223(f). This compares to Enterprise maximum LTVs of 80 percent and a minimum DSCR of 1.25. Earlier in 2010, FHA announced plans to raise the DSCR for Section 223(f) loans to 1.2 from 1.176.

[70] "MBA Study: First Quarter 2010 Commercial/Multifamily Mortgage Originations Increase from Year Earlier, Though Levels Remain Low, 5/18/2010", available at: *http://www.mbaa.org/NewsandMedia/PressCenter/72890.htm.*

[71] Moody's/Real CPPI Report May 2010, available at: *http://web.mit.edu/cre/research/credl/rca.html.*

[74] Fannie Mae: *Monthly Summary, April 2010,* Table 9.

[75] Freddie Mac: *Monthly Volume Summary: April 2010,* Table 6.

Table 7
GSE Funding of Low-Income Multifamily Units, 2001-09
(Performance if 2010 goal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE (Including CMBS)* FNM	GSE (Including CMBS)* FRE	GSE (Including CMBS)* Ratio	GSE (Excl. CMBS)' FNM	GSE (Excl. CMBS)' FRE
Number of Low-Income Multifamily	2009	235,199	167,026	0.71	234,492	166,680
	2008	456,377	276,267	0.61	446,797	265,699
	2007	542,221	492,630	0.91	391,768	297,711
	2006	441,131	423,221	0.96	311,088	173,331
	2005	349,423	387,241	1.11	347,228	162,707
	2004	337,438	316,150	0.94	334,219	229,468
	2003	598,641	409,746	0.68	594,503	332,849
	2002	338,735	245,942	0.73	336,895	244,494
	2001	390,048	256,540	0.66	388,499	253,885
	Average, 2001-09	409,913	330,529	0.81	376,165	236,314
Dollar Volume (in billions) of Low-Income Multifamily Units Financed	2009	$10.28	$7.23	0.70	$10.26	$7.22
	2008	$19.53	$12.83	0.66	$19.03	$12.29
	2007	$26.97	$24.18	0.90	$18.04	$12.68
	2006	$19.34	$19.18	0.99	$12.71	$7.70
	2005	$13.30	$18.34	1.38	$13.23	$7.08
	2004	$11.94	$11.99	1.00	$11.85	$8.66
	2003	$20.63	$13.14	0.64	$20.48	$10.29
	2002	$10.83	$8.57	0.79	$10.77	$8.50
	2001	$11.98	$8.21	0.68	$11.90	$8.18
	Average, 2001-09	$16.09	$13.74	0.85	$14.25	$9.18

*GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.

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).

Figures including CMBS have been corrected from those in Table 7 on page 9053 of the 2/26/10 proposed rule.

Very low-income multifamily subgoals. 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 and as revised by FHFA for 2009, "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. 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 2001–09 period is reported in Table 8. On average, Fannie Mae funded 92,000 such units each year and Freddie Mac funded 74,000 such units. The same general pattern prevailed over time as that shown in Table 7 between 2007 and 2009, with a significant drop in funding by Fannie Mae (49 percent) and a substantial drop by Freddie Mac (80 percent). As a result, the number of such units financed by Freddie Mac in 2009 was only 33 percent of the number financed by Fannie Mae, the lowest ratio of this period.

Table 8
GSE Funding of Very Low-Income Multifamily Units, 2001-09
(Performance if 2010 goal had been in effect, based on units or dollar volume)

Performance Measure	Year of Purchase	GSE (Including CMBS)* FNM	GSE (Including CMBS)* FRE	GSE (Including CMBS)* Ratio	GSE (Excl. CMBS)' FNM	GSE (Excl. CMBS)' FRE
Number of Very Low-Income Multifamily Units Finance	2009	60,765	20,302	0.33	60,466	20,302
	2008	97,045	46,043	0.47	95,308	42,835
	2007	118,159	102,472	0.87	88,369	59,490
	2006	124,822	136,140	1.09	86,894	34,256
	2005	95,573	103,501	1.08	94,733	31,339
	2004	79,038	71,579	0.91	78,114	45,735
	2003	122,098	98,794	0.81	120,271	76,280
	2002	69,076	38,258	0.55	68,391	37,254
	2001	57,044	45,206	0.79	56,265	45,048
	Average, 2001-09	91,513	73,588	0.80	83,201	43,615
Dollar Volume (in billions) of Very Low-Income Multifamily Units Financed	2009	$1.99	$0.51	0.26	$1.98	$0.51
	2008	$3.15	$1.44	0.46	$3.09	$1.32
	2007	$4.21	$3.77	0.90	$3.06	$2.16
	2006	$4.09	$4.56	1.11	$2.75	$1.19
	2005	$2.79	$3.84	1.38	$2.77	$1.06
	2004	$2.07	$1.96	0.95	$2.05	$1.25
	2003	$3.16	$2.32	0.73	$3.11	$1.75
	2002	$1.56	$0.97	0.62	$1.54	$0.92
	2001	$1.26	$0.92	0.73	$1.24	$0.92
	Average, 2001-09	$2.70	$2.25	0.84	$2.40	$1.23

***GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.**

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).

Figures including CMBS have been corrected from those in Table 8 on page 9054 of the 2/26/10 proposed rule.

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 American Housing Survey (AHS), multifamily properties containing 5–49 units constituted 77 percent of all multifamily units and 74 percent of multifamily units constructed in the previous 4 years. Other sources indicate that a smaller, but still significant, share of multifamily units are located in small multifamily properties.[76] HERA requires reporting of the Enterprises' role in this market with regard to units affordable to low-income families, and such data is reported in Table 9.

Both Enterprises increased their financing of low-income small multifamily units between 2001 and 2003, from 24,000 units to 155,000 units for Fannie Mae, and from 44,000 units to 139,000 units for Freddie Mac. This increase was motivated at least in part by the "bonus points" that HUD gave for financing goal-qualifying units in small multifamily properties over the 2001–03 period. Under these "bonus points," 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 HUD's "bonus points" in 2004. Fannie Mae financed an average of 49,000 units for 2004–07, while the comparable average for Freddie Mac was 24,000 such units.

Since 2007, both Enterprises' roles in this market have fallen significantly. Fannie Mae's purchases of mortgages financing low-income units in small multifamily properties fell from 65,000 units in 2007 to 44,000 units in 2008 and 13,000 units in 2009, a combined decrease of 79 percent. The decline was even sharper for Freddie Mac, from 24,000 units in 2007 to 2,100 units in 2008 and only 528 units in 2009, a combined decrease of 98 percent.

Although the Safety and Soundness Act requires FHFA to consider the past performance of the Enterprises in establishing the multifamily housing goals, current market conditions suggest that many fewer units are likely to be readily available for purchase in a safe and sound manner in 2010 and 2011. Measuring the multifamily goals as was

[76] *American Housing Survey for the United States: 2007,* U.S. Department of Housing and Urban Development and U.S. Department of Commerce, Bureau of the Census, September 2008, Table 1A–1, page 1.

done previously would ignore the steep fall in multifamily property values and high vacancy rates, among other factors.

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Table 9

GSE Funding of Low-Income Units in Small Multifamily Properties, 2001-09

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

Performance Measure	Year of Purchase	GSE (Including CMBS)* FNM	GSE (Including CMBS)* FRE	GSE (Including CMBS)* Ratio	GSE (Excl. CMBS)' FNM	GSE (Excl. CMBS)' FRE
Number of Low-Income Units in Small Multifamily Properties Financed	2009	13,466	528	0.04	13,417	528
	2008	43,979	2,078	0.05	42,668	1,682
	2007	65,348	23,744	0.36	58,931	2,147
	2006	44,816	23,471	0.52	40,587	773
	2005	53,842	11,408	0.21	53,746	1,704
	2004	33,085	37,063	1.12	33,020	34,211
	2003**	155,105	138,858	0.90	155,025	134,616
	2002**	42,394	35,340	0.83	42,350	35,161
	2001**	23,852	44,339	1.86	23,806	44,301
	Average, 2001-09	52,876	35,203	0.67	51,506	28,347
Dollar Volume (in billions) of Low-Income Units in Small Multifamily Properties Financed	2009	$0.68	$0.02	0.04	$0.68	$0.02
	2008	$2.09	$0.12	0.06	$2.02	$0.10
	2007	$3.33	$1.54	0.46	$2.79	$0.11
	2006	$2.20	$1.04	0.47	$1.93	$0.03
	2005	$2.23	$0.62	0.28	$2.23	$0.08
	2004	$1.30	$1.31	1.01	$1.30	$1.18
	2003**	$6.14	$4.59	0.75	$6.14	$4.42
	2002**	$1.44	$1.29	0.90	$1.44	$1.29
	2001**	$0.67	$1.41	2.10	$0.67	$1.40
	Average, 2001-09	$2.23	$1.33	0.59	$2.13	$0.96

*GSE: FNM = Fannie Mae, FRE = Freddie Mac. Units financed by the acquisition of multifamily commercial mortgage-backed securities (CMBS) are included in first set of figures, but excluded from second set of figures.

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

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).

Figures including CMBS have been corrected from those in Table 9 on page 9055 of the 2/26/10 proposed rule.

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3. Market size

The size of the overall 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. 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 recent years, and on current multifamily market conditions. 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.[77]

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 unavailable or do not meet Enterprise standards. Therefore, based on the factors discussed above, multifamily affordable purchases in the very low-income category are 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 likely be below its average for 2004 to 2008, while Fannie Mae will likely have a very low-income purchase volume near its average for the past several years. As discussed elsewhere in this final rule, CMBS units will no longer receive credit towards the housing goals.

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 became 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. Although showing signs of improvement, the fundamentals of the multifamily real estate market are still weak (*e.g.*, high vacancy rates, stagnant rents and falling property values). As a result, 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 have recently composed a larger than usual portion of the multifamily market. For example, while Fannie Mae estimates that its share of the multifamily market ranged from 21–28 percent in the period from 2004 to 2007, its multifamily market share was 47 percent in 2009. In the years 2010–2011, the Enterprises' share of the market will likely not be as large because of renewed competition from other multifamily market players, including life insurance companies and banks, and declining multifamily market fundamentals.

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 to support new lending by HFAs, and a temporary credit and liquidity program to 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.

The Enterprises actively purchase mortgages on properties with HUD Section 8 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 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

The financial performance of both Enterprises, including the establishment of the conservatorship for the Enterprises in September 2008, is discussed in more detail above. FHFA has considered the multifamily housing goals in light of the importance of the Enterprises to the housing market and in light of FHFA's duties as conservator to conserve and preserve the assets of the Enterprises. FHFA has aligned the multifamily housing goal levels for 2010 and 2011 with safe and sound practices and market reality.

F. Multifamily Housing Goal Levels

As a result of the changes in HERA, the final rule establishes 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. Consistent with the proposed rule, the multifamily affordable goals for each Enterprise in the final rule are established in terms of low-income and very low-income units financed annually.

Regarding the setting of multifamily goals, one commenter noted that there does not appear to be a convenient measure of the market, particularly for very-low income families. The commenter suggested using HMDA data to calculate the size of the small multifamily property market, and estimating the size of the large multifamily property market. The overall size of the market could then be estimated in dollars. FHFA received four comments generally supporting the multifamily housing goal levels in the proposed rule. One policy advocacy group supported the goal levels, but cautioned that increasing the Enterprises' performance for very-low income families may be difficult without a significant increase in the availability of housing subsidies through which rents can be made affordable to such families.

Eight commenters opposed the proposed multifamily goal levels. Two not-for-profit organizations stated that rather than focus on multifamily goal targets, the Enterprises should address the unmet demand for affordable multifamily financing by focusing on the overall quality and effectiveness of project-specific efforts, prototypes and market-wide coverage. One trade association commented that the

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

multifamily goals should continue to be measured as previously, stating that the proposed goals were too precise for these uncertain times. Two other trade associations commented that the proposed goal levels were too low, based on previous Enterprise performance. One trade association added that the Enterprises are now the principal source of financing for affordable rental housing, and FHFA should push them to remain as market leaders. Both Enterprises stated that the multifamily goal levels were too high, and that the demand for multifamily financing is too weak to support such levels.

The final rule lowers the multifamily goal levels by approximately 25 percent from those in the proposed rule. The lower goal levels reflect the uncertain state of the overall multifamily market, the anticipation that the Enterprises will play a less dominant role in that market through 2011 as competition for market share increases from such traditional players as life insurance companies and banks, the decrease in properties qualifying for Enterprise multifamily financing as a result of steep declines in multifamily property prices and declining fundamentals in the market (*e.g.* debt service ratios and LTV ratios, deteriorating property conditions), and the adverse impact on multifamily production as a result of decreased LIHTC investment.

As noted earlier, Freddie Mac's multifamily volume has not kept pace with Fannie Mae's multifamily 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. Structured purchases are not readily available and are likely to reappear in only limited volumes in the near term. Pursuant to this final rule, CMBS units will no longer count toward the housing goals.

Fannie Mae, on the other hand, is better positioned than Freddie Mac to finance affordable units through its flow business. For example, Fannie Mae has a division 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. Mortgages on small multifamily properties are usually more expensive to originate and underwrite than mortgages on large properties because the costs, mostly fixed, are spread over fewer units.[78] The DUS program helps Fannie Mae mitigate some of the credit risk of financing affordable multifamily units.

Since Fannie Mae will likely finance significantly more multifamily units in 2010 than Freddie Mac, consistent with the proposed rule, the final rule sets distinct goals for each of the Enterprises, as was done in previous years. 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.

Unlike with the dual approach for the single-family goals described above, FHFA has not defined the multifamily goals as prospective market-based targets, with a provision to be measured retrospectively against actual market data. The availability of the necessary market data to measure affordability of rents in the multifamily market, prospectively or retrospectively, is less certain. As a result, consistent with the proposed rule, the final rule sets the multifamily goals in the traditional prospective volume of business manner. However, these goals remain subject to the statutory provisions enabling them to be adjusted, or providing relief from enforcement, if multifamily market conditions so require.

FHFA considered previous multifamily performance and the current market in setting the multifamily goals in the final rule as well as revisions in the final rule which disallow counting CMBS toward multifamily goals in setting these revised goals.

Multifamily low-income housing goal. Under the final rule, the annual goal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 177,750 dwelling units for each of 2010 and 2011, a decrease from the 237,000 units set in the proposed rule. The annual goal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to low-income families is at least 161,250 such dwelling units for each of 2010 and 2011, a decrease from the 215,000 units set in the proposed rule.

Multifamily very low-income housing subgoal. Under the final rule, the annual subgoal for Fannie Mae's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 42,750 dwelling units for each of 2010 and 2011, a decrease from the 57,000 units set in the proposed rule. The annual subgoal for Freddie Mac's purchases of mortgages on multifamily residential housing affordable to very low-income families is at least 21,000 such dwelling units for each of 2010 and 2011, a decrease from the 28,000 units set in the proposed rule.

G. Small Multifamily Properties

HERA requires the Enterprises to report on purchases of mortgages secured by small multifamily properties. In the proposed rule, FHFA invited comment on whether additional requirements for small multifamily properties should be considered.

Five commenters supported the establishment of small multifamily housing goals. They stated that this is an underserved market segment and should be a focus for the Enterprises. One policy advocacy group stated that a small multifamily housing goal would recognize the vast majority of renters who live in small multifamily properties. However, the commenter added that this still would not address the significant number of single-family rentals. A governmental entity stated that the goal should be expanded to include mixed-use residential properties that include one- to four-family buildings with ground floor commercial space.

Three commenters opposed establishing a small multifamily housing goal. One trade association supported reporting requirements for small multifamily properties rather than establishing a goal, and recommended that FHFA meet with industry and banking representatives to explore small multifamily options. Both Enterprises stated that small multifamily housing requirements were not necessary at this time, citing the current state of the multifamily market and the financial condition of the Enterprises.

FHFA has considered these comments and determined that the Enterprises should not be subject to small multifamily housing subgoals while in conservatorship. Such new subgoals could be viewed as encouraging substantial new activity in an area in which the Enterprises have limited operational capacity. Accordingly, the

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

final rule does not establish such subgoals but, as provided by HERA, the Enterprises will be required to continue to report on their activity in this area.

H. Discretionary Adjustment of Housing Goals—§ 1282.14

Consistent with the requirements of section 1334 of the Safety and Soundness Act, as amended by HERA, and the proposed rule, § 1282.14 of the final rule provides for an Enterprise to petition the Director to reduce the level of any goal or subgoal,[79] and sets forth the standards and procedures for consideration by the Director in determining whether to reduce a goal or subgoal level.

One trade association supported the discretionary authority of the Director to adjust the housing goals upon petition by the Enterprises. However, this commenter requested that any such petitions and adjustments be made public to ensure transparent consideration of the full implications of any such request.

FHFA considered this comment and determined that the final rule should not make any changes to this section of the proposed rule, because it already provides for public comment on such adjustments, consistent with the process required under section 1334 of the Safety and Soundness Act, as amended by HERA.

I. General Counting Requirements—§ 1282.15

In the final rule, § 1282.15 sets forth general requirements for the counting of Enterprise mortgage purchases toward the achievement of the housing goals. Except as described below, these requirements are unchanged from the general requirements set forth in the proposed rule. Performance under the single-family housing goals will 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 will 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 have been revised to reflect changes in the housing goals for 2010 and 2011. The methodology for estimating affordability for single-family rental properties has been 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 has been removed because it is no longer in use by either Enterprise. The option to request approval of alternative methodologies has also been removed. In light of the shorter time period for which the 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.

Contract rent. Under the proposed rule, the definition of "contract rent" would clarify that market rent would be used as the anticipated rent for unoccupied units.

Freddie Mac recommended that effective rent, not market rent, be used to determine affordability. Freddie Mac and other industry participants use effective rent, which averages nearly six percent below market rent, when underwriting multifamily loans and determining property value. The use of effective rent would align goals qualification rules with these market standards.

FHFA understands that it is industry practice when estimating cash flow for underwriting purposes to use rents net of rent concessions. FHFA also understands that when rent concessions are given, the tenants pay less than the contract rent for that given period of time. However, since FHFA does not have sufficient information to project when and where rent concessions will be available to tenants or prospective tenants, FHFA uses contract rents as the basis for establishing affordability and the multifamily housing goal and subgoal targets. Since the affordability of units in properties associated with the Enterprises' mortgage acquisitions will be scored against a housing goal based on contract rents, § 1282.15(d) of the final rule continues to require the Enterprises to use contract rents when calculating affordability.

J. Special Counting Requirements—§ 1282.16

Section 1282.16 of the final rule sets 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 were proposed for this section to ensure consistent application of the counting rules among the Enterprises. The final rule adopts most of the changes from the proposed rule, except as described in more detail below.

As in the proposed rule, § 1282.16(b) of the final rule makes clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage is excluded even if it otherwise falls within one of the special counting rules in § 1282.16(c). For example, a non-conventional mortgage that is excluded from consideration pursuant to § 1282.16(b)(3) could not be counted even if it otherwise would be counted as a seasoned mortgage under § 1282.16(c)(6). Section 1282.16(c) also makes 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 housing goals.

Consistent with the proposed rule, § 1282.16(b) of the final rule does not include the provision that excluded jumbo conforming loans from consideration for purposes of the housing goals.[80] 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 final rule, it is no longer necessary to exclude such loans from consideration for purposes of the housing goals.

Equity investments in low-income housing tax credits. Consistent with the proposed rule, § 1282.16(b)(1) of the final rule clarifies the existing rule to refer more specifically to equity investments in LIHTCs as being excluded from counting toward the housing goals.

Four commenters supported the exclusion of Enterprise equity investments in LIHTCs from counting for purposes of the housing goals, and one commenter opposed such exclusion. One policy advocacy group commented that the lack of LIHTC investments is one reason for the short supply of affordable housing for very low-, low- and moderate-income families. Another policy advocacy group commented that the Enterprises should invest in LIHTCs but refrain from selling these investments in a manner that would destabilize the market. One trade association agreed that investments in LIHTCs should be a non-qualifying activity, but recommended that subordinate debt be allowed to fill the financing gap.

FHFA recognizes that LIHTCs are an important component of the affordable

[79] 12 U.S.C. 4564.

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

housing financing structure. However, investments in LIHTCs have never been counted for purposes of the housing goals, and the final rule does not make any changes to that policy.

Home Equity Conversion Mortgages. Consistent with the proposed rule, § 1282.16(b)(3) of the final rule excludes all purchases of non-conventional single-family mortgages, including mortgages insured under HUD's HECM insurance program, from counting for purposes of the housing goals. Certain non-conventional mortgages, including HECMs, have been counted for purposes of 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.[81] This restriction does not preclude the Enterprises' purchase of Charter-compliant non-conventional single-family mortgages, including HECMs, but such purchases will not count toward the housing goals—that is, such purchases are excluded from both the numerator and denominator in calculating goal performance. The final rule also clarifies that the existing exception that permitted certain non-conventional multifamily mortgages to count, continues to apply.

Subordinate liens. Proposed § 1282.16(b)(10) would have excluded purchases of subordinate lien mortgages (second mortgages) from counting for purposes of the housing goals, as does the final rule. This excludes "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. The proceeds of a home equity loan are not used for the purchase price of a property, and the mortgage does not satisfy or replace an existing mortgage and so does not count toward the housing goals. FHFA excluded piggy-back loans from counting toward the housing goals because such loans are not easily distinguishable from home equity loans.

One trade association supported the general exclusion of subordinate or second lien mortgages, as well as first lien mortgages accompanied by simultaneous second lien mortgages, from counting for purposes of the housing goals. Four commenters supported providing housing goals credit for purchases of subordinate lien mortgages on multifamily properties. A trade association and a policy advocacy group stated that the Enterprises should be allowed to count subordinate liens on multifamily mortgages because it would help make low-cost capital available to support affordable lending. Fannie Mae commented that subordinate liens allow multifamily owners to tap additional equity for property rehabilitation without requiring refinancing or payment of a lockout waiver fee. Fannie Mae noted that subordinate liens could comprise five to ten percent of low- and very low-income multifamily units. Freddie Mac commented that subordinate financing is an efficient and standard industry practice that is beneficial to both owners and residents of multifamily rental housing. Freddie Mac stated that the exclusion of subordinate multifamily loans from housing goal-eligibility would reduce the availability of capital for multifamily properties, including for property repairs, improvements and upgrades.

Section 1282.16(b)(10) of the final rule excludes both single-family and multifamily subordinate liens from counting for purposes of the housing goals. This provision does not preclude the Enterprises' purchase of Charter-compliant subordinate lien mortgages, but as with HECMs, such purchases do not count for purposes of the housing goals. Although multifamily mortgages that finance dwelling units affordable to low-income families generally count toward the housing goals, it is not clear whether all subordinate lien multifamily mortgages are for the purpose of financing dwelling units affordable to low-income families. Accordingly, the final rule does not allow credit for subordinate lien multifamily mortgages. FHFA may solicit further public comment on whether such mortgages, entered into in a manner that is safe and sound, and which finance repairs, upgrades and rehabilitation that benefit low-income residents, should be counted for purposes of the housing goals.

Mortgages previously counted. Proposed § 1282.16(b)(11) would have made explicit the existing prohibition on counting mortgages for purposes of the housing goals if the mortgages had previously been counted for purposes of the performance of either Enterprise under the housing goals for a previous year. To limit excessively burdensome recordkeeping that could result, the proposed rule would have made clear that this limitation only extends back for five years.

The Enterprises opposed this provision, commenting that compliance would be burdensome and operationally challenging. They stated that only a small number of loans would be identified, but the cost of compliance would be very high and inter-Enterprise cooperation in data sharing could impact the competitive structure between the Enterprises.

In response to these comments and in view of the operational concerns expressed, the final rule retains the restriction on counting an Enterprise's own mortgages more than once, which shall only extend back for five years. The final rule does not extend this general restriction to mortgages the other Enterprise may have counted in a previous year.

Certificate of occupancy. Proposed § 1282.16(b)(12) would have excluded purchases of mortgages secured by properties that have not been certified as ready for occupancy from consideration for purposes of the housing goals.

Fannie Mae requested clarification on this counting issue for large multifamily properties that may be completed and certified for occupancy in stages. In particular, Fannie Mae stated that the rule should clarify whether the entire project is excluded if any part is not yet certified, or if the certified units may be counted. Fannie Mae also stated that the rule should clarify whether housing goals credit would be received in the year of certification or in the year of purchase.

In the final rule, to avoid splitting mortgage acquisitions across calendar reporting years, mortgages will be reported by an Enterprise, and receive housing goals credit where applicable, in the calendar year that all units are certified for occupancy. This may result in a delay in the reporting of a mortgage where not all units are certified for occupancy at the time of mortgage acquisition by the Enterprise. Mortgages with a reporting delay due to lack of full certification for occupancy will be excluded from both the numerator and denominator of the multifamily housing goals calculations for the year of acquisition.

Private Label Securities. As in the proposed rule, § 1282.16(b)(13) of the final rule excludes PLS from counting for purposes of the housing goals.

As discussed in the proposed rulemaking, 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

[81] 12 U.S.C. 4562(a).

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 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, the final rule, like the proposed rule, excludes 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. Accordingly, even to the extent that a non-GSE secondary mortgage market returns, loans backing new or seasoned PLS will not count in either the numerator or the denominator for purposes of the housing goals.

As in the proposed rule, the final rule also excludes CMBS from counting towards the housing goals.

FHFA invited comments in the proposed rulemaking on the proposed exclusion of PLS, and on alternatives to not counting PLS mortgages for purposes of the housing goals. One alternative discussed was to allow PLS mortgages to be counted if an appropriate senior Enterprise official 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 loans. FHFA also requested comments on whether CMBS should be treated differently from other PLS for purposes of the housing goals.

Five commenters supported excluding PLS, while Freddie Mac favored inclusion of PLS in the housing goals if due diligence on the characteristics of the loans backing the securities is conducted. The MBA supported excluding CMBS for goals credit, while three other commenters favored including CMBS. One trade association commented that Enterprise participation in the market has expanded liquidity to the apartment sector, and supported housing goals credit for the purchase of CMBS for multifamily properties. The commenter recommended that a reduced percentage of units be allocated to CMBS. Both Enterprises opposed the exclusion of purchases of CMBS for housing goals purposes. Fannie Mae stated that maturing loans in CMBS securities are being extended by special servicers, reducing the number of loans available for refinancing or for sale. Freddie Mac commented that it has accomplished small multifamily financing through structured pool deals and CMBS purchases to mitigate the higher risk of small multifamily finance. Freddie Mac also commented that these avenues of finance are not available in the current market, but they bring liquidity to the CMBS market and should receive goals credit.

Consistent with the exclusion of single-family PLS from the housing goals, the final rule does not count CMBS for purposes of the housing goals. While CMBS historically have helped the Enterprises to meet multifamily housing goals, purchases of CMBS do not add liquidity to the multifamily market in the same way as the direct purchase and securitization of multifamily mortgages by the Enterprises.

Housing Trust Fund and Capital Magnet Fund. As in the proposed rule, and pursuant to HERA, § 1282.16(b)(14) of the final rule provides that Enterprise contributions to the Housing Trust Fund and the Capital Magnet Fund and mortgage purchases funded with such grant amounts shall not be counted for purposes of the housing goals.[82]

REMICs. Consistent with the proposed rule, § 1282.16(c) of the final rule no longer includes real estate mortgage investment conduits (REMICs) as mortgage purchases for purposes of the housing goals, consistent with the general exclusion of PLS under § 1282.16(b)(13). In addition, § 1282.16(c) eliminates consideration of expiring assistance contracts, reflecting the changes under HERA to the former special affordable housing goal.

Risk-sharing. The proposed rule would not have changed existing § 1282.16(c)(3), which provides that a mortgage purchase under a risk-sharing arrangement between an Enterprise and a Federal agency counts for purposes of the housing goals if the Enterprise was responsible for a substantial amount of the risk, specified as at least 50 percent of the risk. Section 1282.16(c)(3) of the final rule does not include a specific percent that would constitute a "substantial amount." The change is not intended to affect the substantive requirement that an Enterprise hold a substantial portion of the risk in order for units to be counted for purposes of the housing goals, but is intended to provide more flexibility in determining on a case-by-case basis whether a particular risk-sharing program meets that requirement.

Cooperative housing and condominiums. Section 1282.16(c)(5) is unchanged from the proposed rule and amends the existing provisions regarding cooperative housing and condominiums to reflect HERA's treatment of single-family housing and multifamily housing under separate goals.

Mortgage revenue bonds. As in the proposed rule, § 1282.16(c)(8) of the final rule removes current limitations on counting mortgage revenue bonds related to the source of funds for repayment and the presence of additional credit enhancements. An Enterprise is required to have sufficient information available to determine the eligibility of any underlying mortgages before counting such mortgages or units for purposes of the housing goals.

Two policy advocacy groups and the Enterprises supported these proposed changes to the counting rules. One policy advocacy group supported Enterprise investment in housing bonds as a means to stabilize and improve pricing in the market. The other policy advocacy group commented that the inclusion of eligible mortgage revenue bonds is important and helpful, because these bonds are often a major source of lower-cost capital for the preservation and construction of affordable rental housing units. Fannie Mae supported the inclusion of mortgage revenue bonds, and recommended that the rule be modified to provide full credit for dwellings financed by tax exempt or taxable bonds issued by state and local HFAs. Freddie Mac commented that the proposed provision will encourage the

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

Enterprises to continue to support state and local HFAs through the purchase of single-family and multifamily mortgage revenue bonds.

FHFA does not believe that a further broadening of the mortgage revenue bond counting rules is appropriate while the Enterprises are in conservatorship.

Loan modifications. Proposed § 1282.16(c)(10) would have treated certain modifications of single-family loans held in an Enterprise's portfolio or in a pool backing a security guaranteed by an Enterprise as mortgage purchases for purposes of the housing goals. Only modifications undertaken under the Making Home Affordable (MHA) program would have been eligible for inclusion.

Two commenters recommended that this counting treatment be expanded to include non-MHA single-family loan modifications and multifamily loan modifications. One trade association recommended the inclusion of multifamily loan modifications, and stated that as a result of falling property values and stress on rental income due to the extreme economic and employment issues faced by multifamily property owners, many owners will not be able to refinance their loans. Freddie Mac recommended that multifamily loan modifications, as well as single-family loan modifications outside of MHA, be eligible to count toward the housing goals.

The final rule adjusting the levels of the housing goals for 2009, which generally lowered the housing goal levels, allowed credit for MHA modifications. *See* 74 FR 39873, 39898 (Aug. 10, 2009). Proposed § 1282.16(c)(10) would have retained this provision. Loan modifications, however, are not readily incorporated into market estimates, which makes it difficult to set housing goals that reflect the actual market. Accordingly, the final rule provides that only permanent MHA loan modifications will be counted as mortgage purchases for purposes of the housing goals. For 2010, only modifications that were both initiated and made permanent in 2010 will be counted for purposes of the housing goals. For 2011, only modifications that were initiated in 2010 or 2011 and made permanent in 2011 will be counted for purposes of the housing goals. Modifications that were opened on a trial basis but not made permanent in 2010 or 2011 will not be given credit toward the goals.

In addition, all such permanent MHA loan modifications will be treated as refinance mortgages in 2010 and 2011, rather than being treated in accordance with the original purpose of the loan. Loan modifications are more similar to refinancing mortgages than to purchase money mortgages. A loan modification changes the terms of the loan but involves the same property and the same borrower. A loan modification does not involve a new home purchase. Thus, it is more appropriate to treat loan modifications as refinancing mortgages than as home purchase mortgages. Accordingly, a modification of a low-income home purchase mortgage will not be counted toward the low-income home purchase goal, as it was in 2009. Rather, it will be counted in calculating performance on the low-income refinance goal. As a result, performance on the three home purchase goals for 2010–11 will not be affected by loan modifications, but performance on the low-income refinance goal will be affected. That is, all permanent MHA loan modifications will be included in the denominator, and all permanent MHA loan modifications for low-income families will be included in the numerator in calculating performance on the low-income refinance goal in 2010 and 2011.

FHFA will consider providing credit for MHA loan modifications in the final rulemaking on the Duty to Serve requirements of HERA.

HOEPA mortgages and mortgages with unacceptable terms or conditions. Consistent with the proposed rule, § 1282.16(d) of the final rule relocates 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.

Multifamily property conversion. Some commenters suggested that FHFA revise the counting rules to deny housing goal credit for multifamily loans that aid the conversion of properties from being affordable to market rate properties, at which point the units, although initially scored as affordable, would no longer be affordable. FHFA expects to address this issue in a separate rulemaking following the implementation of this final rule.

K. Affordability Definitions—§§ 1282.17 Through 1282.19

Consistent with the proposed rule, § 1282.17 of the final rule sets forth definitions and establishes cutoff points or boundaries for the statutory and traditionally defined levels of affordability based on AMI 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 includes 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 final rule establishes cutoffs for determining such affordability to facilitate any reporting or analysis of such data that is required.

As in the proposed rule, § 1282.18 of the final rule sets forth definitions and establishes 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 includes an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

As in the proposed rule, § 1282.19 of the final rule sets forth definitions and establishes 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 includes an additional paragraph (e) for extremely low-income tenants with income at or below 30 percent of AMI with adjustments for unit size.

L. Housing Goals Enforcement—§§ 1282.20 and 1282.21

Consistent with the proposed rule, § 1282.20 of the final rule provides that the Director shall determine whether an Enterprise has met the housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA and this final rule. 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, the Director shall provide notice, in writing, to the Enterprise of such preliminary determination in accordance with 12 U.S.C. 4566(b).

As in the proposed rule, § 1282.21 of the final rule includes 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 is at the discretion of the Director.

M. Reporting Requirements—Subpart D

As in the proposed rule, subpart D of the final rule relocates existing Enterprise reporting requirements from part 81, subpart E of title 24 of the Code of Federal Regulations. Section 1282.65 relocates 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 included various conforming changes throughout subpart D. Proposed § 1282.62(b) would have included a requirement for the Enterprises to submit loan-level mortgage data on a quarterly basis. Previously, such submissions were required only semi-annually. Proposed § 1282.62(c) would have revised the due date for submission to FHFA of the required quarterly Mortgage Reports from 60 days after the end of the quarter to 45 days. Proposed § 1282.63 would have revised the due date for fourth quarter Annual Mortgage Report and the Annual Housing Activities Reports (AHARs) from 75 days after the end of the calendar year to 60 days.

In its comment letter, Fannie Mae requested that the due dates for the quarterly and Annual Mortgage Reports and loan-level data submissions remain unchanged. Fannie Mae stated that shortening the time period would adversely impact its quarterly data quality reviews and prevent reconciliation with its annual Form 10–K, which is due within 60 days of the end of the calendar year.

FHFA acknowledges Fannie Mae's concerns and, accordingly, the final rule retains the current due dates for the quarterly and Annual Mortgage Reports and AHARs. Consistent with the proposed rule, the final rule requires that the loan-level data be submitted on a quarterly basis.

As in the proposed rule, § 1282.63 of the final rule requires 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. As in the proposed rule, § 1282.64 of the final rule eliminates the requirement for the Enterprises to submit information that is typically made available to the public by each Enterprise. The Director may continue to request such reports, information and data as the Director deems necessary. Consistent with the proposed rule, subpart D of the final rule does 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. Section 1282.64 is sufficiently broad to encompass any requests for additional data or reports that the Director deems necessary.

Consistent with the proposed rule, § 1282.65 of the final rule simplifies 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. Section 1282.65 maintains the most important aspects of the data integrity process in the regulation, including the requirement that the Enterprises certify the accuracy of their submissions.

One trade association requested that FHFA consider clarifying the procedures for certification of submissions, and recommended that measures should be established to ensure the Enterprises submit accurate, truthful and complete information. FHFA currently requires data submitted for the calendar year housing goals to be certified as true, correct and complete by a corporate officer with the authority to sign for the Enterprise. This certification was required beginning with the submission of 2005 mortgage data to align with the customary practice of regulators of financial institutions, which require certification as a means of ensuring corporate accuracy in, and accountability for, the financial information provided by a corporation to its regulators.

N. Book-Entry Procedures—Part 1249

As in the proposed rule, part 1249 of the final rule relocates 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.

As in the proposed rule, the final rule also relocates definitions that are currently found in § 1282.2 and that are applicable only to the book-entry procedures in part 1249 to a new section 1249.10 in that part. The final rule makes conforming changes throughout the part, including a clarification that the waiver provision in § 1249.17 applies only to the book-entry provisions in part 1249. Section 1249.15 has been amended to reflect the transfer of authority from the Secretary of HUD to the Director. The final rule also corrects several typographical errors that were present in the proposed rule. The final rule does not make any changes to the substance of the book-entry provisions.

V. Paperwork Reduction Act

The final 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.*).

VI. 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 final rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small 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 amends chapter XII of title 12 of the Code of Federal Regulations as follows:

■ 1. Part 1249 is added to subchapter C to read as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

PART 1249—BOOK–ENTRY PROCEDURES

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 and in 12 CFR 1282.1. 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 Securities 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, each 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 shall be 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 this part, 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.

■ 2. Part 1282 is revised to read as follows:

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

Subpart A—General

Subpart B—Housing Goals

Subpart C—[Reserved]

Subpart D—Reporting Requirements

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 that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. 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. This time period may be adjusted for a particular disaster area by notice from FHFA to the Enterprises.

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 and 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 $1000, 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) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

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

(vi) 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

(vii) 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. 4561–4564, 4566), this subpart establishes:

(1) Three single-family owner-occupied purchase money mortgage housing goals, a single-family owner-occupied purchase money mortgage housing subgoal, 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 150 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) A benchmark level which shall be set annually by FHFA notice based on the benchmark level for the low-income areas housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for moderate-income families in designated disaster areas in the most recent year for which such data is available.

(f) *Low-income areas housing subgoal.* 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 census tracts or for moderate-income families in minority census tracts 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.

(g) *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 21 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 177,750 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 161,250 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 42,750 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 21,000 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, and the area median income at the time the mortgage was acquired.

(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 single-family non-conventional mortgages and multifamily non-conventional mortgages, except:

(i) Multifamily mortgages acquired under a risk-sharing arrangement with a Federal agency;

(ii) Multifamily mortgages under other multifamily mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals;

(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 the 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, or any units within the property, have not been approved for occupancy;

(13) Purchases of private label securities;

(14) Enterprise contributions to the Housing Trust Fund (12 U.S.C. 4568) or 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 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 permanent modification, in accordance with the Making Home Affordable program announced on March 4, 2009, of a loan 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. Each such permanent loan modification shall be counted in the same manner as a purchase of a refinancing mortgage.

(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 (4.0% 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
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, the low-income areas housing subgoal, 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 60 days of the end of the quarter. Each Enterprise shall submit its Annual Mortgage Report within 75 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 75 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: September 1, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–22361 Filed 9–13–10; 8:45 am]

BILLING CODE 8070–01–P