

there is a regulatory agreement, recorded use restriction, or deed restriction in place that maintains affordability for the term defined by the state or local program.

(2) *Additional Activities.* Additional Activities that either:

(i) Involve preserving existing subsidy where the term of affordability required for the subsidy is followed, or where there is a deed restriction for affordability for the life of the loan; or

(ii) Involve preserving the affordability of properties in conjunction with state or local inclusionary zoning, real estate tax abatement, or loan programs, where a regulatory agreement, recorded use restriction, or deed restriction maintains affordability of a portion of the property's units for the term defined by the state or local program.

(d) *No credit under loan purchase evaluation area.* The following activities are not eligible to receive duty to serve credit under the loan purchase evaluation area, even if the activity otherwise would receive duty to serve credit under § 1282.38:

(1) Purchases of mortgages to the extent they finance any dwelling units that are secondary residences;

(2) 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;

(3) Purchases of mortgages or interests in mortgages that previously received credit under any underserved market within the five years immediately preceding the current performance year;

(4) Purchases of mortgages where the property or any units within the property have not been approved for occupancy;

(5) Any interests in mortgages that FHFA determines will not be treated as interests in mortgages;

(6) Purchases of state and local government housing bonds except as provided in § 1282.39(h); and

(7) Any combination of factors in paragraphs (d)(1) through (d)(6) of this section.

(e) *FHFA review of activities or objectives.* FHFA may determine whether

and how any activity or objective will receive duty to serve credit under an underserved market in a Plan, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any activity or objective. FHFA will make any such determinations available to the public on FHFA's Web site.

(f) *The year in which an activity or objective will receive credit.* An activity or objective that FHFA determines will receive duty to serve credit under an underserved market in a Plan will receive such credit in the year in which the activity or objective is completed. FHFA may determine that credit is appropriate for an activity or objective in which an Enterprise engages, but does not complete, in a particular year, except that activities or objectives under the loan purchase evaluation area will receive credit in the year in which the Enterprise purchased the mortgage.

(g) *Credit under one evaluation area.* An activity or objective will receive duty to serve credit under only one evaluation area in a particular underserved market.

(h) *Credit under multiple underserved markets.* An activity or objective, including financing of dwelling units by an Enterprise's mortgage purchase, will receive duty to serve credit under each underserved market for which the activity or objective qualifies in that year.

§ 1282.38 General requirements for loan purchases.

(a) *General.* This section applies to Enterprise mortgage purchases that may receive duty to serve credit under the loan purchase evaluation area for a particular underserved market in a Plan. Only dwelling units securing a mortgage purchased by the Enterprise in that year and not specifically excluded under § 1282.37(b) and (d) may receive credit.

(b) *Counting dwelling units.* Performance under the loan purchase evaluation area will be measured by counting dwelling units affordable to very low-, low-, and moderate-income families.

(c) *Credit for owner-occupied units.*—(1) Mortgage purchases financing owner-occupied single-family properties will

be evaluated based on the income of the mortgagor(s) and the area median income at the time the mortgage was originated. To determine whether mortgages may receive duty to serve credit under a particular family income level, *i.e.*, very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under § 1282.17.

(2) Mortgage purchases financing owner-occupied single-family properties for which the income of the mortgagor(s) is not available will not receive duty to serve credit under the loan purchase evaluation area.

(d) *Credit for rental units.*—(1) *Use of rent.* For Enterprise mortgage purchases financing single-family rental units and multifamily rental units, affordability is determined based on rent and whether the rent is affordable to the income groups targeted by the duty to serve. A rent is affordable if the rent does not exceed the maximum levels as provided in § 1282.19.

(2) *Affordability of rents based on housing program requirements.* Where a multifamily property is subject to an affordability restriction under a housing program that establishes the maximum permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program for those units. If using income, the maximum income level must be no greater than the maximum income level for each income group targeted by the duty to serve, adjusted for family or unit size as provided in § 1282.17 or § 1282.18, as appropriate. If using rent, the maximum rent level must be no greater than the maximum rent level for each income group targeted by the duty to serve, adjusted for unit size as provided in § 1282.19.

(3) *Unoccupied units.* 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. A

unit in a multifamily property that is unoccupied because it is being used as a model unit or rental office may receive duty to serve credit only if the 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 for single-family rental properties, an Enterprise must use tenant income and area median income available at the time the mortgage was originated. For multifamily rental properties, the Enterprise must use tenant income and area median income available at the time the mortgage was acquired.

(e) *Missing data or information for rental units.*—(1) When calculating unit affordability, rental units for which bedroom data are missing will be considered efficiencies.

(2) When an Enterprise lacks sufficient information to determine whether a rental unit in a single-family or multifamily property securing a mortgage purchased by the Enterprise receives duty to serve credit under the loan purchase evaluation area because rental data are not available, the Enterprise's performance with respect to such unit may be evaluated using estimated affordability information, except that an Enterprise may not estimate affordability of rental units for purposes of receiving extra credit for residential economic diversity activities. The estimated affordability information is calculated by multiplying the number of rental units with missing affordability information in properties securing the mortgages purchased by the Enterprise in each census tract by the percentage of all moderate-income rental dwelling units in the respective tracts, as determined by FHFA.

(f) *Affordability of manufactured housing communities.* For an Enterprise purchase of a blanket loan on a manufactured housing community, unless otherwise determined by FHFA, the affordability of the homes in the community shall be determined using one of the methodologies in paragraphs (f)(1) or (f)(2) of this section, as applicable, except that for purposes of determining extra credit for residential economic

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diversity activities or objectives, the methodology in paragraph (f)(2) of this section may not be used.

(1) *Methodology for government-, nonprofit- or resident-owned manufactured housing communities.* For a manufactured housing community owned by a government unit or instrumentality, a nonprofit organization, or the residents, if laws or regulations governing the affordability of the community, or the community’s or ownership entity’s founding, chartering, governing, or financing documents, require that a certain number or percentage of the community’s homes be affordable consistent with paragraph (d)(1) of this section, then any homes subject to such affordability restriction are treated as affordable.

(2) *Census tract methodology for any type of manufactured housing community.* For any type of manufactured housing community, except for purposes of determining extra credit for residential economic diversity activities or objectives, the affordability of the homes in the community is determined as follows:

(i) If the median income of the census tract in which the manufactured housing community is located is less than or equal to the area median income, then all homes in the community are treated as affordable;

(ii) If the median income of the census tract in which the manufactured housing community is located exceeds the area median income, then the number of homes that are treated as affordable is determined by dividing the area median income by the median income of the census tract in which the community is located and multiplying the resulting ratio by the total number of homes in the community.

(g) *Application of median income.*—(1) To determine 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 must 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 (12 U.S.C. 2801 *et seq.*), if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract; or

(ii) A census place code.

(h) *Newly available data.* When an Enterprise uses data to determine whether a dwelling unit may receive duty to serve credit under the loan purchase evaluation area 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.

§ 1282.39 Special requirements for loan purchases.

(a) *General.* Subject to FHFA’s determination of whether an activity or objective will receive duty to serve credit under a particular underserved market, the activities or objectives identified in this section will be treated as mortgage purchases as described and receive credit under the loan purchase evaluation area. An activity or objective that is covered by more than one paragraph below must satisfy the requirements of each such paragraph.

(b) *Credit enhancements.*—(1) Dwelling units financed under a credit enhancement entered into by an Enterprise will be treated as mortgage purchases only when:

(i) 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

(ii) 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.