Rules and Regulations

Federal Register

Vol. 74, No. 152

Monday, August 10, 2009

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA25

2009 Enterprise Transition Affordable Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) transferred the authority to establish, monitor and enforce the affordable housing goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) from the Department of Housing and Urban Development (HUD) to the Federal Housing Finance Agency (FHFA). Section 1128(b) further provides that the annual housing goals in effect for 2008 as established by HUD shall remain in effect for 2009, except that the Director of FHFA shall review such goals to determine their feasibility given current market conditions, and make appropriate adjustments consistent with such market conditions. Pursuant to this directive, FHFA has analyzed current market conditions and is adopting a final rule that adjusts the housing goal, home purchase subgoal and special affordable multifamily housing subgoal levels for the Enterprises for 2009. The final rule also permits loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Making Home Affordable Program (also known as the Homeowner Affordability and Stability Plan) announced on March 4, 2009, to be treated as mortgage purchases and count for purposes of the housing goals. In addition, the final rule excludes purchases of jumbo conforming loans from counting towards the 2009 housing goals. FHFA's housing goals regulation is set forth in a new part of FHFA's regulations, and is generally consistent with the housing goals provisions previously established by HUD, except as modified herein. Pursuant to section 1302 of HERA and 12 U.S.C. 4603, to the extent FHFA is adopting provisions from HUD regulations in new FHFA regulations, those provisions in the HUD regulations are no longer in effect.

DATES: The final rule is effective on August 10, 2009.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law 110–289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), 12 U.S.C. 4501 *et seq.,* and created the 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 HUD to FHFA. HERA provides for the abolishment of OFHEO one year after the date of enactment. 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. *See* 12 U.S.C. 4513.

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, 12 U.S.C. 1716 *et seq.,* and the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.,* (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. *See* HERA at section 1302, 122 Stat. 2795; 12 U.S.C. 4603.

The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.* 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. *Id.*

B. Statutory and Regulatory Background

Prior to HERA, the Safety and Soundness Act provided the Secretary with the authority to establish, monitor and enforce affordable housing goals for the Enterprises. *See* 12 U.S.C. 4561 *et seq.* (2008). 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. *See* 24 CFR part 81. HUD's regulations provide

[1] *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

that the housing goal levels for 2008 continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD. *See* 24 CFR 81.12 through 81.14.

Section 1331(c) of the Safety and Soundness Act, as amended by section 1128(b) of HERA, provides that the housing goal levels established by HUD for 2008 ''shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on the date of the enactment of [HERA], the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions.'' *See* 12 U.S.C. 4561(c). Under section 1336 of the Safety and Soundness Act, as amended by section 1130 of HERA, the Director of FHFA has authority to monitor and enforce compliance with the 2009 housing goals, as well as the housing goals established by FHFA for subsequent years. *See* 12 U.S.C. 4566.[2]

C. Conservatorship

On September 7, 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.

II. Proposed Rule

Section 1128(b) of HERA authorizes the Director of FHFA to adjust the housing goal levels established by HUD for 2009 based on current market conditions. FHFA reviewed the current market conditions and determined that the 2009 housing goal and home purchase subgoal levels established in 24 CFR part 81 are not feasible unless they are adjusted. Accordingly, on May 1, 2009, FHFA published proposed adjustments to the housing goal and home purchase subgoal levels in the **Federal Register** for a 21-day comment period, which closed on May 22, 2009. *See* 74 FR 20236 (May 1, 2009). FHFA received a total of 25 comment letters on the proposed rule, representing 26 commenters.[3] Commenters included: Fannie Mae; Freddie Mac; twelve trade associations; seven not-for-profit lenders or lending consortia; one credit risk scoring corporation; one credit risk reporting corporation; a not-for-profit mortgage lending policy advocacy organization; one labor union; and one Member of Congress. FHFA has considered all of the comments it received on the proposed rule, and has determined to adopt a final rule adjusting the 2009 housing goal, home purchase subgoal, and special affordable multifamily housing subgoal levels, and to make certain other revisions, as further discussed 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. Adoption of Housing Goals Provisions in New 12 CFR Part 1282

HUD's regulations on establishing, monitoring and enforcing the housing goals for the Enterprises are set forth in 24 CFR part 81, Subparts A and B. Under section 1302 of HERA, part 81 continues in effect and is enforceable by the Director of FHFA until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. Consistent with the proposed rule, the final rule establishes housing goal requirements for the Enterprises for 2009 in new part 1282 of title 12 of FHFA's regulations. The housing goal requirements are generally consistent with the HUD housing goal provisions in Subparts A and B, except as modified herein. Upon the effective date of this final rule, the related housing goal provisions adopted by FHFA in chapter XII from 24 CFR part 81 will no longer be in effect pursuant to section 1302 of HERA.

B. Adjustment of Housing Goal, Home Purchase Subgoal, and Special Affordable Multifamily Housing Subgoal Levels

Section 1128(b) of HERA authorizes the Director of FHFA to adjust the housing goal levels established by HUD for 2009 based on current market conditions. FHFA has reviewed current market conditions and has determined that the 2009 housing goal and home purchase subgoal levels established in 24 CFR part 81 are not feasible unless they are adjusted.[4] Adverse market conditions, such as stricter underwriting standards, the increased standards of private mortgage insurers, and the high rate of unemployment will result in the origination of fewer goals-qualifying loans, as will a surge in refinancing. Moreover, the increase in the share of the mortgage market of mortgages insured by the government and the decline in private label securities backed by mortgages are two of several factors that will contribute to fewer goals-qualifying mortgages available for purchase by the Enterprises.

Based on FHFA's review of the public comments on the proposed rule and a revised and updated assessment of current market conditions, FHFA has determined that the overall housing goal levels in the proposed rule should be adjusted downward, the three home purchase subgoal levels should remain as proposed, and the dollar-based special affordable multifamily housing subgoal levels in the proposed rule should be adjusted upward for each Enterprise as indicated below. Specifically, the final rule sets the goal and subgoal levels as follows:

—*Low- and moderate-income housing goal:* 43 percent;
—*Special affordable housing goal:* 18 percent;
—*Underserved areas housing goal:* 32 percent;
—*Low- and moderate-income home purchase subgoal:* 40 percent;
—*Special affordable home purchase subgoal:* 14 percent;
—*Underserved areas home purchase subgoal:* 30 percent;
—*Special affordable multifamily housing subgoal for Fannie Mae:* $6.56 billion;
—*Special affordable multifamily housing subgoal for Freddie Mac:* $4.60 billion.

FHFA's market analysis that serves as the basis for these determinations is set forth in section IV. Analysis of Final Rule below.

C. New Counting Requirements

Exclusion of jumbo conforming loans. Consistent with the proposed rule, the final rule excludes the Enterprises' purchases of jumbo conforming loans from counting towards the 2009 housing goals.

MHA loan modifications. Consistent with the proposed rule, the final rule

[2] Sections 1331 through 1335 of the Safety and Soundness Act, as amended by HERA, also contain new housing goal requirements for the Enterprises effective for 2010 and thereafter, as well as duty to serve underserved markets requirements. FHFA will implement these requirements pursuant to separate rulemaking. *See* 12 U.S.C. 4561 through 4565.

[3] One of the letters contained joint comments from two trade associations.

[4] Performance under each of the housing goals is measured using a fraction that is converted into a percentage. *See* § 1282.15(a); 24 CFR 81.15(a). The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator may not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by the FHFA or transactions that are specifically excluded as ineligible under the rule. *See id.*

permits loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Making Home Affordable Program, announced on March 4, 2009 (MHA), to be treated as mortgage purchases and count for purposes of the housing goals.

IV. Analysis of Final Rule

A. Scope of Part—§ 1282.1

Consistent with the proposed rule, § 1282.1 of the final rule sets forth the scope of new part 1282. Section 81.1 of HUD's regulations describes the scope with regard to the respective duties of HUD and OFHEO in relation to the Enterprises. 24 CFR 81.1. Section 1282.1 describes the scope with reference to the Director of FHFA's regulatory authority, since HUD's housing goals authority and OFHEO's safety and soundness supervisory authority were transferred to FHFA by HERA.

B. Definitions—§ 1282.2

Consistent with the proposed rule, § 1282.2 sets forth definitions of terms used in the final rule that are generally consistent with the definitions in § 81.2 of HUD's regulations, except for minor technical and clarifying changes and the addition of several new definitions in light of the transfer of the housing goals authority from HUD to FHFA and other changes made by HERA. *See* 24 CFR 81.2.

C. Housing Goal and Subgoal Levels for 2009—§§ 1282.12 Through 1282.14

In 2004, HUD established by regulation new housing goal levels for years 2005 through 2008, with the 2008 levels applicable in 2009 pending establishment by HUD of goals for 2009 (2004 Rule). *See* 69 FR 63639 (Nov. 2, 2004) (codified at 24 CFR 81.12 through 81.14). The 2004 Rule also implemented home purchase subgoals under each housing goal and established target levels for each subgoal. *Id.* These levels rose in yearly increments, capping out at the highest levels in 2008. HUD had not established new goal levels for 2009 before HERA was enacted and HUD's housing goals authority was transferred to FHFA.

1. Adjustment of Housing Goal and Home Purchase Subgoal Levels

Section 1128(b) of HERA provides that the housing goals established by HUD for the Enterprises shall continue in effect for 2009 at their 2008 levels, unless the Director of FHFA adjusts the levels based on current market conditions. FHFA reviewed the feasibility of the 2009 housing goal and subgoal levels established by HUD, and determined that the current goal and home purchase subgoal levels are not feasible given current market conditions. The proposed rule would have adjusted downward the housing goal levels for 2009, as follows:

- *Low- and moderate-income housing goal*—51 percent (down from the 56 percent level set by HUD for 2008 and 2009).
- *Underserved areas housing goal*—37 percent (down from the 39 percent level set by HUD for 2008 and 2009).
- *Special affordable housing goal*—23 percent (down from the 27 percent level set by HUD for 2008 and 2009).
- *Low- and moderate-income home purchase subgoal*—40 percent (down from the 47 percent level set by HUD for 2008 and 2009).
- *Underserved areas home purchase subgoal*—30 percent (down from the 34 percent level set by HUD for 2008 and 2009).
- *Special affordable home purchase subgoal*—14 percent (down from the 18 percent level set by HUD for 2008 and 2009).

The majority of commenters on the proposed housing goal levels either supported the proposed levels or recommended higher levels than those proposed. Four trade associations supported the proposed levels but expressed caution about the potential for increased risk of default that could result from inappropriate or overly ambitious housing goals. Two other trade associations stated that overly stringent goals have not supported affordable housing, as shown by foreclosures, neighborhood blight and the Enterprises' serious financial problems. One mortgage lending policy advocacy organization, the Center for Responsible Lending, stated that the goals must be responsibly attainable under current market conditions. The commenter expressed concern that the goal levels in the proposed rule may not be low enough, given the extreme impairment of the credit and housing markets, and the economic hardships for low- and moderate-income families in particular. The commenter stated that the goal levels in the proposed rule could be lowered still further, and urged that they be applied flexibly in 2009 to ensure that they can be responsibly met.

One trade association recommended higher levels than those proposed for the special affordable and underserved area housing goals, stating that the past performance of the Enterprises and the current primary mortgage market levels indicate that higher levels should be achievable. Another trade association recommended higher levels than those proposed for the low- and moderate-income housing goal and home purchase subgoals, stating that the manufactured housing industry is in an unprecedented decline largely because of the unavailability of private financing fueled by Enterprise policy, and that reduction of these levels would allow the Enterprises to retreat from their mission of providing liquidity for low- and moderate-income home purchasers.

Fannie Mae and Freddie Mac both recommended further lowering the proposed goal levels. Freddie Mac stated that the proposed levels are five percentage points or more above the highest level of expected primary mortgage market origination levels, and that the refinance wave, contraction in the multifamily mortgage sector, and increasingly important role of the Federal Housing Administration (FHA) in the low- and moderate-income segment of the housing market could make it infeasible for the Enterprises to meet the goals. Fannie Mae was concerned that the proposed levels might be higher than current economic conditions support and might ultimately prove to be infeasible.

One trade association expressed concerns about the profound negative impact of lower housing goal levels on low- and moderate-income communities, and the brief comment period of the proposed rule, and urged withdrawal of the proposed rule for reconsideration.

After review of the current market conditions and the comments received on the proposed rule, FHFA has determined that the three overall housing goal levels should be further adjusted downward from the levels set by HUD for 2008 and 2009 and the levels in the proposed rule. Based on the most recent conventional mortgage market size estimates and consistent with current market conditions, the final rule establishes goals for 2009 as follows:

- *Low- and moderate-income housing goal*—43 percent (down from the 56 percent level set by HUD for 2008 and 2009 and the 51 percent level in the proposed rule). That is, under § 1282.12, the 2009 goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families is 43 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.
- *Underserved areas housing goal*—32 percent (down from the 39 percent level set by HUD for 2008 and 2009 and the 37 percent level in the proposed rule). That is, under § 1282.13, the 2009 goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas is 32 percent of the

total number of dwelling units financed by that Enterprise's mortgage purchases.

• *Special affordable housing goal*—18 percent (down from the 27 percent level set by HUD for 2008 and 2009 and the 23 percent level in the proposed rule). That is, under § 1282.14, the 2009 goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families is 18 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.

In addition, based on review of current market conditions and the comments received on the proposed rule, FHFA has determined that the three home purchase subgoal levels for 2009 should be adjusted downward from the levels set by HUD for 2008 and 2009 and remain at the levels in the proposed rule, as follows:

• *Low- and moderate-income home purchase subgoal*—40 percent (down from the 47 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.12, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the low- and moderate-income housing goal for 2009. This level is slightly above the upper end of the market estimate (39 percent) in light of the significant improvements in the affordability of housing, as reflected in data published by the National Association of Realtors.

• *Underserved areas home purchase subgoal*—30 percent (down from the 34 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.13, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the underserved areas housing goal for 2009.

• *Special affordable home purchase subgoal*—14 percent (down from the 18 percent level set by HUD for 2008 and 2009 and the same as the level in the proposed rule). That is, under § 1282.14, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the special affordable housing goal for 2009.

At the time the 2008 and 2009 housing goal levels were established in HUD's 2004 Rule, mortgage markets were still evidencing significant expansion. However, as discussed further below, based on current market conditions, FHFA estimates that the market shares for certain goals and home purchase subgoals have declined significantly. Adjusting the 2009 housing goals and home purchase subgoals to levels that reflect market conditions consistent with current projections is necessary to ensure that the Enterprises continue to serve their secondary market purposes at feasible and appropriate levels that reflect their capacity to lead the market.

Notably, this rule, for the first time, allows housing goal credit for certain loan modifications, which will tend to improve the Enterprises' performance on the housing goals. By adjusting the housing goal and home purchase subgoal levels to challenging levels for 2009, and by allowing housing goal credit for loan modifications that directly affect the 2009 housing market through the prevention of foreclosures, FHFA seeks to ensure that the Enterprises place a high priority on the achievement of their affordable housing mission based on performance standards that align with current market conditions.

2. Special Affordable Multifamily Housing Subgoals—§ 1282.14

The final rule increases the 2009 minimum dollar-based special affordable multifamily housing subgoal levels to $6.56 billion for Fannie Mae, and $4.60 billion for Freddie Mac. In the 2004 Rule, these subgoal levels were established at 1.0 percent of the average aggregate dollar volume of total mortgage purchases by each Enterprise in a base period (2000, 2001 and 2002), and were set at $5.49 billion for Fannie Mae and $3.92 billion for Freddie Mac for 2008 and 2009. 24 CFR 81.14. In the proposed rule, FHFA did not propose to adjust these levels downward for 2009 because both Enterprises have exceeded their respective multifamily subgoals by wide margins in recent years, especially in 2007. FHFA also did not propose to increase these levels for 2009 because the prospects for multifamily mortgage market volume in 2009 are significantly less favorable than in recent years.

Most commenters on the special affordable multifamily housing subgoals, including nonprofit organizations and trade associations, recommended raising the subgoal levels. Many of the nonprofit organizations stated that maintaining the existing goals levels for 2009 would exacerbate lenders' liquidity crises, limit the ability to meet the housing needs of a growing number of families, and undermine economic recovery. These commenters urged that the Enterprises purchase performing seasoned multifamily mortgages that are held in the portfolios of conventional lenders, which they stated would help stabilize communities.

One trade association stated that the Enterprises are the main sources for multifamily rental development, and with multifamily originations projected at $43 to $65 billion in 2009, the Enterprises should be expected to surpass the existing subgoal levels for 2009. The commenter noted that the Enterprises have restricted credit for multifamily loans by tightening underwriting standards and increasing risk-based delivery fees, resulting in higher mortgage rates for borrowers and impairing their ability to obtain credit.

Two trade associations cautioned that meeting the existing special affordable multifamily housing subgoals levels may be challenging. The commenters stated that, with increased risk of default and the impact of deteriorating market conditions, there will be limited property acquisitions, declining reinvestment and fewer loan originations and refinancing opportunities for the Enterprises. These commenters also anticipated that the Enterprises' portfolio of maturing loans would present challenges in meeting capital requirements and loan terms for new debt, and expected that 2009 multifamily loan and transaction volume will be less than 2008 volume.

A Member of Congress urged higher multifamily special affordable housing subgoal levels that would be commensurate with the Enterprises' historical performance levels and purchase opportunities, and that would send a clear message to the Enterprises about their critical role in providing liquidity in light of current multifamily mortgage market dislocations.

FHFA review of the Enterprises' special affordable multifamily mortgages goals performance through May 2009 suggests that the Enterprises will not have the high performance level in this area in 2009 that they experienced in recent years. Based on the comments received and FHFA's review of current market conditions, FHFA has set "stretch" special affordable multifamily housing subgoal levels by changing the base for these subgoals from 2000–2002 in the 2004 Rule and the proposed rule to 1999–2008, which includes years with very high mortgage volume such as 2003 and years with lower volume such as 2000.

FHFA is applying the same 1.0 percent of average total mortgage purchases factor to this base period in setting these subgoal levels. Total mortgage purchases averaged $656 billion for Fannie Mae and $460 billion for Freddie Mac over the 1999–2008 period. Thus, FHFA is setting the subgoal levels at 1.0 percent of these amounts—$6.56 billion for Fannie Mae (an increase of 19 percent over the 2008 and proposed 2009 subgoal level of $5.49 billion), and $4.60 billion for Freddie Mac (an increase of 17 percent over the 2008 and proposed 2009 subgoal level of $3.92 billion).

Several nonprofit organizations and a trade association commented that the Enterprises should be more active in the purchase of seasoned multifamily loans held by portfolio lenders, many of which purchased such loans as a result of Community Reinvestment Act (CRA) responsibilities. FHFA expects each Enterprise to actively purchase CRA-related multifamily loans from portfolio lenders, among other avenues, in meeting the special affordable multifamily housing subgoals.

3. Market Conditions

a. Market Conditions Do Not Support the Current Housing Goals and Home Purchase Subgoals Levels

FHFA has determined that 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 considered in setting the proposed and final housing goal and subgoal levels for 2009 include: (1) Tightened credit underwriting practices; (2) the sharply increased standards of private mortgage insurance companies; (3) the increased role of FHA in the marketplace; (4) the collapse of the mortgage private label securities (PLS) market; (5) increasing unemployment; (6) multifamily market volatility; and (7) a refinancing surge in 2009. FHFA finds that while the existence of lower home prices and lower mortgage interest rates has increased affordability, there is ample evidence to support a conclusion that the housing goal and home purchase subgoal levels for 2009 that were set in 2004 are not attainable.

Tightened underwriting practices. In general, tighter underwriting standards result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 in response to declining market conditions and early payment defaults, among other factors. For example, in May 2008, responding to private mortgage insurance underwriting changes, Fannie Mae revised its down payment policy to lower the maximum loan-to-value (LTV) for loans underwritten by Desktop Underwriter and for manually underwritten loans. Freddie Mac similarly tightened its underwriting standards. These industry-wide underwriting standards are expected to remain in place for the balance of 2009.

Sharply increased standards of private mortgage insurers. Much like tighter underwriting standards generally, higher underwriting standards of private mortgage insurance (MI) result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Beginning in late 2007, MI providers implemented profound and sweeping changes in the types of risk they were willing to insure. Most MI providers faced substantial ratings downgrades and acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs. For example, on February 12, 2009, Moody's downgraded the internal strength rating of the Mortgage Guaranty Insurance Corporation (MGIC) to Ba1 from A1, and downgraded the ratings of other mortgage insurers. These actions may limit the ability of MI providers to write new business in 2009 and reduce the overall mortgage lending volume, particularly for higher LTV mortgages, which tend to be more goals-rich. By increasing the cost of borrowing and the difficulty in obtaining loan approval, the tighter underwriting standards limit the number of goals-qualifying mortgages. This has an adverse effect on high-LTV loan purchases by the Enterprises, which generally require some form of credit enhancement.

MI providers have implemented measures in ''declining markets'' that have sharply limited the insurability of certain higher LTV mortgage loans. Generally, the availability of MI for high-LTV or low credit score loans is much reduced relative to a few years ago. The goals-qualifying portion of loans in the market is thereby reduced as it becomes more difficult and more expensive for borrowers requiring mortgages with lower down payments to qualify for mortgages eligible for purchase by the Enterprises.

Increased role of FHA in the marketplace. Another factor having a much greater impact on the Enterprises' housing goals in 2009 than in recent years is the increase in the share of the mortgage market of mortgages insured by the FHA and guaranteed by the Veterans Administration (VA). These loans generally are pooled into mortgage-backed securities issued by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and VA ordinarily do not receive goals credit. In general, the impact of the FHA market on the goal-richness of the conventional market depends on: (1) The goal-richness of the overall market (conventional plus FHA); (2) the share of the market accounted for by FHA mortgages; and (3) the goal-richness of FHA mortgages.

The market share of mortgages insured by FHA and VA has risen 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. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs.

As discussed in the proposed rule, in order to assess the impact that the increased FHA share is likely to have on the housing goals for 2009, FHFA analyzed mortgages originated in 2007 with loan amounts no greater than the conforming loan limit for Fannie Mae and Freddie Mac for 1-unit properties in that year—$417,000 for most areas, but 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands. Loans guaranteed by VA or the Rural Housing Service were excluded from this analysis, as were loans with missing information necessary to determine whether they qualified for the housing goals. The remaining loans included both conventional and FHA loans with information about whether they qualified for the housing goals, resulting in a total of 2.7 million home purchase mortgages and 3.3 million refinance mortgages.

The shares of FHA mortgages that would have qualified for the Enterprises' housing goals were much higher than the goal-qualifying shares of conventional mortgages. Specifically, 60 percent of FHA home purchase mortgages qualified for the low- and moderate-income housing goal in 2007, but only 40 percent of conventional home purchase mortgages so qualified. Similarly, 23 percent of FHA home purchase mortgages qualified for the special affordable housing goal, but only 15 percent of conventional home purchase mortgages so qualified. The discrepancy was comparable for underserved areas, where 46 percent of FHA home purchase mortgages qualified for the underserved areas housing goal versus 34 percent of conventional home purchase mortgages.

The discrepancies between the goal-qualifying shares of FHA refinance mortgages and conventional refinance mortgages were similar to those for home purchase mortgages. For example, 56 percent of FHA refinance mortgages qualified for the low- and moderate-income housing goal, but only 42 percent of conventional refinance mortgages so qualified.

This analysis measures the degree to which FHA mortgages ''siphon off'' goal-rich mortgages from the overall mortgage market. That is, in 2007, 42 percent of all home purchase mortgages were for low- and moderate-income families, but because 60 percent of FHA home purchase mortgages were for such families, only 40 percent of conventional conforming mortgages were in this category. While in 2007 the goal-qualifying shares of FHA mortgages were much higher than the corresponding shares of conventional mortgages, the impact on the goal-qualifying shares of conventional mortgages was mitigated by the fact that in 2007, FHA accounted for only 9.9 percent of home purchase mortgages and only 4.7 percent of refinance mortgages. Although Home Mortgage Disclosure Act (HMDA) data for 2008 is not yet available, this data will likely show a much larger impact of FHA mortgages because FHA's share of the mortgage market was much higher in 2008 than it was in 2007.

Based on FHA's estimated market share in late 2008, its shares of both the home purchase mortgage and refinance mortgage markets may be significantly higher in 2009 than they were in 2008. The impact of these higher shares may be mitigated to some extent by reduced goal-richness of FHA mortgages as higher-income borrowers obtain FHA loans. The net impact of the FHA market on the goal-richness of the conventional mortgage market in 2009, however, is likely to be greater than it was in either 2007 or 2008. Accordingly, the projected increase in the size of the FHA market was a major factor taken into account in adjusting the Enterprises' housing goal levels for 2009.

Collapse of PLS market. The lack of PLS backed by mortgages will make it more difficult for the Enterprises to achieve the existing housing goals in 2009. FHFA will determine, in its upcoming rulemaking for the 2010 housing goals, whether, and if so, under what conditions PLS investment may contribute to meeting housing goals.

Between 2005 and 2008, the period covered by the 2004 Rule, Fannie Mae and Freddie Mac were major purchasers of the AAA-rated tranches of PLS that included substantial amounts of subprime mortgages. These purchases were due in part to the goal-richness of the securities and, particularly, their subgoal-richness.

While the size and nature of the Enterprises' subprime holdings differed, such 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, and are unlikely to be a major factor in 2009. FHFA guidance incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the National Credit Union Administration now restricts the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.[5]

Increasing unemployment. Unemployment increased significantly during 2008 and in 2009, which added to demands on mortgage servicers to address increasing delinquencies and foreclosures. 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.

NeighborWorks, a national network of approximately 230 community-based organizations actively involved in foreclosure mitigation counseling, has estimated that the two leading causes of mortgage default rates were a reduction in income (28 percent of defaults) and loss of income (17 percent of defaults).[6] While a reduction in income by itself does not necessarily lead to a mortgage default, with falling home prices it is difficult for the home owner with little or no home equity to either sell the home or refinance into an affordable mortgage. The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market in 2009.

Multifamily market volatility. The multifamily housing market faces great uncertainty in 2009. Recent housing data suggests that multifamily housing activity (new construction and refinances) will continue to decline in 2009 after slowing significantly in 2008. Because multifamily housing tends to have high percentages of units that qualify for one or more housing goals, declines in multifamily housing activity make it more difficult for the Enterprises to achieve the housing goals.

As a result of the financial crisis and ensuing credit crunch, important sources of affordable multifamily financing have been diminished, including Commercial Mortgage-Backed Securities (CMBS) and Low-Income Housing Tax Credits (LIHTCs). Other traditional providers of financing for multifamily housing, including thrifts, commercial banks and life insurance companies, have significantly reduced their multifamily financing activities. The Enterprises, FHA and GNMA are the principal sources of multifamily financing now.

New multifamily construction is not expected to provide a significant source of goals-eligible units in 2009. Multifamily housing starts amounted to 277,300 units in 2007 and 266,000 units in 2008, but have fallen to an average annual rate of 129,000 units for the first six months of 2009.[7] Some traditionally strong markets, such as New York City, San Francisco and San Jose, have seen apartment rents fall and vacancy rates rise from the fourth quarter of 2008 to the first quarter of 2009. During the same period, multifamily vacancy rates were highest in the Southeast, Arizona and Nevada, according to recent commercial real estate data. Declining rents, increasing vacancy rates and decreasing multifamily property values in many markets are significant obstacles confronting Enterprise multifamily activity in 2009.[8] Additional fees and tighter underwriting standards may make it difficult for many multifamily investors to qualify for financing. Declining multifamily prices will especially impact owners who financed with interest only loans over the past decade. As these loans

[5] In 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 conforms 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.

[6] NeighborWorks, *National Foreclosure Mitigation Counseling Program Update,* January 23, 2009.

[7] U.S. Census Bureau press release, July 17, 2009.

[8] ''Landlords See a Jump in Vacancy Rates Even as Rents Drop,'' Wall Street Journal, April 8, 2009.

come due, properties with interest only loans may not have accumulated additional equity over the term of the loan to counter the effects of declining property values. The lack of new CMBS issuances will also significantly affect the number of multifamily units financed by the Enterprises, thereby making the housing goals more difficult to achieve.

Refinancing surge in 2009. A significant increase in the volume of refinancings of single-family mortgages makes it more difficult for the Enterprises to achieve the housing goals. Higher income borrowers are more likely to take advantage of falling interest rates and refinance. Furthermore, when single-family owner-occupied refinance loans dominate both the market and the Enterprises' purchases, the share of goals-rich multifamily mortgages declines, which hampers the ability of the Enterprises to meet goal targets.

Many forecasters expect 2009 to be a high refinancing year. Projections of the 2009 refinance rate have been up to around 70 percent since March of this year, with the Mortgage Bankers Association (MBA) projecting 66 percent in its July 10, 2009 forecast,[9] Fannie Mae projecting 70 percent in its June 11, 2009 forecast,[10] and Freddie Mac projecting 67 percent in its July 8, 2009 forecast.[11] In addition, the Administration's MHA Program includes an initiative to allow more borrowers with loans owned or guaranteed by Fannie Mae or Freddie Mac to refinance into a new mortgage that will be held or guaranteed by Fannie Mae or Freddie Mac.

FHFA will continue to monitor the size of the refinance market closely in 2009. Refinances may continue to be a very large part of the market in 2009, with the likely effect of a lower percentage of goals-qualifying loans available for purchase by the Enterprises, thus making it more difficult to achieve the goals. FHFA will consider the size of the refinance market in any determination as to the feasibility of any goal an Enterprise fails to achieve in 2009.

b. Size of the Mortgage Market That Qualifies for the Housing Goals

FHFA recognizes that there is no single, comprehensive data set for estimating the size of the affordable lending market, and that the available databases on different sectors of the market must be combined in order to implement FHFA's market share model. The major public data sources from which these market estimates were developed are: (1) Market originations data submitted by lenders in accordance with HMDA for the years 2003 through 2007; (2) the 2000 Decennial Census; (3) the American Community Survey (ACS) for years 2005 and 2006; (4) the American Housing Survey (AHS); and (5) the 2001 Residential Finance Survey (RFS). To a lesser extent, other privately available data and information, including market forecasts, were also used. Sources included the MBA,[12] *Inside Mortgage Finance Publications, Inc.*,[13] First American Loan Performance,[14] Global Insight,[15] Fannie Mae, and Freddie Mac.

Refinance Activity. The 2009 refinancing surge has a major impact on the size of the mortgage market that qualifies for the housing goals. Refinances in the early part of 2009 may have accounted for more than 70 percent of all single-family mortgage originations. This rate has increased from the anticipated 59 percent refinance rate used by FHFA as the basis for the market estimates in the proposed rule.

Table 1 contains FHFA's housing goals market estimates, using a 70 percent refinance volume and share of the single-family conventional conforming market, which is derived from the forecasts of the MBA, Fannie Mae and Freddie Mac cited above.

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[9] *MBA Mortgage Finance Forecast,* June 22, 2009.

[10] Fannie Mae *Economics and Mortgage Market Analysis,* June 11, 2009.

[11] Freddie Mac *Economic and Housing Market Outlook,* June 11, 2009.

[12] The MBA is a national association representing the real estate finance industry.

[13] *Inside Mortgage Finance Publications, Inc.* is a company providing business-to-business news and statistics on the residential mortgage market.

[14] First American Loan Performance databases track the delinquency and prepayment performance of 50 million active individual mortgage payments per month, and provide loan-level information on more than $2.0 trillion in non-agency mortgage-backed and asset-backed securities.

[15] Global Insight is a privately-held company formed from two former economic and financial information and forecasting companies: DRI (Data Resources, Inc.) and WEFA (Wharton Econometric Forecasting Associates).

Table 1

2009 Housing Goals Market Estimates

Mortgage Market Affordability by Mortgage Characteristic

Market Estimates (units)	2009 Projected Low-End[1]		High-End[2]	Mid-Point[3]
Single-Family Owner-Occupied Home Purchase in Metropolitan Areas				
Low- and Moderate-Income Borrowers	34	-	39%	36.5%
Underserved Areas	27	-	31%	29.0%
Special Affordable Borrowers	10	-	14%	12.0%
Total Market (Single-Family and Multifamily)[4]				
Low- and Moderate-Income Borrowers	39	-	45%	42.5%
Underserved Areas	30	-	35%	32.5%
Special Affordable Borrowers	15	-	19%	17.0%

Mortgage Market by Property Type

Market Estimates (units)	2009 Projected Range			Mid-Point
Single-Family Owner-Occupied Units	84.8	-	80.8%	82.3%
Single-Family Rental Units	10.1	-	12.1%	11.1%
Multifamily Rental Units	5.1	-	7.1%	6.6%
	100.0%			100.0%

[1] Assumes investor mortgages are seven percent of all single-family mortgage originations and a multifamily mortgage origination volume of $30 billion (or five percent of all units, including B and C grade mortgages).

[2] Assumes investor mortgages are nine percent of all single-family mortgage originations and a multifamily mortgage origination volume of $40 billion (or seven percent of all units, including B and C grade mortgages).

[3] Assumes investor mortgages are eight percent of all single-family mortgage originations and a multifamily mortgage origination volume of $37.5 billion (or 6.5 percent of all units, including B and C grade mortgages).

[4] The FHFA total market projections in this table result from the various combinations of investor shares (7 - 8 percent), multifamily mixes (5 - 7 percent) and single-family owner-occupied home purchase mortgages in metropolitan areas affordabilities from this table.

The Multifamily Market. In the first quarter of 2009, multifamily mortgage acquisitions by the Enterprises accounted for less than half of the average first quarter acquisitions in the previous three years. Under current economic conditions, it is estimated that the Enterprises and FHA represent at least 90 percent of the entire multifamily mortgage market, which results in total estimated multifamily mortgage originations of $8.3 billion in the first quarter of 2009.

Using the monthly HMDA time series data of multifamily mortgage origination volume provided by the Federal Reserve Board, FHFA has projected the quarterly share of multifamily mortgage originations for 2009. The distributions of quarterly shares for each quarter were normally and independently distributed. The first quarter share was significantly lower than the other three quarters, and the fourth quarter share was significantly higher. These shares are shown in Table 2, along with the ranges associated with a 95 percent confidence level.

Table 2

2009 Multifamily Mortgage Origination Volume Estimate

	Historical Quarterly Volume Shares*			Projected 2009 Volume ($ bil.)		Based on Confidence Interval (C.I.) Limits			
		C. I. Limits (95%)		Historical	No 4th Qtr.	Historical patterns		No 4th Qtr. Spike	
Quarter	Average	Lower	Upper	Patterns	Spike	Lower	Upper	Lower	Upper
1 **	21.4%	20.5%	22.3%	*$8.34*	*$8.34*	*$8.34*	*$8.34*	*$8.34*	*$8.34*
2	25.7%	24.9%	26.5%	$10.02	$10.02	$9.69	$10.32	$9.69	$10.32
3	25.0%	24.0%	26.1%	$9.74	$9.74	$9.35	$10.16	$9.35	$10.16
4	27.9%	26.7%	29.1%	$10.87	$9.37	$10.40	$11.36	$9.13	$9.61
Total	100.0%			$38.98	$37.47	$37.78	$40.18	$36.51	$38.43

	Scenarios				
	A	B	C	D	E
2009 Multifamily Market ($ bil.):	**$30.1**	$36.5	**$37.5**	$39.0	**$40.2**

A: 2009 multifamily mortgage origination market including only loans maturing in 2009 as the source for originations***
B: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, lower limit C. I., and no 4th quarter spike
C: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, no 4th quarter spike
D: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, historical pattern
E: 2009 multifamily mortgage origination market projected based on the Enterprises' 1st quarter volume, upper limit of C. I.

* Federal Reserve Board of Governors, HMDA timeseries data, 1995-2007.
** First quarter 2009 multifamily origination volume estimate of $8.34 billion is based on the Enterprises reported acquisitions.
*** Mortgage Bankers Association. 2009, Commercial/Multifamily Survey of Loan Maturity Volumes, as of December 31, 2008, p.11.

Based on the historical patterns, FHFA made quarterly estimates of the multifamily mortgage origination volume, as well as estimates based on the upper and lower limits of the confidence intervals. Given current economic conditions, it is likely that the ''end of the year'' spike in multifamily mortgage originations that has occurred in prior years will not occur in 2009. Therefore, FHFA made a second set of estimates with the fourth quarter multifamily mortgage origination volume equal to the average of the three prior quarters. From these estimates, FHFA derived scenarios B through E. Scenario A, which is the ''bottom end of the market'' estimate, includes only loans maturing in 2009. To the extent that these loans are able to qualify for refinancing, new mortgages will be originated to replace them as these mortgages mature. Scenarios A, C and E were used to derive the market estimations in Table 1, with scenario C estimates based on historical averages with no fourth quarter spike, as the most likely to occur.

As indicated in scenarios A through E, FHFA estimates that the size of the multifamily mortgage origination market will be between $30 billion and $40 billion in 2009. This is lower than FHFA's estimate of $43 billion to $65 billion used to project the 9 to 13 percent multifamily mix in the proposed rule.[16] Under FHFA's revised estimate, which reflects a higher rate of refinance and a lesser amount of goal-rich multifamily activity than assumed in the proposed rule, FHFA's estimates of the size of the conventional mortgage market for the income-based housing goals and subgoals are lower than those in the proposed rule or in the 2004 Rule. FHFA's revised market size estimates for the three overall housing goals categories for 2009 are as follows:

- 39–45 percent of units financed in the conventional conforming primary mortgage market will qualify for the low- and moderate-income housing goal. This is a downward adjustment from the estimate in the proposed rule that 43–51 percent of units financed in the conventional conforming primary mortgage market would qualify for the low- and moderate-income housing goal;
- 30–35 percent of units will qualify for the underserved areas housing goal. This is a downward adjustment from the estimate in the proposed rule that 32–37 percent of units would qualify for the underserved areas housing goal;
- 15–19 percent of units will qualify for the special affordable housing goal. This is a downward adjustment from the estimate in the proposed rule that 16–23 percent of units would qualify for the special affordable housing goal.

FHFA's revised market size estimates for the three home purchase subgoal categories for 2009 are close to those in the proposed rule, as follows:

- 34–39 percent of owner-occupied single-family home purchase mortgages on properties in metropolitan areas will qualify for the low- and moderate-income home purchase subgoal. This is a slight downward adjustment from the 35–41 percent market size estimate in the proposed rule;
- 27–31 percent of such mortgages will qualify for the underserved areas home purchase subgoal. This is identical to the market size estimate in the proposed rule;
- 10–14 percent of such mortgages will qualify for the special affordable home purchase subgoal. This is a slight downward adjustment from the 10–15 percent market size estimate in the proposed rule.

As discussed in the proposed rule, the Economic Stimulus Act of 2008 (Stimulus Act) temporarily increased the conforming loan limits for certain high-cost areas for loans originated between July 1, 2007 and December 31, 2008. Public Law 110–185, § 201, 122 Stat. 618, 619. The Stimulus Act also excluded purchases of jumbo conforming loans (those which exceed the nationwide conforming loan limits in certain high-cost areas and exceed 150% of the nationwide conforming loan limits in Alaska, Guam, Hawaii and the Virgin Islands) from counting towards the housing goals for 2008. The limit for each high-cost area was set at 125% of the area median price of a residence, up to a limit of $729,750 for one-unit properties (175% of the overall conforming loan limit for 2008). HERA established the 2009 conforming loan limit at $417,000 for one-unit properties and correspondingly higher for two- to four-unit properties. Public Law 110–289, § 1124, 122 Stat. 2654, 2691 (2008) (to be codified at 12 U.S.C. 1717, 1454). HERA also established permanent increases in the loan limit for certain high-cost areas, at 115% of the area median price of a residence, up to a limit of $625,500 for one-unit properties in 2009 (150% of the overall conforming loan limit for 2009). The American Recovery and Reinvestment Act of 2009 (Recovery Act), signed into law by the President on February 17, 2009, generally established the limits that were in place in 2008 as a floor for the 2009 limits. Public Law 111–5, § 1203, 123 Stat. 115.

FHFA has determined that the treatment of jumbo conforming loans in 2008 should remain in effect for 2009, *i.e.,* that purchases of such loans should not be counted toward the housing goals in 2009. This treatment is consistent with section 1336(a)(2) of the Safety and Soundness Act, which provides FHFA with authority to exclude certain categories of mortgage purchases from counting towards the housing goals. *See* 12 U.S.C. 4566(a)(2). Accordingly, in determining the market share estimates for the three housing goal categories for 2009, FHFA has excluded all jumbo conforming loans on one- to four-unit properties.

FHFA's revised analysis of the mortgage market for 2009, which includes a detailed description of FHFA's market model, is contained in a document entitled ''Estimating the Size of the Conventional Conforming Market for each Housing Goal in 2009: Final Rule,'' of June 2009, which is available at *http://www.fhfa.gov.*

4. Past Performance of the Enterprises on the Housing Goals

This section describes the Enterprises' past performance on the three overall housing goals, the three home purchase subgoals, and the special affordable multifamily housing subgoals as determined by HUD for 2005 and 2006, and by FHFA for 2007 and 2008.[17] As discussed in the proposed rule, although HERA does not explicitly require consideration of the Enterprises' past performance on the housing goals in determining whether to adjust the 2009 goal levels, FHFA believes that the Enterprises' past performance is relevant to this determination. Consideration of past performance was required in establishing the goal levels for 2008 and prior years, and is required in establishing the goal levels for 2010 and thereafter. *See* 12 U.S.C. 4562(e)(2)(B)(iii). Current market conditions depend in part on the Enterprises' loan purchase activities, including their goal performance, in previous years. For example, if the Enterprises purchased a substantial volume of a certain type of loan to meet the housing goals in 2008, lenders might be induced to originate more loans of that type in 2009. In addition, the Enterprises' combined shares of the single-family conventional conforming

[16] *See* 74 FR 20236, 20248 (May 1, 2009).

[17] The Enterprises submitted to FHFA their Annual Housing Activities Reports (AHARs), tables on 2008 goals performance, and loan-level data on mortgages purchased on March 16, 2009. FHFA notified the Enterprises of the official performance figures for the 2008 goals and subgoals in letters dated June 11, 2009, and these results are posted on FHFA's Web site.

market and the multifamily market were likely at record levels in 2008. Given these high levels and the collapse of the subprime market, combined Enterprise past performance on the goals is likely a good measure of the goals-qualifying shares of the primary market. Thus, FHFA has analyzed combined Enterprise past performance, and finds that it is of the same magnitude as FHFA's estimates of the 2008 mortgage market goal-qualifying shares.

a. Housing Goals

The three overall goal levels for 2005 through 2008 were set to increase each year so that by 2008, the levels would correspond with the top end of the range of estimates for the goals-qualifying shares of units financed in the primary mortgage market. Analysis of loan-level data for 2005 through 2008 indicates the following results for overall goal performance:

- *Low- and moderate-income housing goal*—This goal level was set at 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. Fannie Mae's performance was 55.1 percent in 2005, 56.9 percent in 2006, and 55.5 percent in 2007. Freddie Mac's performance was 54.0 percent in 2005, 55.9 percent in 2006, and 56.1 percent in 2007. Both Enterprises' performance exceeded the low- and moderate-income housing goal levels from 2005 through 2007. In 2008, both Enterprises fell significantly short of meeting the 56 percent goal level, with Fannie Mae at 53.7 percent and Freddie Mac at 51.5 percent. In letters to Fannie Mae and Freddie Mac, dated March 16, 2009, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 goal level, and that achievement of the goal was not feasible for each Enterprise.[18]
- *Underserved areas housing goal*—This goal level was set at 37 percent for 2005, 38 percent for 2006 and 2007, and 39 percent for 2008. Fannie Mae's performance was 41.4 percent in 2005, 43.6 percent in 2006, and fell slightly to 43.4 percent in 2007. Freddie Mac's performance was 42.3 percent in 2005, 42.7 percent in 2006, and 43.1 percent in 2007. Both Enterprises' performance exceeded the underserved areas housing goal levels from 2005 through 2007. In 2008, Fannie Mae exceeded the 39 percent goal level, at 39.4 percent, and Freddie Mac fell short at 37.7 percent. In the 2008 Goals Feasibility Letter to Freddie Mac, FHFA notified the Enterprise of its final determination that there was a substantial probability of failure by Freddie Mac to meet this 2008 goal level, and that achievement of the goal was feasible but challenging.
- *Special affordable housing goal*—This goal level was set at 22 percent for 2005, 23 percent for 2006, 25 percent for 2007, and 27 percent for 2008. Fannie Mae's performance was 26.3 percent in 2005, 27.8 percent in 2006, and 26.8 percent in 2007. Freddie Mac's performance was 24.3 percent in 2005, 26.4 percent in 2006, and 25.8 percent in 2007. Both Enterprises surpassed this goal level from 2005 through 2007. In 2008, Fannie Mae's performance fell slightly to 26.4 percent, below the 27 percent goal level, and Freddie Mac's performance fell sharply to 23.1 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 goal level, and that achievement of the goal was not feasible for each Enterprise.

These results are shown in Table 3.

b. Special Affordable Multifamily Housing Subgoals

In order to encourage the Enterprises to play a significant role in the multifamily mortgage market, HUD established minimum dollar-based special affordable multifamily housing subgoals. These subgoals were established at 1.0 percent of the average aggregate dollar volume of total mortgage purchases by each Enterprise in a base period (2000, 2001 and 2002). Unlike the overall goal levels, these subgoal levels differ between the Enterprises. Specifically, for 2005 through 2008, the subgoal level was established at $5.49 billion per year for Fannie Mae, and $3.92 billion per year for Freddie Mac.

Results for these special affordable multifamily housing subgoals are also presented in Table 3. As indicated, the Enterprises surpassed the subgoal levels by wide margins in each year through 2008. In 2008, Fannie Mae's performance was 242 percent of its subgoal level ($13.31 billion compared with its subgoal level of $5.49 billion), and Freddie Mac's performance was 191 percent of its subgoal level ($7.49 billion compared with its subgoal level of $3.92 billion).

c. Home Purchase Subgoals

In the 2004 Rule, HUD established home purchase subgoals for the first time. The overall housing goals are expressed in terms of minimum qualifying shares of all dwelling units financed by the Enterprises, combining mortgages on both single-family and multifamily, owner-occupied and rental housing. They include all mortgages, whether for home purchase, refinancing, or some other purpose. The home purchase subgoals are expressed in terms of minimum qualifying shares of each Enterprise's acquisitions of single-family home purchase mortgages in metropolitan areas. The subgoals specify minimum shares of home purchase mortgages that the Enterprises must purchase under each category of the housing goals. The home purchase subgoals are expressed in terms of mortgages, rather than dwelling units.

Analysis of loan-level data for 2005 through 2008 indicates the following results for the Enterprises' home purchase subgoal performance, as shown in Table 4:

- *Low- and moderate-income home purchase subgoal*—This subgoal level was set at 45 percent for 2005, 46 percent for 2006, and 47 percent for 2007 and 2008. Fannie Mae's performance was 44.6 percent in 2005 (falling slightly short of the subgoal), 46.9 percent in 2006, and 42.1 percent in 2007. Freddie Mac's performance was 46.8 percent in 2005, 47.0 percent in 2006, and 43.5 percent in 2007. Neither Enterprise met this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008, HUD declared that the subgoal for 2007 was not feasible. In 2008, Fannie Mae's performance was 38.8 percent, and Freddie Mac's performance was 39.3 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.
- *Underserved areas home purchase subgoal*—This subgoal level was set at 32 percent for 2005, 33 percent for 2006 and 2007, and 34 percent for 2008. Fannie Mae's performance was 32.6 percent in 2005, 34.5 percent in 2006, and decreased to 33.4 percent in 2007, slightly exceeding the subgoal level in that year. Freddie Mac's performance was 35.5 percent in 2005, exceeding both Fannie Mae's performance and the 32 percent subgoal level by wide margins. In 2006 and 2007, Freddie Mac exceeded this subgoal level by narrow

[18] *See* Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to Herb Allison, Chief Executive Officer, Fannie Mae, dated March 16, 2009; Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to John Koskinen, Interim Chief Executive Officer, Freddie Mac, dated March 16, 2009 (2008 Goals Feasibility Letters).

margins at 33.6 percent and 33.8 percent, respectively. In 2008, both Enterprises fell short of the subgoal level, at 30.4 percent and 30.2 percent for Fannie Mae and Freddie Mac, respectively. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this 2008 subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

• *Special affordable home purchase subgoal*—This subgoal level was set at 17 percent for 2005 and 2006, and 18 percent for 2007 and 2008. Fannie Mae's performance was 17.0 percent in 2005, and 17.9 percent in 2006, and decreased to 15.5 percent in 2007. Freddie Mac's performance was 17.7 percent in 2005, and 17.0 percent in 2006, and decreased further to 15.9 percent in 2007. Thus, Freddie Mac surpassed this subgoal level in 2005, and barely met it in 2006. Conversely, Fannie Mae barely met the subgoal level in 2005, and surpassed it in 2006. Both Enterprises fell short on this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008, HUD declared that the subgoal for 2007 was not feasible. In 2008, Fannie Mae's performance was 13.6 percent, and Freddie Mac's performance was 15.1 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there was a substantial probability of failure by the Enterprises to meet this subgoal level, and that achievement of the 2008 subgoal was not feasible for each Enterprise.

Table 3

Overview of the Enterprises' Housing Goals and Performance, 2005-2008[1]

Goal[2]	2005	2006	2007	2008 [3]	2005 Goals	2006 Goals	2007 Goals	2008 Goals
Low- and Moderate-Income:								
Fannie Mae	55.1%	56.9%	55.5%	53.7%	52%	53%	55%	56%
Freddie Mac	54.0%	55.9%	56.1%	51.5%				
Ratio[4]	0.98	0.98	1.01	0.96				
Underserved Areas:								
Fannie Mae	41.4%	43.6%	43.4%	39.4%	37%	38%	38%	39%
Freddie Mac	42.3%	42.7%	43.1%	37.7%				
Ratio[4]	1.02	0.98	0.99	0.96				
Special Affordable:								
Fannie Mae	26.3%	27.8%	26.8%	26.4%	22%	23%	25%	27%
Freddie Mac	24.3%	26.4%	25.8%	23.1%				
Ratio[4]	0.92	0.95	0.96	0.88				
Special Affordable Multifamily[5]:								
Fannie Mae	$10.39	$13.31	$19.84	$13.31	$5.49	$5.49	$5.49	$5.49
Freddie Mac	$12.35	$13.58	$15.12	$7.49	$3.92	$3.92	$3.92	$3.92

Source: HUD and FHFA analysis of data submitted by the Enterprises. Some results differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs).

[1] Percentages of dwelling units in properties whose mortgages were purchased by the Enterprises that qualified for each goal in 2005-08, based on HUD's November 2004 rule, and goals for 2005-2008. Underserved areas goals for 2005-08 based on 2000 census data.

[2] Abbreviated definitions of goals:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved Areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent *and* tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

[3] Performance for 2008 as determined by FHFA; in some cases the figures differ slightly from those reported by the Enterprises in March 2009 and included in the May 1, 2009 proposed rule. In March 2009 FHFA declared that the 2008 low- and moderate-income goal and the special affordable goal were infeasible, and so notified the Enterprises and Congress.

[4] Ratio of Freddie Mac goal performance to Fannie Mae goal performance.

[5] Performance and goals in billions of dollars. Goals for 2005-08 were 1.0 percent of each Enterprise's average total mortgage purchases in 2000-02.

Table 4

Enterprises' Single-Family Home Purchase (HP) Mortgages in Metropolitan Areas Qualifying for the Housing Subgoals, 2005-08

Category[1]	2005 HP Subgoal		2006 HP Subgoal		2007 HP Subgoal[2]		2008 HP Subgoal[3]	
	Required	Actual	Required	Actual	Required	Actual	Required	Actual
Low- and Moderate-Income:								
Fannie Mae	45%	44.6%	46%	46.9%	47%	42.1%	47%	38.8%
Freddie Mac	45%	46.8%	46%	47.0%	47%	43.5%	47%	39.3%
Ratio[4]		1.05		1.00		1.03		1.01
Underserved areas:								
Fannie Mae	32%	32.6%	33%	34.5%	33%	33.4%	34%	30.4%
Freddie Mac	32%	35.5%	33%	33.6%	33%	33.8%	34%	30.2%
Ratio[4]		1.09		0.97		1.01		0.99
Special Affordable:								
Fannie Mae	17%	17.0%	17%	17.9%	18%	15.5%	18%	13.6%
Freddie Mac	17%	17.7%	17%	17.0%	18%	15.9%	18%	15.1%
Ratio[4]		1.04		0.95		1.03		1.11

Source: HUD and FHFA analysis of data submitted by the Enterprises. Some results differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs). Home purchase subgoals first took effect in 2005.

[1] Abbreviated definitions of categories:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent *and* tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

[2] In April 2008 HUD declared that the 2007 low- and moderate-income and special affordable home purchase subgoals were infeasible.

[3] Performance for 2008 as determined by FHFA; in some cases the figures differ slightly from those reported by the Enterprises in March 2009 and included in the May 1, 2009 proposed rule. In March 2009 FHFA declared that the 2008 home purchase subgoals were infeasible, and so notified the Enterprises and Congress.

[4] Ratio of Freddie Mac performance to Fannie Mae performance.

D. General Requirements—§ 1282.15

Consistent with the proposed rule, § 1282.15 of the final rule sets forth general requirements for the counting of mortgage purchases toward the achievement of the housing goals. These requirements are generally consistent with those established by HUD in 24 CFR 81.15.

E. Special Counting Requirements—§ 1282.16

Consistent with the proposed rule, § 1282.16 of the final rule sets forth the requirements for receipt of full, partial or no credit for a transaction toward achievement of the housing goals. These requirements are generally consistent with those established by HUD in 24 CFR 81.16, with the addition of the counting requirements for jumbo conforming loans and MHA loan modifications discussed below. In some provisions, where the HUD regulatory language cites to specific statutory provisions that no longer appear in the statute due to amendment by HERA, the final rule incorporates the applicable statutory language.

Comments received on counting issues were generally limited to jumbo conforming loans and loan modifications. Several commenters, however, made recommendations on other counting issues that are beyond the scope of this rulemaking. Specifically, a trade association recommended that personal property manufactured housing loans insured under FHA Title I, a program that insures mortgage loans made by private lending institutions to finance the purchase of a new or used manufactured home, be given full credit rather than half credit towards the housing goals. A mortgage lending policy advocacy organization recommended that the Enterprises' guidelines for loan purchases should also apply to private label securities, and that goals credit should be given only to those loans in private label securities that satisfy the guidelines. A trade association urged that the Enterprises be required to assist insured depository institutions meet their CRA obligations as set forth in section 1335 of the Safety and Soundness Act, and recommended that the Enterprises be given extra goals credit for the purchase of CRA loans. Another trade association recommended that mortgages required by the Enterprises to be repurchased should be subtracted from the goals calculation in the year in which they were repurchased. One trade association stated that the slowdown in commercial lending has made it difficult for owners of land-lease manufactured housing communities to refinance, and recommended that, while it may be difficult to estimate the income of the manufactured housing community residents, commercial loans to such communities should be eligible to count towards the special affordable multifamily housing subgoal.

Because these comments relate to issues that are beyond the scope of this rulemaking, the final rule does not address these issues. However, these issues may be considered by FHFA in its upcoming rulemaking on the 2010 affordable housing goals.

1. Exclusion of Jumbo Conforming Loans—§ 1282.16(b)(10)

Consistent with the proposed rule, § 1282.16(b)(10) of the final rule excludes purchases of jumbo conforming loans from counting towards the 2009 housing goals. Jumbo conforming loans will not be included in the numerator or the denominator when calculating performance under the housing goals. Commenters generally supported the exclusion of jumbo conforming loans from counting towards the 2009 housing goals. A trade association supported the exclusion of jumbo conforming loans, but also stated that the lack of jumbo loan availability is hindering the economic and housing recoveries. Another trade association opposed the exclusion of jumbo conforming loans, stating that there are many areas of the country where the low end of the jumbo conforming loan limits encompasses borrowers who satisfy housing goals criteria.

As discussed in the proposed rule, the Stimulus Act excluded purchases of jumbo conforming loans from counting towards the housing goals for 2008. Consistent with this treatment of jumbo conforming loans in 2008, and in accordance with FHFA's authority under the Safety and Soundness Act to exclude certain categories of mortgage purchases from counting towards the housing goals, FHFA has determined that purchase of jumbo conforming loans shall not be counted toward the housing goals in 2009. *See* 12 U.S.C. 4566(a)(2).

2. Making Home Affordable (MHA) Loan Modifications—§ 1282.16(c)(10)

Currently, Enterprise purchases of loans that have been modified by third parties are eligible for goals credit. To address the increasing importance of loan modifications, consistent with the proposed rule, § 1282.16(c)(10) of the final rule provides that an Enterprise's modification of a loan in accordance with the Administration's MHA Program that is held in portfolio, or in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase and count for purposes of the housing goals. The MHA Program, also known as the Homeowner Affordability and Stability Plan (HASP), was announced by the Administration on March 4, 2009.[19]

As discussed in the proposed rule, many homeowners face the prospect of sharp increases in monthly mortgage costs as a result of rate resets. While loan modifications cannot prevent all defaults or foreclosures from occurring, they can help some existing homeowners stay in their homes, which will enhance the stability and liquidity of the housing and credit markets. In addition, such loan modifications may help to stabilize local communities and preserve the home values of homeowners who are not in danger of losing their jobs. The Administration's MHA initiative is designed to help families modify or refinance their troubled mortgages to achieve an affordable payment and avoid foreclosure. MHA includes access to low-cost refinance loans for borrowers with loans that are owned or guaranteed by the Enterprises. Many borrowers may also be eligible for loan modification assistance under MHA. Allowing goals credit for MHA loan modifications may encourage the Enterprises to modify more loans.

The general rule for counting mortgages in § 1282.16(a), consistent with 24 CFR 81.16(a), permits FHFA to assign goals credit upon its determination that a transaction or activity is substantially equivalent to a mortgage purchase, adds liquidity to an existing market, and fulfills an Enterprise's purpose and is in accordance with its Charter Act. As discussed in the proposed rule, FHFA believes that MHA loan modifications meet the standards in § 1282.16(a) for goals credit. In today's unique market conditions, the largest threat to home ownership, including for the low- and moderate-income borrowers and communities at whom the housing goals are targeted, is the risk of default and foreclosure. The Administration's MHA loan modification initiative is a principal means of combating that risk. Therefore, during these unique conditions, FHFA finds that loan modifications within the MHA initiative are ''substantially equivalent to a mortgage purchase'' for purposes of the housing goals. FHFA also finds that they add liquidity, fulfill an Enterprise's purpose, and are consistent with the Charter Acts.

A number of commenters (Fannie Mae, Freddie Mac, five trade associations and one nonprofit organization) supported the proposed loan modification proposal, primarily because it would provide further incentive for the Enterprises to assist efforts by financial institutions to modify the loans of at-risk borrowers and lower the incidence of defaults and foreclosures. A trade association stated that loan modifications ensure ongoing home ownership unlike loan refinancings that are executed to realize home-equity appreciation, or promote consumption spending or other goals not directly related to maintaining home ownership. Freddie Mac stated that loan modifications extend the life of a mortgage and that, by avoiding foreclosure, these modifications will potentially avoid the dislocation, financial distress, and community

[19] *See http://makinghomeaffordable.gov.* The proposed rule referred to this Program by the name ''HASP.'' The final rule uses the name ''MHA'' in lieu of ''HASP,'' consistent with the usage on the MHA Program Web site.

destabilization that can occur in the wake of foreclosure.

Fannie Mae requested technical clarifications regarding counting loan modifications toward the housing goals, including the appropriate date for determining the unpaid principal balance and affordability of the loan, the appropriate date for treating loan modifications with trial periods as purchases, and the treatment of loan modifications with missing data. These issues will be addressed in forthcoming guidance to the Enterprises.

A number of comments were received in response to FHFA's specific request for comment in the proposed rule on whether other types of loan modifications in addition to MHA loan modifications should receive goals credit. Several trade associations suggested that loan modifications on multifamily properties receive goals credit. Fannie Mae stated that providing goals credit to other types of loan modifications would not have a significant impact on goals performance.

FHFA believes that the large number of loans subject to some form of modification, and the often complex nature of the loans and their resulting modifications, present operational difficulties in determining when to count a modified loan toward the housing goals. In addition, only owner-occupied loans are eligible for consideration under the MHA Program. Accordingly, under the final rule, only loans that are modified under the MHA Program will receive credit towards the 2009 housing goals. Other types of loan modifications may be considered for housing goals credit in future rulemakings.

3. HOEPA Mortgages and Mortgages With Unacceptable Terms and Conditions—§ 1282.2, and § 1282.16(c)(12), (c)(13)

The proposed rule did not propose changes to the existing regulatory provisions regarding HOEPA mortgages and mortgages with unacceptable terms or conditions, or mortgages contrary to good lending practices. Section 1282.16(c)(12) provides that Enterprise purchases of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1282.2, shall not receive credit towards the three housing goals. Section 1282.16(c)(13) provides that, based on the results of the Director's monitoring of the Enterprises' practices, the Director may determine, pursuant to § 1282.16(d), that mortgages contrary to good lending practices, as defined in § 1282.2, shall not receive credit towards the three housing goals.

Nonetheless, a number of commenters suggested that additional types of loans should be excluded from receiving housing goals credit under these regulatory provisions, and recommended specific factors that should be considered in determining whether loans should be excluded. A labor union suggested that mortgages originated by the affiliated lender of homebuilders should not receive goals credit, stating that homebuilders use tactics to entice or frighten borrowers into loans with affiliated lenders that are contrary to good lending practices or that contain unacceptable terms and conditions. Two trade associations recommended that a loan be excluded unless the underwriting standards are at least as stringent as those for HOEPA loans or under the recently-revised Regulation Z (12 CFR part 226, Truth in Lending). One of these trade associations also suggested that loans violating the Home Valuation Code of Conduct (HVCC) should not be counted towards goal performance. Two trade associations encouraged FHFA to take the lead in prohibiting the Enterprises from financing loans with abusive terms and conditions, to impose penalties for loans that go into early default, and to develop mandates to ensure Charter Act compliance.

Because these comments relate to issues that are beyond the scope of this rulemaking, the final rule does not address these issues. However, these issues may be considered by FHFA in its upcoming rulemaking on the 2010 affordable housing goals.

F. Affordability—Income Level and Rent Level Definitions—§§ 1282.17 through 1282.19

Consistent with the proposed rule, §§ 1282.17 through 1282.19 of the final rule include income level and rent level definitions for purposes of determining whether a dwelling or rental unit is affordable to very low-, low- or moderate-income families. The definitions are consistent with the definitions established by HUD in 24 CFR 81.17 through 81.19.

G. Actions To Meet the Goals—§ 1282.20

Consistent with the proposed rule, § 1282.20 of the final rule provides that to meet the housing goals under this rule, the Enterprises shall operate in accordance with 12 U.S.C. 4565(b). This is generally consistent with 24 CFR 81.20.

H. Notice and Determination of Failure To Meet Goals—§ 1282.21

Consistent with the proposed rule, § 1282.21 of the final rule provides that if the Director of FHFA preliminarily determines than an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal, the Director shall follow the procedures in 12 U.S.C. 4566(b) for purposes of making a final determination on the Enterprises' achievement of the goals and the feasibility of the goals. This is generally consistent with 24 CFR 81.21.

I. Housing Plans—§ 1282.22

Consistent with the proposed rule, § 1282.22 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 requirements are generally consistent with 24 CFR 81.22, except that the requirement to submit a housing plan will be at the discretion of the Director, pursuant to the amendments made by HERA to § 1336(c) of the Safety and Soundness Act. *See* 12 U.S.C. 4566(c).

J. Other Issues

Credit Score Terminology. The proposed rule provided a market analysis to support the proposed adjustment of the housing goals levels for 2009, and discussed the effect of tighter underwriting standards of private mortgage insurers and the reduction in mortgage insurance availability for borrowers with low credit scores. A credit reporting corporation and a credit scoring corporation commented that FHFA's analysis should not specifically reference ''FICO'' credit scores, stating that the reference implies endorsement of the Fair Isaac Corporation product and creates an unfair advantage. FHFA did not intend to endorse a specific product. Accordingly, the market analysis in the final rule refers generally to credit scores rather than to a specific product.

Other HERA Requirements. Two trade associations requested that FHFA address HERA's requirements that FHFA determine an annual publication date for housing goals for the years 2010 and beyond, and establish a manner for evaluating the Enterprises' duty to serve the manufactured housing market. These statutory mandates are beyond the scope of this rulemaking and, therefore, are not addressed in the final rule. However, these statutory provisions will be implemented by FHFA in upcoming rulemakings.

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 business entities because the rule is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

■ Accordingly, for the reasons stated in the preamble, FHFA hereby amends chapter XII of title 12 of the Code of Federal Regulations, by adding new part 1282 to subchapter E to read as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Sec.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561(c), 4565(b), 4566, 4603.

Subpart A—General

§ 1282.1 Scope of part.

The Director has general regulatory and supervisory authority over Fannie Mae and Freddie Mac, and is required to make such regulations as are necessary to carry out the Director's duties under the Safety and Soundness Act, the Fannie Mae Charter Act, and the Freddie Mac Act, and to ensure that the purposes of such statutes are accomplished.

§ 1282.2 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.

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System. Book-entry GSE Security also means the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE 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 GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Fannie Mae Charter Act or the Freddie Mac Act.

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.

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.

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

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.

ECOA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

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

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

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 (12 U.S.C. 1715 *et seq.*).

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 GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act (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 (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

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

HOEPA mortgage means a mortgage for which the annual percentage rate (as calculated in accordance with the relevant provisions of section 107 of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1606)) exceeds the threshold described in section 103(aa)(1)(A) of HOEPA (15 U.S.C. 1602(aa)(1)(A)), or for which the total points and fees payable by the borrower exceed the threshold described in section 103(aa)(1)(B) of HOEPA (15 U.S.C. 1602(aa)(1)(B)), as those thresholds may be increased or decreased by the Federal Reserve Board or by Congress, unless the Enterprises are otherwise notified in writing by FHFA. Notwithstanding the exclusions in section 103(aa)(1) of HOEPA, for purposes of this part, the term ''HOEPA mortgage'' includes all types of mortgages as defined in this section, including residential mortgage transactions as that term is defined in section 103(w) of HOEPA (15 U.S.C. 1602(w)), but does not include reverse mortgages.

Home Purchase Mortgage means a residential mortgage for the purchase of an owner-occupied single-family property.

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 area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

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 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:

(1) *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;

(2) *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;

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

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

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

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, or a manufactured home that is personal property under the laws of the State in which the manufactured home 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 subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Mortgages contrary to good lending practices means a mortgage or a group or category of mortgages entered into by a lender and purchased by an Enterprise where it can be shown that a lender engaged in a practice of failing to:

(1) Report monthly on the borrower's repayment history to credit repositories on the status of each Enterprise loan that a lender is servicing;

(2) Offer mortgage applicants products for which they qualify, but rather steer applicants to high cost products that are designed for less credit worthy borrowers. Similarly, for consumers who seek financing through a lender's higher-priced subprime lending channel, lenders should not fail to offer or direct such consumers toward the lender's standard mortgage line if they are able to qualify for one of the standard products;

(3) Comply with fair lending requirements; or

(4) Engage in other good lending practices that are:

(i) Identified in writing by an Enterprise as good lending practices for inclusion in this definition; and

(ii) Determined by the Director to constitute good lending practices.

Mortgages with unacceptable terms or conditions or resulting from unacceptable practices means a mortgage or a group or category of mortgages with one or more of the following terms or conditions:

(1) 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.

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

(A) Origination fees;

(B) Underwriting fees;

(C) Broker fees;

(D) Finder's fees; and

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

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

(A) Bona fide discount points;

(B) 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;

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

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

(E) State and local transfer taxes or fees;

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

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

(2) Prepayment penalties, except where:

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

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

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

(iv) 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.

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

(4) Evidence that the lender did not adequately consider the borrower's ability to make payments, *i.e.,* mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration of the borrower's income and other obligations. Ability to repay must be determined and must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments; or

(5) Other terms or conditions that are:

(i) Identified in writing by an Enterprise as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and

(ii) Determined by the Director as an unacceptable term or condition of a mortgage for which goals credit should not be received.

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

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

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

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

Person, as used in subpart H of 24 CFR part 81, 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, a GSE, or a Federal Reserve Bank.

Portfolio of loans means 10 or more loans.

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.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

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

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) 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;

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

(6) 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

(7) 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:

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

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

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

(ii) 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.

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

Rural area means any underserved area located outside of any metropolitan area.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, codified generally at 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.

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

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.

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 GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

Underserved area means:

(1) For purposes of the definitions of ''Central city'' and ''Other underserved area'', a census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the metropolitan area and a minority population of 30 percent or greater; or

(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of ''Rural area'', a whole census tract, a Federal or State American Indian reservation or Tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or Tribal or individual trust land, having:

(i) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(ii) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(3) Any Federal or State American Indian reservation or Tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by FHFA. In such cases, FHFA will notify the Enterprises as to applicability of other definitions and counting conventions.

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 telephone service.

Utility allowance means either:

(1) 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

(2) 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, for purposes of the 2009 housing goals:

(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, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

Wholesale exchange means a transaction in which an Enterprise buys or otherwise acquires mortgages held in portfolio or securitized by the other Enterprise, or where both Enterprises swap such mortgages.

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

(c) *Subpart H terms.* Unless the context requires otherwise, terms used in subpart H of 24 CFR part 81 that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

Subpart B—Housing Goals

§ 1282.11 General.

This subpart establishes three housing goals for 2009 as required by section 1331(c) of the Safety and Soundness Act, requirements for measuring performance under the goals, and procedures for monitoring and enforcing the goals.

§ 1282.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each Enterprise of mortgages on housing for low- and moderate-income families (''the Low- and Moderate-Income Housing Goal'') is intended to achieve increased purchases by the Enterprises of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families shall be 43 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal for 2009.

§ 1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each Enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the Enterprises of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Underserved Areas Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas shall be 32 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal for 2009.

(d) *Measuring performance.* The Enterprises shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances one or more dwelling units located in a central city, rural area, or other underserved area.

§ 1282.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases by the Enterprises of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families shall be 18 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. The goal for the year 2009 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single-family and multifamily) mortgages purchased by the respective Enterprise in the years 1999 through 2008. That is, this multifamily subgoal for 2009 is $6.56 billion for Fannie Mae and $4.60 billion for Freddie Mac. In addition, as a Special Affordable Housing Home Purchase Subgoal, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal for 2009.

(d) *Counting of multifamily units.*—(1) Dwelling units affordable to low-income families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgaged property.

(e) *Full Credit Activities.*—(1) For purposes of this paragraph (e), full credit means that each unit financed by a mortgage purchased by an Enterprise and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that Enterprise.

(2) The following mortgages meet the requirements of paragraph (e)(3) of this section: mortgages insured under HUD's Home Equity Conversion Mortgage (''HECM'') Insurance Program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on Tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195.

(3) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or securitization of Federally insured or guaranteed mortgages if such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal Agency, and participation of the Enterprise substantially enhances the affordability of the housing subject to such mortgages, provided the Enterprise submits documentation to FHFA that supports eligibility under this paragraph for FHFA's approval.

(4)(i) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or refinancing of existing seasoned portfolios of loans if the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal, and such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal. For purposes of determining whether a seller meets the requirement in this paragraph (e)(4), a seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller for this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers qualifying loans to the seller.

(v) The Enterprise must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraphs (e)(4)(vi) and (vii) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section. Sellers that are institutions that are:

(A) Regularly in the business of mortgage lending;

(B) Depository institutions insured under the Deposit Insurance Fund; and

(C) Subject to, and have received at least a satisfactory performance evaluation rating for:

(*1*) At least the two most recent consecutive examinations under the Community Reinvestment Act, if the lending institutions have total assets in excess of $250 million; or

(*2*) The most recent examination under the Community Reinvestment Act if the lending institutions which have total assets no more than $250 million are identified as sellers that are presumed to have a primary business of originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) Classes of institutions or organizations that are presumed to have as their primary business originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed in paragraphs (e)(4)(i) through (e)(4)(iv) of this section to meet the requirements are as follows: State housing finance agencies; affordable housing loan consortia; and Federally insured credit unions that are:

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer lending standard of the Community Support Program; or

(B) Community development credit unions; community development financial institutions; public loan funds; or non-profit mortgage lenders. FHFA may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if so, will notify the Enterprises in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section, and the seller has held the loans for six months or less prior to selling the loans to the Enterprise, FHFA will consider that the seller has met the requirements of this paragraph (e)(4).

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of an Enterprise's existing mortgages or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two Enterprises shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (g), ''mortgages or mortgage-backed securities portfolios'' includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 1282.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by FHFA or transactions that are specifically excluded as ineligible under § 1282.16(b).

(3) *Missing data or information.* 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 housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *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.

(d) *Counting owner-occupied units.* (1) For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgages may be counted under a particular family income level, *i.e.,* especially low-, very low-, low- or moderate-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)(i) When the income of the mortgagor(s) is not available to determine whether an owner-occupied unit in a property securing a single-family mortgage originated after 1992 and purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(A) Excluding from the denominator and the numerator single-family owner-occupied units located in census tracts with median incomes less than, or equal to, area median income based on the most recent decennial census, up to a maximum of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases with missing data in excess of the maximum will be included in the denominator and excluded from the numerator;

(B) For home purchase mortgages and for refinance mortgages separately, multiplying the number of owner-occupied units with missing borrower income information in properties securing mortgages purchased by the Enterprise 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; or

(C) Such other data source and methodology as may be approved by FHFA.

(ii) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (d)(2)(i) of this section to estimate affordability information for single-family owner-occupied units.

(iii) If an Enterprise chooses to use an estimation methodology under paragraph (d)(2)(i)(B) or (d)(2)(i)(C) of this section to determine affordability for owner-occupied units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums for home purchase mortgages and for refinance mortgages 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 single-family owner-occupied units in properties securing mortgages purchased by the Enterprise for each census tract, summed up over all census tracts. If this nationwide maximum is exceeded, then the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which income information may be estimated to the total number of single-family owner-occupied units with missing income information in properties securing mortgages purchased by the Enterprise. Owner-occupied units 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.

(e) *Counting rental units*—(1) *Use of income, rent*—(i) *Generally.* For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, 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.

(ii) *Availability of income information.*—(A) Each Enterprise shall require lenders to provide to the Enterprise tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) 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 the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the Enterprise shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices.* A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if an Enterprise determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants.* When the income of actual tenants is available, to determine whether a tenant is very low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17.

(4) *Income of prospective tenants.* 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.

(5) *Use of rent.* When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very low-, low-, or moderate-income families 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.

(6) *Affordability data unavailable.*—(i) *Multifamily.*—(A) 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 Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal 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 in accordance with one of the following methods:

(*1*) 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, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(*2*) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(i)(A) of this section to estimate affordability information for multifamily rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(i)(A) of this section to determine affordability for rental units in properties securing multifamily mortgage purchases eligible to be counted toward the respective housing goal, then that methodology 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. If this maximum is exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the nationwide maximum number of units for which affordability information may be estimated to the total number of multifamily rental units with missing affordability information in properties securing mortgages purchased by the Enterprise. Multifamily rental units in excess of the maximum set forth in this paragraph (e)(6)(i)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(ii) *Rental units in 1–4 unit single-family properties.*—(A) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a single-family mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal 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 in accordance with one of the following methods:

(*1*) Excluding rental units in 1- to 4-unit properties with missing affordability information from the denominator as well as the numerator in calculating performance under those goals;

(*2*) Multiplying the number of rental units with missing affordability information in properties securing single family 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, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(*3*) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(ii)(A) of this section to estimate affordability information for single-family rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(ii)(A)(*2*) or (e)(6)(ii)(A)(*3*) of this section to determine affordability for rental units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums of five percent of the total number of rental units in properties securing non-seasoned single-family mortgage purchases by the Enterprise in the current year and 20 percent of the total number of rental units in properties securing seasoned single-family mortgage purchases by the Enterprise in the current year. If either or both of these maximums are exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which affordability information may be estimated to the total number of single-family rental units with missing affordability information in properties securing seasoned or unseasoned mortgages purchased by the Enterprise, as applicable. Single-family rental units in excess of the maximums set forth in this paragraph (e)(6)(ii)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(7) *Timeliness of information.* In determining performance under the housing goals, each Enterprise shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of median income.*—(1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and for the definition of ''low-income area,'' 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 nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan 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'').

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

(h) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase 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.

(i) *Counting mortgages toward the Home Purchase Subgoals.*—(1) *General.* The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§ 1282.12 through 1282.14. However, performance under the subgoals shall be counted using a fraction that is converted into a percentage for each subgoal and the numerator of the fraction for each subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year. For purposes of each subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit.* For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each subgoal that applies to the Enterprise's mortgage purchase.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. 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 count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either Enterprise's performance under the housing goals:

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in § 1282.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage (''HECM'') insurance program, 12 U.S.C. 1715z–20; mortgages guaranteed under the Rural Housing Service's Single

Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z–13, HUD's Section 184 program, 12 U.S.C. 1515z–13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other 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, provided the Enterprise submits documentation to FHFA that supports eligibility and that FHFA makes such a determination; or

(iv) As provided in § 1282.14(e)(3);

(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 mortgage refinancings 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 mortgages on one- to four-unit properties with maximum original principal obligations that exceed:

(i) The nationwide conforming loan limits for properties of a particular size; or

(ii) 150 percent of the nationwide conforming loan limits for properties of a particular size located in Alaska, Guam, Hawaii and the Virgin Islands; and

(11) Any combination of factors in paragraphs (b)(1) through (10) of this section.

(c) *Other special rules.* Subject to FHFA's primary 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 following supplemental rules apply:

(1) *Credit enhancements.*—(i) Dwelling units financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases and count toward achievement of the housing goals 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);

(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; and

(C) Such dwelling units otherwise qualify under this part.

(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) *Real estate mortgage investment conduits (''REMICs'').*—(i) An Enterprise's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(*1*) Guaranteed by the Government National Mortgage Association; or

(*2*) Previously counted toward any housing goal by the Enterprise; and

(B) The Enterprise has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the Enterprise, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the Enterprise purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the Enterprise shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the Enterprise (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the Enterprise had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the Enterprise.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the Enterprises and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.*—(i) The purchase of a mortgage on a cooperative housing unit (''a share loan'') or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.,* affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building (''a blanket loan'') or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where an Enterprise purchases both ''a blanket loan'' and mortgages for units in the same building (''share loans''), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement 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 are mortgage purchases and shall count toward achievement 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 these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where:

(i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year; or

(ii) FHFA determines, based upon a written request by an Enterprise, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as otherwise provided in this part, the purchase of a refinanced mortgage by an Enterprise is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.*—(i) The purchase of a State or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such mortgage revenue bond shall count toward achievement of the goals where:

(A) The mortgage revenue bond is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the mortgage revenue bond; and

(B) The mortgage revenue bond is not a general obligation of a State or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward achievement of a housing goal to the extent such dwelling units otherwise qualify under this part.

(9) *Expiring assistance contracts.* Actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997, shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(10) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where an Enterprise holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the Enterprise shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where an Enterprise undertakes more than one action to assist a single project or where an Enterprise engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the Enterprise must submit the transaction to FHFA for a determination on appropriate goals counting treatment.

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

(11) [Reserved]

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in § 1282.2 shall not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Director shall monitor the practices and processes of the Enterprises to ensure that they are not purchasing loans that are contrary to good lending practices as defined in § 1282.2. Based on the results of such monitoring, the Director may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices shall not receive credit toward the three housing goals.

(14) *Seller dissolution option.*—(i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases and receive credit toward the achievement 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) *FHFA review of transactions.* FHFA will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If an Enterprise seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the Enterprise may provide FHFA detailed information regarding the transactions for evaluation and determination by FHFA in accordance with this section. In making its determination, FHFA may also request and evaluate additional information from an Enterprise with regard to how the Enterprise believes the transactions should be counted. FHFA will notify the Enterprise of its determination regarding the extent to which the class of transactions may count under the 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 to very low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit 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* 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) *Very-low-income* 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) *Especially-low-income* means, 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).

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

In determining whether a rental unit is affordable to very low-, low-, or moderate-income families 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,* 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 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	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 especially 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).

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

For purposes of determining whether a rental unit is affordable to very low-, low-, or moderate-income families 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,* maximum affordable rents to count as housing for 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	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 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	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 especially low-income,* maximum affordable rents to count as housing for especially 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

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

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

(e) *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)(6)(i).

§ 1282.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each Enterprise shall operate in accordance with 12 U.S.C. 4565(b).

§ 1282.21 Notice and determination of failure to meet goals.

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 follow the procedures at 12 U.S.C. 4566(b).

§ 1282.22 Housing plans.

(a) If the Director determines, under § 1282.21, 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 30 days after issuance of a notice under § 1282.21 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 (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.

Dated: July 28, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–18517 Filed 8–7–09; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2009–5]

Fees for Special Handling of Registration Claims

AGENCY: Copyright Office, Library of Congress.

ACTION: Temporary rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing an interim rule relating to fees for special handling of registration claims that have been pending for at least six months. Special handling is the expedited processing of an application and is granted in certain circumstances when compelling reasons are present. Ordinarily a special handling fee is charged for special handling in addition to the regular fee for an application to register a copyright claim. Because of current delays in the processing of applications for registration occurring in the course of the Office's implementation of its business process reengineering program, the Office has determined that the special handling fee shall not be assessed for conversion of a pending application to special handling status when the application has been pending for more than six months and the applicant has satisfied the Office that expedited handling of the registration is needed because the applicant is about to file a suit for copyright infringement.

EFFECTIVE DATES: This rule is effective August 10, 2009 through July 1, 2011.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Stephen Ruwe, Attorney–Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024–0400, Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Although the copyright law provides that a work of authorship obtains copyright protection from the moment it is fixed in a tangible medium of expression and that copyright registration is not a prerequisite for such protection, copyright registration nevertheless is required in order to obtain certain remedies for copyright infringement. Section 411 of the Copyright Act provides that, with certain exceptions, a suit for infringement of a United States work[1] may not be filed until registration of the copyright claim has been made or refused by the Copyright Office. Section 412 provides that, with certain exceptions, the remedies of statutory damages and awards of attorney's fees are not available to a copyright owner when (1) infringement of copyright in an unpublished work commenced before the effective date of its registration; or (2) infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration was made within three months after the first publication of the work.

Because the effective date of registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office," 17 U.S.C. 410(d), a delay by the Copyright Office in its processing of an application for copyright registration will not adversely affect the ability of a copyright owner to

[1] While a detailed definition of "United States work" may be found at 17 U.S.C. 101 (definition of "United States work"), we offer a somewhat simplified description here: A "United States work" is a work that (1) is first published in the United States (unless it was simultaneously published in a country that has a copyright treaty relationship with the United States and where the term of copyright protection is shorter than the term in the United States), (2) is first published in a country with which the United States has no copyright treaty relations, and the authors of which are all nationals, domiciliaries, or habitual residents of the United States, or (3) is unpublished and all the authors of which are nationals, domiciliaries, or habitual residents of the United States.