

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

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AUTHORITY: 12 U.S.C. 1430, 1430b, 1430c, 1431.

SOURCE: 75 FR 81105, Dec. 27, 2010, unless otherwise noted.

Subpart A—General

§ 1281.1 Definitions.

As used in this part:

AMA mortgage means a mortgage that was purchased by a Bank under an AMA program.

AMA program has the meaning set forth in § 1268.1 of this chapter.

AMA user means any participating financial institution, as defined in § 1268.1 of this chapter, from which the Bank purchased at least one AMA mortgage during the year for which the housing goals are being measured.

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 specific period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

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

Community-based AMA user means any AMA user whose average total assets over the three-year period culminating in the year preceding the one being measured are no greater than the applicable community-based AMA user asset cap.

Community-based AMA user asset cap means \$1,224,000,000, subject to annual adjustments by FHFA, beginning in 2021, to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

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

Day means a calendar day.

Designated disaster area means any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, where individual assistance payments were authorized by FEMA. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation. This time period may be adjusted for a particular disaster area by notice from FHFA to the Banks.

Dwelling unit means a room or unified combination of rooms with plumbing and kitchen facilities 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.

Families in low-income areas means:

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

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

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

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

FEMA means the Federal Emergency Management Agency.

Low-income means income not in excess of 80 percent of area median income.

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

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

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.

Minority census tract means a census tract that has a minority population of

at least 30 percent and a median income of less than 100 percent of the area median income.

Moderate-income means income not in excess of area median income.

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 purchase means a transaction in which a Bank bought or otherwise acquired a mortgage.

Non-metropolitan area means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area, for which median incomes are determined by FHFA.

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

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

(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;

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(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; or

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

Residence means a property where one or more families reside.

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

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

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

Very low-income means income not in excess of 50 percent of area median income.

[75 FR 81105, Dec. 27, 2010, as amended at 78 FR 2328, Jan. 11, 2013; 81 FR 76300, Nov. 2, 2016; 81 FR 91690, Dec. 19, 2016; 85 FR 38050, June 25, 2020]

Subpart B—Housing Goals

§ 1281.10 General.

Pursuant to the requirements of the Bank Act, as amended (12 U.S.C. 1430c), this subpart establishes:

(a) A prospective mortgage purchase housing goal;

(b) A small member participation housing goal;

(c) Requirements for measuring performance under the housing goals; and

(d) Procedures for monitoring and enforcing the housing goals.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38051, June 25, 2020]

§ 1281.11 Bank housing goals.

(a) *Prospective mortgage purchase housing goal*—(1) *Target levels*. For each calendar year, the percentage of a Bank's AMA mortgages acquired during the calendar year that are for very low-income families, low-income families, or families in low-income areas must meet or exceed either:

(i) A target level of 20 percent; or

(ii) An alternative target level proposed by the Bank and approved by FHFA under paragraph (c) of this section.

(2) *Cap on low-income areas loans counted toward goal*. No more than 25 percent of the mortgages that are counted toward a Bank's achievement of the prospective mortgage purchase housing goal may be mortgages for families with incomes above 80 percent of area median income. Any purchases of mortgages for families with incomes above 80 percent of area median income in excess of the 25 percent cap shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for the housing goal, but such mortgages shall not be included in the numerator in calculating a Bank's performance under the housing goal.

(b) *Small member participation housing goal*. For each calendar year, the percentage of a Bank's total AMA users that are community-based AMA users must meet or exceed one of the following:

(1) A target level of 50 percent;

(2) A percentage that is three percentage points greater than the percentage from the preceding calendar year; or

(3) An alternative target level proposed by the Bank and approved by FHFA under paragraph (c) of this section.

(c) *Alternative target levels*—(1) *Submission of Bank requests*. A Bank, upon approval of its board of directors, may submit a written request to FHFA for approval of different target levels for the prospective mortgage purchase

housing goal, the small member participation housing goal, or both. A Bank's request under this paragraph must include proposed target levels for three consecutive years following the calendar year in which the request is submitted. A Bank is not required to propose the same target level for each of the three years.

(2) *Content of Bank request.* A Bank's request under paragraph (c)(1) of this section for an alternative target level must include a detailed explanation of:

(i) Why the target level for the goal in paragraphs (a) and (b) of this section, as applicable, is infeasible;

(ii) Why the Bank's proposed alternative target level is achievable; and

(iii) How the Bank's proposed alternative target level will meaningfully further affordable housing mortgage lending in its district.

(3) *Frequency of Bank requests—(i) Three-year period.* A Bank may not submit a request under paragraph (c)(1) of this section for an alternative target level more frequently than once every three years, except as provided in paragraphs (c)(3)(ii) or (c)(3)(iii) of this section. The deadline for submitting a request under paragraph (c)(1) of this section is September 15 of the calendar year preceding the calendar year in which the alternative target level would apply. FHFA will review each Bank request that is received by the deadline and will notify the Bank in writing if its request is approved. If FHFA does not notify a Bank that its request is approved, the Bank will remain subject to the target levels in paragraphs (a) and (b) of this section, as applicable.

(ii) *Exception for changes in AMA products or programs.* FHFA may require a Bank to submit a request under paragraph (c)(1) of this section for an alternative target level to address discontinuation of an AMA product or program or approval of a new AMA product or program.

(iii) *Exception for special circumstances.* A Bank may submit a request under paragraph (c)(1) of this section for an alternative target level more frequently than once every three years if warranted given economic, operational, or other circumstances.

(4) *Public comment.* FHFA will publish each request that is submitted under paragraph (c)(1) of this section for an alternative target level on FHFA's public website for a period of at least 30 days, to provide the public an opportunity to comment on the request. FHFA will publish each request without redactions or other changes, except that FHFA will not publish any confidential or proprietary material. A Bank must submit any material supporting its request under paragraph (c)(1) of this section that it considers to be confidential or proprietary as a separate document, clearly designated as confidential or proprietary.

[85 FR 38051, June 25, 2020]

§ 1281.12 General counting requirements.

(a) *General.* Mortgage purchases financing single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level (*e.g.*, low- or very low-income), the income of the mortgagor is compared to the median income for the area at the time the mortgage was originated, using the appropriate percentage factor provided under § 1281.1.

(b) *No double-counting.* A mortgage may be counted only once toward the achievement of the prospective mortgage purchase housing goal, even if it satisfies multiple criteria for the prospective mortgage purchase housing goal.

(c) *Application of median income.* For purposes of determining an area's median income under § 1281.1, the area is:

(1) The metropolitan area, if the residence that secures the mortgage is in a metropolitan area; and

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

(d) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a tabulation of

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each mortgage during that year; a sampling of such purchases is not acceptable.

[85 FR 38051, June 25, 2020]

§ 1281.13 Special counting requirements.

(a) *General.* FHFA shall determine whether a Bank shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals, meaning that in calculating the applicable percentage target level, they shall be excluded from both the numerator (*i.e.*, AMA mortgages acquired during the calendar year that are for very low-income families, low-income families, or families in low-income areas) and the denominator (*i.e.*, total AMA mortgages acquired during the calendar year), even if the transaction or activity would otherwise be counted under paragraph (c) of this section:

(1) Purchases of participation interests in AMA mortgages from another Bank, except as provided in paragraph (e) of this section;

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

(3) Options to acquire mortgages;

(4) Rights of first refusal to acquire mortgages;

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

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

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

(8) Purchases of subordinate lien mortgages;

(9) Purchases of mortgages that were previously counted by a Bank under any current or previous housing goal within the five years immediately preceding the current performance year;

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

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

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

(1) *Cooperative housing and condominiums.* The purchase by a Bank of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals.

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

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

(4) *Non-conventional mortgages.* The purchase of a non-conventional single-family mortgage shall be treated as a mortgage purchase for purposes of the housing goals only if the mortgage was acquired from a community-based AMA user.

(d) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the

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housing goals. FHFA will notify each Bank in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

(e) *Mortgage participation transactions.* Where two or more Banks acquire a participation interest in the same mortgage simultaneously, the mortgage will be counted on a *pro rata* basis for the prospective mortgage purchase housing goal for each Bank with a participation interest.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

§ 1281.14 Determination of compliance with housing goals; notice of determination.

(a) *Determination of compliance with housing goals.* On an annual basis, FHFA will determine each Bank's performance under each housing goal and will publish the final determinations. FHFA will publish its final determination including the numbers and percentages for each Bank's AMA purchases that meet each of the housing goals criteria, including loans to low-income families, loans to very low-income families, and loans to families in low-income areas, including by each of the defined categories. FHFA's determination will include these numbers in total and separated into purchase money mortgages, refinancing mortgages, conventional mortgages, and non-conventional mortgages.

(b) *Failure to meet a housing goal.* If the Director determines that a Bank has failed to meet any housing goal, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of a preliminary determination under this section shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) *Notice.* The Director shall provide written notice to a Bank of a preliminary determination under this section, the reasons for such determination, and the information on which the Director based the determination.

(2) *Response period*—(i) *In general.* During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section,

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the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was feasible.

(ii) *Extended period.* The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) *Shortened period.* The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) *Failure to respond.* The failure of a Bank to provide information during the 30-day period under this paragraph (b)(2), as extended or shortened, shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) *Consideration of information and final determination*—(i) *In general.* After the expiration of the response period under paragraph (b)(2) of this section or receipt of information provided during such period by a Bank, the Director shall issue a final determination on:

(A) Whether the Bank has failed to meet the housing goal; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, the achievement of the housing goal was feasible.

(ii) *Considerations.* In making a final determination under paragraph (b)(3)(i) of this section, the Director shall take into consideration any relevant information submitted by a Bank during the response period.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

§ 1281.15 Housing plans.

(a) *Housing plan requirement.* For any year after 2023, if the Director determines that a Bank has failed to meet any housing goal and that the achievement of the housing goal was feasible, the Director may require the Bank 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 Bank will take to achieve the housing goal for the next calendar year;

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

(5) Address any alternative target levels for which the Bank has submitted a request under §1281.11(c)(1).

(c) *Deadline for submission.* The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank 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 plan.* The Director shall review and approve or disapprove a housing plan as follows:

(1) *Approval.* The Director shall review each submission by a Bank, including a housing plan submitted under this section and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Bank Act, this part, and any other applicable provision of law.

(2) *Notice of approval and disapproval.* The Director shall provide written notice to a Bank submitting a housing plan of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by a Bank, the Bank 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 Bank 15 days to submit a new plan.

(f) *Enforcement of housing plan.* If the Director finds that a Bank has failed to meet any housing goal, and that the achievement of the housing goal was feasible, and has required the Bank to submit a housing plan under this section, the Director may issue a cease and desist order, or impose civil money penalties, if the Bank refuses to submit such a plan, fails to submit an acceptable plan, or fails to comply with the approved plan. In taking such action, the Director shall follow procedures consistent with those provided in 12 U.S.C. 4581 through 4588 with respect to actions to enforce the housing goals.

[75 FR 81105, Dec. 27, 2010, as amended at 85 FR 38052, June 25, 2020]

Subpart C—Reporting Requirements

SOURCE: 85 FR 38052, June 25, 2020, unless otherwise noted.

§ 1281.20 Reporting requirements.

(a) *General.* Each Bank must collect and submit to FHFA any data that FHFA determines to be necessary for FHFA to evaluate transactions and activities under the Bank housing goals.

(b) *Reporting for prospective mortgage purchase housing goal.* Each Bank must collect data on each AMA mortgage purchased by the Bank. The data must include any data elements specified by FHFA. On no less frequent than an annual basis, each Bank must submit such data to FHFA in accordance with the Data Reporting Manual.

(c) *Reporting for small member participation housing goal.* Each Bank must collect data on AMA user asset size. On no less frequent than an annual basis, each Bank must submit such data to FHFA in accordance with the Data Reporting Manual.

(d) *Other reporting.* Each Bank must provide to FHFA such additional reports, information, and data as FHFA may request from time to time.

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

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