

families.” Inasmuch as there are unaddressed needs of low-income renters in low-income areas and of very-low-income renters, the Secretary has determined that mortgages for low-income renters in low-income areas should be included under the goal. The final rule reflects this change.

Counting of Rental Units

The proposed rule specified that only rental units affordable to very-low-income families (i.e., families whose incomes are 60 percent of area median income or less) would count toward the goal. This altered a convention applicable to the Special Affordable Housing Goal in 1993–1995 that any low-income rental unit in a multifamily property where at least 20 percent of the units are affordable to especially low-income families (i.e., families whose incomes are 50 percent of area median income or less) or where at least 40 percent of the units are affordable to very-low-income families (i.e. families whose incomes are 60 percent of area median income or less) would count toward the goal.

A number of commenters, including both GSEs, the MBA, the Association of Local Housing Finance Agencies, and the Enterprise Foundation, argued that the proposed rule’s approach would create a regulatory incentive for the GSEs to focus only on mortgage purchases for buildings that are entirely occupied by very-low-income tenants, at the expense of financing mixed-income buildings. These commenters argued that an exclusive focus on 100-percent very-low-income buildings is contrary to HUD policy established in other contexts emphasizing mixed-income rental developments as more beneficial for residents and communities. The Secretary concluded that the comments have validity and has revised the final rule to use the transition-period convention of counting all low-income units in buildings where the percentage of such units meets the thresholds used during the transition which, in turn, were modeled on the LIHTC.

Refinancings From Portfolio

Under the Interim Notices establishing transition goals, HUD did not allow any credit toward the Special Affordable Housing Goal for the refinancing of mortgages held by the GSEs in portfolio. The proposed rule provided credit for these refinancings—as long as they were economically motivated transactions initiated by the borrower—to count toward the goal. Both Fannie Mae and Freddie Mac supported this approach. Several commenters expressed concern that

including refinancings would create a disincentive for the GSEs to focus on new originations for lower-income households.

The exclusion of refinancings, as provided in the Interim Notices, imposed significant compliance burdens on the GSEs in order to identify those purchases of refinanced mortgages that represented mortgages previously purchased by the GSEs. Further, this provision was contrary to the common method of financing multifamily properties using relatively short-term balloon mortgages, which by their nature must be refinanced frequently to maintain project viability. Refinancings in this context serve the goal of continued availability of housing meeting the goals. For these reasons, the final rule maintains that economically motivated, arm’s-length refinancings will count toward the Special Affordable Housing Goal.

General Requirements, Section 81.15

Insufficient Information

Performance under each of the housing goals is based on a fraction that is converted into a percentage. The numerator of this fraction is the number of dwelling units that count toward the achievement of a particular housing goal. The denominator is the number of dwelling units (for all mortgages purchased) that could, under appropriate circumstances, count toward achievement of a goal. Under § 81.15(b) of the proposed rule, dwelling units with insufficient information to determine whether the unit scored toward a GSE’s goal performance would be excluded from the numerator, but included in the denominator. Freddie Mac objected that this provision was too strict and “distorts the reports to Congress on * * * purchases of mortgages counted within * * * the goals.” Freddie Mac recommended that, when a given threshold of completeness of data is met, the GSE be permitted to eliminate from the denominator up to a given percentage of units lacking sufficient data.

HUD is aware that the GSEs have incomplete data for mortgages originated before 1993. Consequently, when a GSE lacks sufficient information to determine whether a mortgage originated before 1993 counts toward achievement of any of the housing goals, the purchase of that mortgage may be excluded from the denominator for purposes of measuring goal performance. However, the goals must be structured in a manner that will create incentives for the GSEs to obtain and provide the data necessary to

determine whether the purchase of mortgages originated during or after 1993 count toward the housing goals. Permitting the GSEs to exclude from the denominator, because a GSE lacked complete information, mortgage purchases (of post-1992 originations) that did not meet the goals would create a disincentive to the collection of such information. This result is contrary to the legislative history, which emphasizes the importance of accurate and comprehensive data. Accordingly, the final rule requires all mortgages originated after 1992 to be included in the determination of the GSE’s performance under each of the housing goals.

Double-Counting

Some dwelling units financed by a GSE mortgage purchase count toward achievement of one, two, or all three housing goals under § 81.15(d) of the proposed rule. Two commenters objected to permitting double- or triple-counting. One commenter noted that the GSEs may not have to alter their “programmatic focus to any great extent” to meet the goals. In the final rule, HUD has allowed counting mortgage purchases toward one or more of the goals, because double counting is consistent with congressional intent. The Senate Report on FHEFSSA⁴³ provides that the goals be “overlapping, in that each [GSE] activity counts toward the achievement of each goal, if any, for which the activity qualifies.”

Use of Rent

Freddie Mac commented that § 81.15(f)(5) should be clarified so that use of average rent-by-unit-type continues to be an acceptable means for reporting rent levels and determining affordability of non-owner-occupied units. Freddie Mac claimed that requiring it to obtain individual unit rent data would be a large drain on resources and would place Freddie Mac at a competitive disadvantage relative to its non-GSE competitors. Because the current reporting system has worked satisfactorily and the GSEs’ reporting burden is an important consideration, the rule has been changed to conform to Freddie Mac’s suggestion.

Seasoned Mortgages

In determining whether mortgages count toward the goals, Freddie Mac asked for revision of §§ 81.15(f)(6) and 81.16(c)(6), to allow the GSEs to use tenant information (for 2- to 4-unit mortgages) and income or rent level information (for single-family

⁴³ S. Rep. at 63.