

mortgages) as of the time of origination, regardless of the age of the mortgages when acquired by the GSE. According to Freddie Mac, the rule would then conform to industry practice and would avoid requiring the modification of data collection and underwriting practices for these types of units. This practice was also allowed under the Notice of Interim Housing Goals published in October 1993, to avoid costly reverification of information. For the same reasons, the final regulation continues this requirement.

#### Split Areas

Freddie Mac criticized § 81.15(g) of the proposed rule, which would have provided an allocation formula for split census tracts in measuring performance under the Geographically Targeted Goal, as "cumbersome and inconsistent with HMDA requirements" in its treatment of determining area median income in census tracts that cross metropolitan area boundaries in New England. Freddie Mac stated that the additional precision in reporting that HUD was apparently seeking was not worth the cost. Freddie Mac recommended that where the "area" cannot be determined and the census tract or property lies in a "split area," the GSEs should be permitted to use the convention adopted by the Federal Financial Institutions Examination Council (FFIEC) for HMDA reports. The final rule adopts this suggestion, which uses an allocation that distinguishes only portions of the county within a metropolitan area from those portions outside of a metropolitan area.

#### *Special Counting Requirements, Section 81.16*

##### Low-Income Housing Tax Credit Purchases (LIHTC) and Mortgage Revenue Bonds (MRB)

Fannie Mae objected to §§ 81.16(b) (1) and (2) of the proposed rule, which would have provided that the GSEs' LIHTC equity investments and MRB purchases would not count toward any of the goals, including the Special Affordable Housing Goal. Fannie Mae commented that the Secretary's position on these forms of investment is "inconsistent and counter-productive." Several other commenters agreed with Fannie Mae. One commented that the Secretary should at least give credit for LIHTCs in central cities and underserved areas. Another commenter stated that LIHTC equity investments are not mortgage purchases and, therefore, it might be appropriate to place "an upper limit on the amount of credit to be taken for such activities."

The final rule does not change the provision that the purchase of LIHTCs will not count toward the housing goals. The GSEs' support of affordable housing through the provision of equity in exchange for tax benefits is an important activity. Although the legislative history states that equity investments should not count toward the achievement of the Special Affordable Housing Goal, the legislative history indicates that it is the Secretary's decision whether the purchase of LIHTCs should count toward achievement of the other two housing goals.<sup>44</sup> Because the purchase of LIHTCs is not the equivalent of the purchase of a mortgage, equity investments in LIHTCs do not count toward achievement of any of the housing goals.

Freddie Mac commented that the purchase of MRBs should receive full credit. Freddie Mac commented that:

\* \* \* where revenue bonds are issued that are not supported by any pledge or promise from the state or local issuer of the bonds, or by any other credit enhancement or collateral, other than the payments from the mortgage itself, the purchaser of these bonds would be in the exact same economic position as the purchaser of the mortgage itself.

The final rule allows units financed by a mortgage revenue bond purchased by the GSEs to count under the housing goals with certain restrictions to assure that such MRB purchases are the functional equivalent of mortgage purchases by the GSEs. Under the rule, purchases of MRBs count only where the MRB is to be repaid from the principal and interest of the underlying mortgages originated with funds made available by the MRB. Purchase of an MRB which is either a general obligation of a state or local government or agency or is otherwise credit enhanced, by any government or agency, third party guarantor or surety, will not count.

##### Risk-Sharing Arrangements

Freddie Mac commented that the exception in § 81.16(b)(3) should be modified so that mortgages purchased by the GSEs under risk-sharing arrangements with HUD or other Federal agencies would receive full credit under the Special Affordable Housing Goal. Freddie Mac stated that such an approach would better comport with the statutory language and would provide an incentive for completing mortgage purchases that may entail greater underwriting risks and a higher level of monitoring. Freddie Mac commented that HUD's rationale in the

proposed rule for denying full credit under risk-sharing arrangements of the kind described was "flawed," and that the Secretary lacked authority under FHEFSSA to refuse to give credit, or to provide for only partial credit.

NTIC disagreed with Freddie Mac's comment and with the proposed rule's provision of partial credit for risk-sharing activities. NTIC asserted that the GSEs' risk-sharing activities should supplement affordable housing programs, not replace them. NTIC stated: "The legislation was enacted to ensure regular, conventional business is available to all citizens and neighborhoods. Allowing Fannie and Freddie to use the government's money to make their goals is unacceptable!"

Under section 1333(b)(1)(A) of FHEFSSA, the Secretary is required to give full credit toward the Special Affordable Housing Goal for the purchase or securitization of federally-insured or guaranteed mortgages where: (1) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency; (2) the GSEs' participation substantially enhances the affordability of the housing subject to such mortgages; and (3) the mortgages involved are on housing that otherwise qualifies under the Special Affordable Housing Goal to be considered for purposes of that goal. The Secretary has determined that the GSEs' current risk-sharing activities meet the requirements in (1) and (2). To the extent the third requirement is satisfied, risk-sharing activities will receive full credit toward achievement of the Special Affordable Housing Goal under the final rule, as long as the dwelling units financed meet the other requirements of the goal.

Furthermore, the final rule provides full credit under the Low- and Moderate-Income Goal and the Geographically Targeted Goal for mortgages purchased under risk-sharing arrangements where the GSE assumes substantial risk, which serve to increase available housing opportunities. HUD intends to monitor future GSE purchases under risk-sharing arrangements to assure that providing full credit for such purchases remains warranted.

##### Forward Commitments

Freddie Mac commented that § 81.16(b)(4) should be revised to permit commitments to purchase mortgages to count as mortgage purchases in the year the commitments were made. Freddie Mac stated that such revision would make the rule consistent with requirements imposed under FHEFSSA, which mandate that Freddie Mac hold

<sup>44</sup> See, e.g., S. Rep. at 38; H. Rep. at 60 and 61.