capital against forward commitments. Freddie Mac added that the rule could add language to ensure against "double counting."

Under FHEFSSA, the Secretary is to establish housing goals for mortgage purchases. Section 1303(11) of FHEFSSA defines mortgage purchases to include mortgages purchased for portfolio or securitization. The use of the past tense of the verb, i.e., "purchased," rather than the future tense, i.e., "purchased or to be purchased," indicates that a transaction does not constitute a mortgage purchase simply because a mortgage may be purchased in the future based on a commitment, but that the mortgage must actually have been "purchased." Accordingly, this section of the rule has not been revised.

### Second Homes

Freddie Mac commented that § 81.16(b)(5) should be eliminated so that the purchase of mortgages on secondary residences would receive full credit toward the goals. Freddie Mac stated that the majority of secondary residences are located in low- and moderate-income census tracts and "serve an important role in bolstering local housing markets and providing a supplement to the local housing stock."

Many second homes, which are frequently owned by affluent families, are located in predominantly low- or moderate-income areas. These second homes provide few, if any, affordable housing opportunities for the permanent residents of areas defined as underserved. Accordingly, the final rule does not provide goal credit for secondary residences.

#### Credit Enhancements

Freddie Mac expressly supported the Secretary's decision to allow credit enhancements to count toward achievement of the housing goals. However, Freddie Mac commented that certain revisions should be made to §81.16(c)(1): (1) the requirement that the GSE provide specific mortgages as collateral should be dropped because it does not relate to the economic substance of a credit enhancement or to the rating of the bonds; (2) in a credit enhancement, Freddie Mac does not 'guarantee bonds," but ensures that payments are made on the underlying mortgages; thus, the reference to guaranteeing should be omitted; (3) the proposed rule was unclear because it referred to "State or local housing finance agency" in one place and "any entity" in another place; Freddie Mac commented that "any entity" should be used; and (4) the rule should include

credit enhancements where a GSE "reinsures' mortgage insurance provided by a public purpose mortgage insurance entity or fund." Freddie Mac provided revised language for this section consistent with its comments.

The National Council of State Housing Agencies stated that it was "pleased" that HUD proposed to count the GSEs' credit enhancement transactions, and it opposed the rule's limitation of this credit to transactions in which a GSE provides specific mortgages as collateral.

The counting of a credit enhancement should not depend on whether a GSE's insurance of mortgage payments is provided through collateralizing specific mortgages. This section of the rule has been modified to require the GSE to provide only a specific contractual obligation to ensure mortgage payments. In addition, the Secretary agrees with Freddie Mac that reinsurance of mortgage insurance provided by a public purpose mortgage insurance entity or fund is beneficial to the mortgage markets. Accordingly, the Secretary has decided that, on a case-bycase basis, a GSE may seek the Secretary's approval for counting such transactions toward the achievement of the housing goals.

The Secretary does not want to create a regulatory distortion of corporate decisions on how to develop and initiate credit enhancement transactions. The inconsistency in the proposed rule—limiting credit enhancement transactions to State and local agencies—referred to by Freddie Mac has been removed, and the broader language that it recommended has been adopted.

## Real Estate Mortgage Investment Conduits (REMICS)

Freddie Mac commented that § 81.16(c)(2) should be drafted so that purchases of REMICs would count toward fulfillment of all three housing goals "to the extent that the purchase of the mortgages underlying the REMICs would provide credit under the goals and there is no resulting 'double counting' of these mortgages." Freddie Mac stated that this type of transaction increases the liquidity of the mortgagebacked securities market and lowers costs for borrowers.

Fannie Mae commented that the purchase of REMICs should count toward the goals because such activity is functionally equivalent to a mortgage purchase. Fannie Mae commented: "REMICs that do not contain MBS [Mortgage-Backed Securities] or mortgages purchased by Fannie Mae, Freddie Mac, or a government insured entity do not cause 'double counting' . . . .'' Fannie Mae noted that it has never purchased a REMIC that contained anything other than mortgages and property related to mortgages. (Under the Internal Revenue Service (IRS) Code, 26 CFR 1.860G– 2(a)(4) and 1.856–3(c), REMICs may include other interests in real property such as "options to acquire land or improvements thereon" and "timeshare interests.")

In large measure, HUD agrees with these comments concerning purchases of REMICs. Accordingly, the purchase of REMICs by the GSEs may count toward the goals as long as the underlying mortgages or mortgage-backed securities were not previously purchased or issued by the GSEs or otherwise would result in double counting. Subject to the same restrictions, the guarantee of a REMIC by a GSE may also count toward the goals.

HUD recognizes that the development of new and distinct REMIC structures is dynamic and HUD does not in any manner seek to impede these developments. However, the GSEs are advised that when there is any question about whether a new structure meets these restrictions for counting under the goals, the GSEs should seek the advice of HUD before counting the transaction.

## Participations

Instead of counting participations in mortgages toward achievement of the housing goals based on the percentage of the participation purchased by a GSE, as proposed under §81.16(c)(4), Freddie Mac commented that the rule should provide for full credit whenever the GSE's participation percentage is 50 percent or more and no credit when a participation is below 50 percent.

Freddie Mac's proposal would reduce the reporting and compliance burden, and the final rule adopts this proposal. Participations have played, and are expected to play, a *de minimis* role in the GSEs' purchases, and for that reason the counting approach adopted should have little impact on housing goal performance.

# Second Mortgages

In response to the proposed rule's questions concerning whether and how to count second mortgages, Freddie Mac commented that second mortgages should receive full, rather than partial, credit under the goals, because of the difficulty in arriving at an appropriate means of allocating partial credit and because second mortgages frequently fulfill the same purpose as refinancing, at lesser cost to the borrower. Fannie