

Secretary and the Director of the Office of Federal Housing Enterprise Oversight share authority, this part does not implement any authority of the Director of OFHEO.

#### Section 81.2—Definitions

This section defines terms which are relevant to the Secretary's regulatory authorities. These terms relate to the housing goals, fair housing/fair lending, new program approval, and collection, dissemination and protection of GSE information furnished to the Secretary. Some of the terms are defined in FHEFSSA, some are defined under the Freddie Mac Act and the remainder were defined for these regulations.

The Freddie Mac Act defines terms that are relevant to both GSEs although the same terms are not defined under the Fannie Mae Charter Act. The legislative history of FIRREA indicates that Congress intended that competitive parity exist between the GSEs and that the regulatory power granted to the Secretary be identical for both GSEs.<sup>71</sup> The proposed regulation, therefore, defines terms the same for both GSEs even where the definitions were originally provided in the Freddie Mac Act.

Defined terms that are relevant to all of the housing goals include "Balloon mortgage", "Conventional Mortgage", "Dwelling unit", "Mortgage", "Mortgage purchase", "Multifamily Housing", "Refinancing", "Rental housing", "Residence", "Seasoned mortgage", "Single family housing". "Conventional mortgage" is defined as a mortgage other than a mortgage as to which a GSE has the benefit of any guaranty, insurance or other obligation by the United States. "Mortgage purchase" is defined as a transaction where a GSE buys or otherwise acquires with cash or other thing of value a mortgage for its portfolio or for securitization. "Multifamily housing" means a residence having more than four dwelling units. "Single family housing" is a residence consisting of one to four dwelling units."

Terms relating to the low- and moderate-income housing goals include "Low-income", "Median income", "Moderate income", "Rent", "Utilities," and "Utility allowance". The term "Low-income" is defined as income not in excess of 80 percent of area median income, adjusted for family size for rental units but unadjusted for owner-occupied units. "Median income" means, with respect to an area, the

unadjusted median family income of the area, as most recently established by the Secretary; an area is the metropolitan statistical area (MSA) if the property is located in an MSA—otherwise, an area is the county in which the property is located. "Moderate-income" means income not exceeding area median income and, in the case of rental units, income not in excess of median income with adjustments for family size. "Rent" is defined as contract rent if the cost of all utilities are included in contract rent; if all utilities are not included, "Rent" is contract rent plus the cost of those utilities or contract rent plus a utility allowance. "Utilities" means charges for electricity, gas, water, sewage disposal, fuel, and garbage collection.

Defined terms concerning the central cities, rural areas, and other underserved areas goal include the terms "Central cities", "Rural" and "Underserved areas". As discussed fully below, in this preamble's discussion of the housing goals, the term "central cities" is defined as the underserved areas of any political subdivision designated as a central city by the Office of Management and Budget. "Rural area" is defined as the underserved areas located outside of any metropolitan statistical area (MSA) designated by the Office of Management and Budget. "Underserved area" is defined as a census tract: With a median income at or below 120 percent of the area median income and a minority population of 30 percent or greater; or with a median income at or below 80 percent of area median income.

The special affordable housing goals have specific rules requiring the definition of certain terms. These terms include "Low-income areas", "Portfolio of loans" and "Very low-income". "Low-income area" means a census tract in which the median income does not exceed 80 percent of area median income. "Portfolio of loans" means ten or more loans. "Very low-income" is defined as income not exceeding 60 percent of the area median income—under the Act's definition, this percentage is adjusted for family size for rental units but is not adjusted for family size for owner-occupied units.

Terms concerning the fair housing provisions of these regulations include "Familial status", "Handicap" and "Minority". The terms "familial status" and "handicap" are defined under these regulations by reference to the definitions contained in the Fair Housing Act regulations at 24 CFR 100.20 and 100.201. "Minority" includes American Indians, Alaskan Natives, Asian and Pacific Islanders, African Americans, and Hispanics.

The defined term pertaining to the Secretary's new program approval authority is "New program." "New program" is defined in the Act and under these regulations as a program for the purchasing, servicing, lending on the security of, or otherwise dealing in conventional mortgages that is significantly different from a program that: Was approved or engaged in by the GSE at the time of the enactment of FHEFSSA; or represents an expansion above limits expressly contained in any prior approval.

Terms that are relevant to both the reports and information provisions of the regulations include "Mortgage data", "Proprietary information" and "Public data". "Mortgage data" is defined as data obtained by the Secretary from the GSEs under the Fannie Mae Charter Act and the Freddie Mac Act relating to the GSEs' mortgage purchases. "Proprietary information" is defined as all categories of information and data submitted to the Secretary by the GSE which contain trade secrets and commercial or financial information of the GSE which is privileged or confidential and which, if released, would cause substantial competitive harm. Although this definition parallels the definition under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), in determining which GSE information is proprietary, the Department will not be bound by FOIA, its legislative history, or Exemption 4 case law. "Public data" means all mortgage data obtained by the Secretary from the GSEs which the Secretary determines is not proprietary and should be made publicly available; Appendix D to the regulations lists and describes this data.

Finally, the proposed regulation defines the terms: "Act," "Day," "Director," and "Secretary." "Act" is defined to mean the Federal Housing Enterprises Financial Safety and Soundness Act or FHEFSSA. "Day" is defined as a calendar day rather than a working day. "Director" means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development. "Secretary" means the Secretary of Housing and Urban Development.

#### Subpart B—Housing Goals

##### Background

The Secretary is required to establish, by regulation, annual housing goals for each GSE. The goals include a low- and moderate-income housing goal,<sup>72</sup> a

<sup>71</sup> H.R. Rep. No. 101-54, 101st Cong., 1st Sess., pt. 3, at 2 (1989), and S. Rep. No. 101-19, 101st Cong., 1st Sess. 38 (1989).

<sup>72</sup> Section 1332.