

such as mortgage revenue bonds,<sup>115</sup> which serve significant purposes related to low- and moderate-income housing. The Secretary has concluded, however, that—although important in providing financing for low-income housing development—these activities are not equivalent to “mortgage purchases” and credit will not be granted toward the goals for these activities. This approach is consistent with the language in the Senate report concerning such activities: “The (GSEs) are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation.”<sup>116</sup>

(9) *Second homes.* Mortgages financing secondary residences would not count toward achievement of any of the goals because the Secretary has determined that the goals should be directed to increasing the supply of primary residences, not secondary residences.

(10) *Refinancings.* The purchase of refinanced mortgages shall fully count toward achievement of the housing goals except as provided in the specific restrictions under the special affordable housing goal which, generally, permits arms-length borrower-driven refinancings to count toward achievement of the goal but excludes wholesale exchanges of mortgages between the GSEs.

#### Affordability Determination Under the Goals

In analyzing a GSE's performance in achieving these goals, the Secretary will, for mortgage purchases on owner-occupied dwelling units, consider the mortgagors' income as required by the Act.<sup>117</sup>

For mortgage purchases on rental dwelling units, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available. Where such income information is not available, rent on the dwelling units is used as a proxy and compared to the rent levels affordable to very low-, low-, and moderate-income families.<sup>118</sup> To be considered affordable, the rent cannot exceed 30 percent of the maximum income level of the family's classification, *i.e.*, very low-, low-, or moderate-income, with adjustments for unit size.<sup>119</sup>

Consistent with the Act,<sup>120</sup> the Secretary is requiring that tenants' income information be collected by each GSE where such income information is available. Based on the legislative history, income information is available “when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program.”<sup>121</sup> Thus, where, as a condition of an existing federal, state, or local housing program, income information of tenants is required to be collected, such income information is considered as known to a lender and, therefore, available to the GSEs.

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate each GSE's performance in achieving the goals.<sup>122</sup> (The Secretary notes that the 30-percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 80 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term “rent” is not defined in the Act. Where the term “rent” is used in eligibility and affordability requirements for government housing programs, the term means “gross rent,” which includes all utilities, based on either actual data or allowances. Likewise, this proposed regulation defines “rent” as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component of housing costs from the rent calculation. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, the Department projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.<sup>123</sup>

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time providing workable means for including those costs, this proposed regulation allows the GSEs to use: Actual data on utilities; utility allowances based on data from the American Housing Survey (AHS) and issued annually by the Secretary; utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The proposed regulation provides that, unless such an alternative approach is approved by the Secretary, the GSEs shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, the Act requires that the test for affordability of rental dwelling units be applied to units “with appropriate adjustments for unit size as measured by the number of bedrooms.”<sup>124</sup> Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of bedrooms in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this proposed regulation requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as very low, low, or moderate, are established for the HUD Section 8 program and use of these adjustments is also required under this proposed regulation. To determine which rental dwelling units qualify as affordable, this proposed regulation combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate-income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent

dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

<sup>124</sup> Sections 1332(c)(2) and 1333(c)(2).

<sup>115</sup> 26 U.S.C. 143.

<sup>116</sup> *Id.* at 38. See also, *id.* at 31, and H.R. Rep. No. 102-206, 102d Cong., 1st Sess. 60 (1991) (hereinafter cited as “H. Rep.”).

<sup>117</sup> Sections 1332(c)(1) and 1333(c)(1)(A).

<sup>118</sup> Sections 1332(c) and 1333(c).

<sup>119</sup> Sections 1332(c)(2) and 1333(c)(2).

<sup>120</sup> Sections 1332(c)(1)(B) and 1333(c)(1)(B).

<sup>121</sup> S. Rep. at 35.

<sup>122</sup> See sections 1332(c) and 1333(c).

<sup>123</sup> Using rent as defined in this Notice, consistent with current law, 93 percent of existing rental