of area median income.¹²⁵ Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LÎHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net onebedroom unit size adjustment factor of 22.5 percent of area median income. 126 Similar interpolations also are made for three-bedroom and five-bedroom units.

In certain rare instances (normally in New England), it may be unclear which area median income should be applied to determine the affordability of certain dwelling units. Under the proposed regulation, where a GSE knows that a property is located in a census tract that is split between two different areas and it is not clear which area median income should be used, the GSE must calculate a median income for the split census tracts. The median income for such split areas equals: (A) The percentage of the population of the census tract that is located in the first area times the median income of that area; plus (B) the percentage of the population of the geographic segment that is located in the second area times the median income of that area.

For example, a GSE purchases a mortgage on a property located in a census tract that is partially in a metropolitan statistical area (MSA) and partially outside the MSA; seventy-five percent of the census tract's population is in the MSA and the remaining 25 percent is outside the MSA; the median

income for the MSA is \$40,000; the median income for the county outside the MSA is \$30,000. The median income for the split census tract would be 75 percent of \$40,000 plus 25 percent of \$30,000, or \$37,500.

HUD seeks guidance on the appropriate reference for income in non-metropolitan areas for determining affordability under the housing goals for low- and moderate-income families and special affordable housing and for defining low-income areas in the goal for central cities, rural areas and other underserved areas. Should borrower and area income in non-metropolitan areas be defined: (1) Relative to the county median income; or (2) relative to the maximum of the county median income or the median income of the non-metropolitan balance of the State?

Housing Plans

The proposed rule provides procedures if a GSE fails to meet any housing goal. If the Secretary determines that either GSE has failed to meet any housing goal or there is a substantial probability that a GSE will fail to meet a housing goal, the Secretary shall, by written notice, preliminarily require that the GSE submit a housing plan. 127 The GSE would then have 30 days (which may be extended by the Secretary) to respond in writing to the Secretary's notice. 128 The GSE's response may include any information that the GSE considers appropriate for the Secretary to consider in determining whether the GSE failed to meet a housing goal, whether there is a substantial probability that the GSE will fail to meet a housing goal, and whether achievement of the housing goal was or

After reviewing the GSE's response, the Secretary shall issue a final determination as to whether the GSE has failed or there is a substantial probability that the GSE will fail to meet the housing goal. 129 Additionally, the Secretary shall determine whether achievement of the housing goal was or is feasible based on market and economic conditions and the GSE's financial condition. 130 Where the Secretary determines that the GSE has failed or there is a substantial probability that the GSE will fail to meet the housing goal and that achievement of the housing goal was or is feasible, the Secretary shall require the GSE to submit a housing plan. 131

Each housing plan must be feasible and sufficiently specific to enable the Secretary to monitor the GSE's performance under and compliance with the plan. 132 A housing plan must describe the specific actions that the GSE will take to achieve the goal in the next calendar year or, where the Secretary has determined that a substantial probability exists that the GSE will fail to meet a goal in the current year, the plan must describe the reasonable improvements the GSE will make in the remainder of the year. 133

Subpart C—Fair Housing Requirements

The Act requires the Secretary, by regulation, to prohibit the GSEs from discriminating in their mortgage purchase activities and to require that the GSEs submit specified data to the Secretary on mortgage lenders to assist the Secretary's investigative activities under the Fair Housing Act and to assist investigative activities under the Equal Credit Opportunity Act (ECOA).¹³⁴ The Act also requires the Secretary to: Obtain and provide to the GSEs information on violators of the Fair Housing Act and ECOA; direct the GSEs to take action against mortgage lenders found to discriminate; and periodically review and comment on the GSEs' underwriting guidelines. 135

In enacting FHEFSSA, Congress recognized the unique position and responsibilities of the GSEs in the mortgage market and their unparalleled capabilities to effectuate fair housing and fair lending in that market. The GSEs are Federally sponsored and purchase a large majority of all of the conventional mortgages originated by primary lenders. The House Report on the Act stated:

While the Committee does not intend that the (GSEs) be responsible for investigating and punishing acts of discrimination, the Committee does expect the (GSEs) to use their considerable influence over the mortgage market to ensure that lenders with which they deal are acting in a nondiscriminatory manner. ¹³⁶

Discrimination on a prohibited basis is intolerable and socially and economically destructive. The GSEs on many occasions have expressed their commitment to combatting discrimination and advancing fair lending. The Secretary, through this regulation, seeks to make concrete the

¹²⁵ Similarly, for purposes of determining affordability to low-income families: An efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

¹²⁶ Similarly, for purposes of low-income affordability, the same 75 percent figure is used to obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent.

¹²⁷ Section 1336(b)(1).

¹²⁸ Section 1336(b)(2).

¹²⁹ Section 1336(b)(3)(A).

¹³⁰ *Id*.

¹³¹ Section 1336(c)(1).

¹³² Section 1336(c)(2).

¹³³ Id.

¹³⁴ Sections 1325(1)-(3).

¹³⁵ Section 1325(4)–(6).

¹³⁶ H. Rep. at 57.