

(i) *Newly available data.* Where a GSE uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the GSE need not use the new data until the start of the following quarter; the GSE may continue to use the data that was available at the beginning of the quarter.

§ 81.16 Special counting requirements.

(a) *General.* This section details the extent to which transactions or activities of the GSEs count toward achievement of any of the housing goals and, where the transaction or activity does count, whether full credit or some level of partial credit shall be provided for such transaction or activity. In determining the level of credit to be counted for each transaction or activity, the Secretary considers the following criteria:

(1) Where a transaction or activity is substantially equivalent to a mortgage purchase, the GSE shall receive full credit for the transaction or activity toward achievement of any of the housing goals;

(2) Where a transaction or activity has less than the normative risk associated with the GSE's mortgage purchases, the GSE shall receive less than full credit for the transaction or activity; and

(3) Where a transaction or activity creates a new market or adds liquidity to an existing market, the GSE shall receive full credit for the transaction or activity.

(b) *Not counted.* The following transactions or activities do not count toward achievement of any of the housing goals and shall not be included in the denominator in calculating either GSE's performance under the housing goals:

(1) Equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42;

(2) Purchases of State and local government housing bonds, including mortgage revenue bonds;

(3) Purchases of non-conventional mortgages, including mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203 (b) and (i) of the National Housing Act, 12 U.S.C. 1709 (b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs, except where such mortgages are acquired under a risk-sharing arrangement with the Department or another Federal agency and except where such mortgages are permitted to count toward achievement of the special affordable housing goals under § 81.14(h)(1)(i);

(4) Commitments to buy mortgages at a later date or time; and

(5) Mortgage purchases to the extent mortgage purchases finance any dwelling units that are secondary residences.

(c) *Other special rules.*—(1) *Credit enhancements.*

(i) Credit enhancement transactions shall count toward achievement of the housing goals where:

(A) The GSE provides specific mortgages it owns as collateral to guarantee bonds issued to finance housing; such bonds may be issued by any entity, including a State or local housing finance agency; and

(B) The GSE assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by the GSE if it had securitized the mortgages financed by such State or local housing finance agency.

(ii) Dwelling units financed under this type of credit enhancement transaction shall count toward a goal to the extent such dwelling units otherwise qualify under this rule.

(2) *Real estate mortgage investment conduits (REMICs).*

[Reserved pending responses received on the questions contained in the preamble].

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the GSEs and the Department or any other Federal agency under which the GSE and the agency acquire mortgages and share the risk associated with such acquisition shall count toward achievement of the housing goals on a partial credit basis equal to the percentage of risk that the GSE takes under the risk-sharing arrangement multiplied by the number of dwelling units that would have counted toward the goal(s) if the GSE had purchased all of the mortgages. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the risk-sharing arrangement multiplied by the percentage of risk that the GSE takes under the arrangement. The GSE shall provide a certification to the Secretary stating the actual percentage of risk to the GSE for each risk-sharing arrangement and explain how that percentage was calculated; that percentage of risk shall be used to count toward achievement of the housing goals.

(4) *Participations.* Participations purchased by a GSE shall receive partial credit toward achievement of the housing goals equivalent to the percentage of the mortgage that the GSE purchases.

(5) *Cooperative housing.* (i) For purposes of counting a GSE's purchase

of a mortgage on a cooperative housing unit ("a share loan") toward achievement of any of the housing goals, such a purchase is counted in the same manner as a mortgage purchase of single family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") shall count toward achievement of the housing goals. Where a GSE purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals except as provided under the special affordable housing goal and except where the GSE has already counted the mortgages under a housing goal applicable to 1993 or any subsequent year. For seasoned, single family mortgages that are more than 3 years old when purchased by a GSE, the affordability of the housing must be determined based on income and/or rent level information at the time of purchase by the GSE. For multifamily dwelling units, a seasoned, multifamily mortgage will be counted toward achievement of the housing goals based on rental information and area median income as of the time that the GSE purchases the mortgage.

(7) *Purchase of refinanced mortgages.* The purchase of a refinanced mortgage by a GSE shall count toward achievement of the housing goals to the extent the mortgage qualifies, except to the extent that the specific restrictions under the special affordable housing goal apply.

(8) *Second mortgages.* [Reserved pending responses received on the questions contained in the preamble].

§ 81.17 Income level definitions for owner-occupied units, actual tenants, and prospective tenants (if family size is known).

In determining whether a dwelling unit is affordable to very low-, low-, or moderate-income families, where (for rental housing) family size is known, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of