

families as provided in § 81.19. In determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Affordability data unavailable.* (i) *Multifamily.* When information regarding the affordability of a rental unit is not available, a GSE's performance with respect to such a unit may be evaluated with estimated affordability information, so long as the Department has reviewed and approved the data source and methodology for such estimated data. The use of estimated information to determine affordability may be used up to a maximum of five percent of the total number of units backing the GSEs' multifamily mortgage purchases in the current year, adjusted for REMIC percentage and participation percent. When the application of affordability data based on an approved market rental data source and methodology is not possible, and therefore the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward the achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, HUD will exclude units in multifamily properties from the denominator as well as the numerator in calculating performance under those goals.

(ii) *Rental units in 1-4 unit single family properties.* When neither the income of prospective or actual tenants of a rental unit in a 1-4 unit single family property nor actual or average rent data is available, and, therefore, the GSE lacks sufficient information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, a GSE may exclude rental units in 1-4 unit single family properties from the denominator as well as the numerator in calculating performance under those goals.

(7) *Timeliness of information.* In determining performance under the housing goals, each GSE shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of Median income.* (1) For purposes of determining an area's median income under §§ 81.17 through 81.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When a GSE cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the GSE shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the GSE can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When 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.

[60 FR 61888, Dec. 1, 1995, as amended at 65 FR 65087, Oct. 31, 2000]

#### § 81.16 Special counting requirements.

(a) *General.* HUD shall determine whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, HUD

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will consider whether a transaction or activity of the GSE is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the GSE's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall 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 housing development projects;

(2) Purchases of State and local government housing bonds except as provided in 81.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") insurance program, 12 U.S.C. 1715z-20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z-13, or HUD's Section 184 program, 12 U.S.C. 1515z-13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191-4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where the Department determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the GSE submits documentation to HUD that supports eligibility and that HUD makes such a determination, or

(iv) As provided in §81.14(e)(3)

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

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Secretary determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences; and

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the GSE already owns or has an interest in the balloon note at the time conversion occurs.

(10) Any combination of factors in paragraphs (b)(1) through (9) of this section.

(c) *Other special rules.* Subject to HUD's primary determination of whether a GSE shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

(1) *Credit enhancements.* (i) Dwelling units financed under a credit enhancement entered into by a GSE shall be treated as mortgage purchases and count toward achievement of the housing goals when:

(A) The GSE provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The GSE assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the GSE if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When a GSE provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the GSE may, on a case-by-case basis, seek approval from the Secretary for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits ("REMICs").* (i) A GSE's purchase

or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(1) Guaranteed by the Government National Mortgage Association; or

(2) Previously counted toward any housing goal by the GSE; and

(B) The GSE has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the GSE, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the GSE purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the GSE shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the GSE (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the GSE had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the GSE.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the GSEs and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the GSE is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by a GSE shall be treated as

mortgage purchases and count toward the achievement of the housing goals, if the GSE's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal 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") or a condominium project is a mortgage purchase and 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) are mortgage purchases and shall count toward achievement of the housing goals. Where a GSE purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* A GSE's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the GSE's performance under the housing goals, except where the GSE has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year, or where the Department determines, based upon a written request by a GSE, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as provided in §81.14(f), the purchase of a refinanced mortgage by a GSE is a mortgage purchase and shall

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count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.* (i) The purchase of a state or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such MRB shall count toward achievement of the goals where:

(A) The MRB is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the MRB; and

(B) The MRB is not a general obligation of a state or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward a housing goal to the extent such dwelling units otherwise qualify under this part.

(9) *Expiring assistance contracts.* In accordance with 12 U.S.C. 4565(a)(5), actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(9) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where a GSE holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the GSE shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where a GSE undertakes more than one action to assist a single project or where a GSE engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the GSE must submit the transaction to HUD for a determination on appropriate goals counting treatment.

(10) *Bonus points.* The following transactions or activities, to the extent the units otherwise qualify for one

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or more of the housing goals, will receive bonus points toward the particular goal or goals, by receiving double weight in the numerator under a housing goal or goals and receiving single weight in the denominator for the housing goal or goals. Bonus points will not be awarded for the purposes of calculating performance under the special affordable housing multifamily subgoal described in §81.14(c). All transactions or activities meeting the following criteria will qualify for bonus points even if a unit is missing affordability data and the missing affordability data is treated consistent with §81.15(e)(6)(i). Bonus points are available to the GSEs for purposes of determining housing goal performance for each year 2001 through 2003. Beginning in the year 2004, bonus points are not available for goal performance counting purposes unless the Department extends their availability beyond December 31, 2003 for one or more types of activities and notifies the GSEs by letter of that determination.

(i) *Small multifamily properties.* HUD will assign double weight in the numerator under a housing goal or goals for each unit financed by GSE mortgage purchases in small multifamily properties (5 to 50 physical units), provided, however, that bonus points will not be awarded for properties that are aggregated or disaggregated into 5-50 unit financing packages for the purpose of earning bonus points.

(ii) *Units in 2-4 unit owner-occupied properties.* HUD will assign double weight in the numerator under the housing goals for each unit financed by GSE mortgage purchases in 2- to 4-unit owner-occupied properties, to the extent that the number of such units financed by mortgage purchases are in excess of 60 percent of the yearly average number of units qualifying for the respective housing goal during the five years immediately preceding the year of mortgage purchase.

(11) *Temporary adjustment factor for Freddie Mac.* In determining Freddie Mac's performance on the Low- and Moderate-Income Housing Goal and the Special Affordable Housing Goal, HUD will count each qualifying unit in a property with more than 50 units as 1.2 units in calculating the numerator and

as one unit in calculating the denominator, for the respective housing goal. HUD will apply this temporary adjustment factor for each year from 2001 through 2003; for the year 2004 and thereafter, this temporary adjustment factor will no longer apply.

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in §81.2 will not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Secretary will monitor the practices and processes of the GSEs to ensure that they are not purchasing loans that are contrary to good lending practices as defined in §81.2. Based on the results of such monitoring, the Secretary may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices will not receive credit toward the three housing goals.

(d) *HUD review of transactions.* HUD will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If a GSE seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the GSE may provide HUD detailed information regarding the transactions for evaluation and determination by HUD in accordance with this section. In making its determination, HUD may also request and evaluate additional information from a GSE with regard to how the GSE believes the transactions should be counted. HUD will notify the GSE of its determination regarding the extent to which the class of transactions may count under the goals.

[60 FR 61888, Dec. 1, 1995, as amended at 65 FR 65088, Oct. 31, 2000]

**§81.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).**

In determining whether a dwelling unit is affordable to very-low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental

housing, family size and income information for the dwelling unit is known to the GSE, 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 area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1 .....	70
2 .....	80
3 .....	90
4 .....	100
5 or more .....	(*)

\*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 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 area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1 .....	56
2 .....	64
3 .....	72
4 .....	80
5 or more .....	(*)

\*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 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 area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1 .....	42
2 .....	48
3 .....	54