

Federal Green Construction Guide for Specifiers” for recommendations.

(iv) *Waste and materials management.* (A) Buildings shall plan for recycling of specific materials, such as paper, metals, plastics, cardboard, and electronics (and associated products).

(B) Adequate space, equipment, and transport accommodations for recycling must be included in the building design.

(C) During a project’s planning stage, local recycling and salvage operations that could process site-related construction and demolition materials must be identified. If such operations are available locally, materials must be recycled or salvaged.

(v) At least 50 percent of non-hazardous and non-radioactive construction, demolition and land clearing materials, excluding soil, must be recycled or salvaged.

(vi) *Ozone-depleting compounds.* The use of ozone-depleting compounds during and after construction must be eliminated where alternative environmentally preferable products are available.

(9) *Siting.* (i) The site selection for Federal building construction shall comply with all applicable Federal rules, Executive Orders, and other Federal actions governing environmental issues impacted by Federal building construction.

(ii) Site selection must prioritize;

(A) Building orientation to maximize energy efficiency of the building;

(B) Locations in central business districts and rural town center;

(C) Sites well served by transit;

(D) Site design elements that ensure safe and convenient pedestrian access;

(E) Consideration of transit access and proximity to housing affordable to a wide range of Federal employees;

(F) Adaptive reuse or renovation of buildings;

(G) Avoiding development of sensitive land resources (such as greenfields and USDA Prime Farmland); and

(H) Evaluation of parking management strategies.

(g)(1) *Ventilation and thermal comfort.* Federal agencies shall design new buildings and major renovations to meet the requirements of ASHRAE 55 (incorporated by reference; *see* § 435.3), including continuous humidity control within established ranges per climate zone, and ASHRAE 62.2, (incorporated by reference; *see* § 435.3).

(2) *Radon.* New Federal low-rise residential buildings and major renovations to such buildings in locations with a high radon potential shall comply with ASTM 1465–08a (incorporated by reference; *see* § 435.3).

16. Add § 435.7 to read as follows:

**§ 435.7 Water conservation.**

If water is used to achieve energy efficiency, water conservation technologies must be applied to the extent practical that the technologies are life-cycle cost-effective.

17. Revise § 435.8 to read as follows:

**§ 435.8 Life-cycle costing.**

For the purpose of this section, evaluation of whether compliance with a requirement is life-cycle cost-effective shall be considered on the basis of individual requirements, not the entire rule. If synergies exist that make combinations of requirements life-cycle cost-effective where individual requirements are not, then these combination of requirements shall be complied with. If requirements containing numerical savings values are not life-cycle cost-effective, the design of the proposed building shall incorporate as much savings as is life-cycle cost-effective.

18. Add a new § 435.9 to read as follows:

**§ 435.9 Green building certification.**

(a) *Green building certification system.* If a new Federal building or Federal building undergoing a major renovation, meeting the criteria in § 435.6(b) for which design for construction began 1 year after publication of the final rule is to be certified under a green building certification system, the system under which the building is certified must –

(1) Have the ability for assessors and auditors to independently verify the criteria and measurement metrics of the system;

(2) Be developed by a certification organization that

(i) Provides an opportunity for public comment on the system; and

(ii) Provides an opportunity for development and revision of the system through a consensus based process;

(3) Be nationally recognized within the building industry;

(4) Be subject to periodic evaluation and assessment of the environmental and energy benefits that result under the rating system; and

(5) Include a verification system for post occupancy assessment of the rated buildings to periodically demonstrate continued environmental benefits and energy savings.

(b) *Certification level.* If a new Federal building or Federal building undergoing a major renovation meeting either of the two criteria in § 435.6(b) is to be certified under a green building certification system, the building must be certified to a level that –

(1) Ensures compliance with—

(i) The energy efficiency performance standards of this part; and

(ii) Water use requirements of this part; and

(iii) Sustainable design requirements of this part.

(2) Promotes the high performance sustainable building guidelines referenced in E.O. 13423 “Strengthening Federal Environmental, Energy, and Transportation Management.”

(c) Federal agencies may request DOE approval of internal certification processes, using certified professionals, in lieu of certification by a system meeting the criteria in paragraph (a) of this section. Requests for approval must be sent to the Office of the Federal Energy Management Program in the DOE. Submissions should demonstrate how the internal certification process would ensure compliance with all applicable regulations under this Part. The Office of the Federal Energy Management Program may request additional information as necessary. The Office of Federal Energy Management will make a determination within 120 days of a completed submission. An agency may then employ the approved internal certification process but must obtain external certification by a system meeting the criteria in paragraph (a) of this section for at least 5 percent of the total number of buildings certified annually by the agency.

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## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1281

RIN 2590–AA16

### Federal Home Loan Bank Housing Goals

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** Section 1205 of the Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Home Loan Bank Act (Bank Act) by adding a new section 10C(a) that requires the Director of the Federal Housing Finance Agency (FHFA) to establish housing goals with respect to the Federal Home Loan Banks’ (Banks) purchase of mortgages, if any. Section 10C(b) provides that the Banks’ housing goals are to be consistent with the housing

goals established by FHFA for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) under sections 1331 through 1334 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended by HERA, taking into consideration the unique mission and ownership structure of the Banks. Section 10C(c) further provides that, to facilitate an orderly transition, the Director shall establish interim target housing goals for the Banks for a transition period extending through 2010. Section 10C(d) also extends the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act to the Banks in the same manner and to the same extent as those requirements apply to the Enterprises.

To implement section 10C, FHFA is issuing and seeking comments on a proposed rule that would establish three single-family owner-occupied purchase money mortgage goals and one single-family refinancing mortgage goal applicable to the Banks' purchases of single-family owner-occupied mortgages, if any, under their Acquired Member Assets (AMA) programs, consistent with FHFA's proposed single-family housing goals for the Enterprises. A Bank would be subject to the proposed housing goals if its AMA-approved mortgage purchases in a given year exceed a volume threshold of \$2.5 billion. Other provisions in the proposed rule would be consistent with comparable provisions applicable to the proposed Enterprise housing goals to the extent appropriate, taking into account the nature of the Banks' AMA programs and the Banks' unique mission and ownership structure.

**DATES:** Written comments must be received on or before July 12, 2010.

**ADDRESSES:** You may submit your comments, identified by regulatory information number (RIN) 2590-AA16, by any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov). Please include "RIN 2590-AA16" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at [RegComments@fhfa.gov](mailto:RegComments@fhfa.gov) to ensure timely receipt by the Agency. Please include "RIN 2590-AA16" in the subject line of the message.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA16, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA16, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:**

Nelson Hernandez, Senior Associate Director, (202) 408-2993, Charles E. McLean, Associate Director, (202) 408-2537, or Rafe R. Ellison, Senior Program Analyst, (202) 408-2968, Office of Housing and Community Investment, 1625 Eye Street, NW., Washington, DC 20006. (These are not toll-free numbers.) For legal matters, contact Kevin Sheehan, Attorney, (202) 414-8952, or Sharon Like, Associate General Counsel, (202) 414-8950, Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. (These are not toll-free numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Comments**

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted without change, including any personal information you provide, such as your name and address, on the FHFA Internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

**II. Background**

*A. Establishment of FHFA*

Effective July 30, 2008, HERA, Division A, Public Law 110-289, 122 Stat. 2654 (2008) (codified at 12 U.S.C. 4501 *et seq.*), amended the Safety and Soundness Act to create FHFA as an

independent agency of the Federal Government. HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises and the Banks from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB), respectively, to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the housing goals for the Enterprises from the Department of Housing and Urban Development (HUD) to FHFA. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner and carry out their public policy missions. The Enterprises and the Banks continue to operate under regulations promulgated by OFHEO and FHFB, respectively, until such regulations are superseded by regulations issued by FHFA. *See* HERA at sections 1302 and 1312, 122 Stat. 2795 and 2798; 12 U.S.C. 4511 note.

*B. Statutory and Regulatory Background*

*1. Federal Home Loan Bank System*

The Federal Home Loan Bank System (System) was created by the Bank Act to support mortgage lending and related community investment. *See* 12 U.S.C. 1421 *et seq.* The System is composed of 12 Banks with more than 8,000 member financial institutions, and the System's fiscal agent, the Office of Finance. The Banks fulfill their statutory mission primarily through providing secured loans (called advances) to their members. The Bank Act provides the Banks explicit authority to make secured advances. 12 U.S.C. 1430(a). Advances provide members with a source of funding for mortgages and asset-liability management, liquidity for a member's short-term needs, and additional funds for housing finance and community investment. Advances are collateralized primarily by residential mortgage loans and government and agency securities. 12 U.S.C. 1430(a)(3). Community financial institutions (*i.e.*, members with average total assets of less than \$1 billion (as adjusted annually for inflation)) may also pledge small business, small agriculture or community development loans as collateral for advances. 12 U.S.C. 1430(a)(3)(E).

Consolidated obligations, consisting of bonds and discount notes, are the principal source for the Banks to fund advances and investments. The Office of Finance issues all consolidated obligations on behalf of the 12 Banks. Although each Bank is primarily liable for the portion of consolidated

obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal of, and interest on, all consolidated obligations. *See* 12 CFR 966.9.

## 2. Bank AMA Programs

In July 2000, FHFB adopted a final regulation authorizing the Banks to establish Acquired Member Assets (AMA) programs. *See* 12 CFR part 955. A Bank may participate in an AMA program at its discretion; FHFA does not have the authority to compel a Bank to engage in any mortgage purchase activities. Each Bank must receive approval from FHFA pursuant to the requirements for new business activities in order to establish an AMA program. *See* 12 CFR part 980. A majority of the Banks have implemented AMA programs pursuant to the AMA approval authority.

In order for a Bank to acquire a mortgage loan under an AMA program, the loan must meet the requirements set forth under a three-part test established by the regulation. The three-part test consists of: a loan type requirement; a member or housing associate nexus requirement; and a credit risk-sharing requirement. 12 CFR 955.2. The AMA regulation generally authorizes the Banks to purchase conforming whole loans on single-family residential real property not more than 90 days delinquent. In addition, the Banks are authorized to purchase conforming whole loans on single-family residential real property regardless of delinquency status if the loan is insured or guaranteed by the U.S. government, although such loans are not eligible to be counted toward the Enterprises' housing goals, as provided in HERA.<sup>1</sup> The Banks acquire AMA from their participating members through either a purchase or funding transaction. The Banks are not authorized under the AMA programs to securitize the mortgages they purchase.

To date, FHFA has approved two AMA programs—the Mortgage Partnership Finance (MPF) program and the Mortgage Purchase Program (MPP)—

that authorize the Banks to purchase only eligible single-family, fixed-rate mortgages, including manufactured housing loans, from participating financial institution members (PFIs). The Banks are not approved to purchase any other types of mortgages under the AMA programs, including mortgages secured by multifamily properties. In operation, the Banks have limited their AMA programs to purchasing conforming, conventional and government-insured or -guaranteed fixed-rate whole first mortgages on single-family residential property with maturities ranging from 5–30 years. Banks have also purchased participations in AMA-approved loan pools after the original Bank acquired the loans. As of March 31, 2010, the combined value of the AMA mortgage loans in the 12 Banks' portfolios was \$69 billion, representing approximately seven percent of the Banks' total combined assets. In contrast, the Banks' outstanding advances, their primary business line, totaled \$572 billion as of March 31, 2010, representing 59 percent of the Banks' total combined assets.<sup>2</sup>

The MPF and MPP programs are designed such that the Banks manage the interest-rate risk and the PFI assumes a substantial portion of the risks associated with originating the mortgage, particularly the credit risk. The AMA regulation requires that PFIs provide credit enhancement to give the mortgages the Banks purchase the credit quality equivalent to an instrument rated at least investment grade (the fourth highest credit rating category or triple-B), although the approved AMA programs require PFIs to enhance the loans to the second highest investment grade (double-A). 12 CFR 955.3. The PFI may provide this credit enhancement through various means, such as establishing a risk account to cover losses in excess of a borrower's equity and primary mortgage insurance on mortgages purchased by a Bank, accepting direct liability to pay credit losses up to a specified amount, or entering into a contractual obligation to provide supplemental mortgage guaranty insurance.

As previously noted, advances remain the core business activity of the Banks and a principal means by which they fulfill their mission. Participation in an AMA program is elective. The acquisition of AMA has presented certain risk management challenges for some Banks. The AMA are long-term, fixed-rate loans and the portfolio

requires careful attention to interest rate risk management in order to match the duration of assets and liabilities and to adjust for loan prepayments. The Banks must also competitively price their product in the market without eroding their own financial interest. Given these challenges and in light of recent interest rate and earnings volatility, several Banks have scaled down their purchases of AMA and returned to their core products. After peaking in 2003, when the Banks purchased over \$91.2 billion in AMA, annual AMA purchases have steadily declined to an annualized average of about \$6.7 billion during the period between 2006 and 2009. Several Banks either have stopped accepting additional master commitments to purchase AMA from their members or no longer accept delivery. In 2007, 2008 and 2009, the principal pay-down and maturities of AMA held for portfolio were greater than purchases and funding of new loans held for portfolio.<sup>3</sup>

## 3. Bank Housing Goals Statutory Provisions

Section 10C(a) of the Bank Act, as amended by HERA, requires the Director of FHFA to “establish housing goals with respect to the purchase of mortgages, if any, by the [Banks],” which “shall be consistent with the goals established under sections 1331 through 1334 of the [Safety and Soundness Act, as amended].” 12 U.S.C. 1430c(a). Section 10C(b) provides that, in establishing the goals for the Banks, “the Director shall consider the unique mission and ownership structure of the [Banks].” 12 U.S.C. 1430c(b). In addition, section 10C(c) provides that, “to facilitate an orderly transition,” the Director shall establish interim target goals for the purchase of mortgages by the Banks for the calendar years 2009 and 2010. 12 U.S.C. 1430c(c). Section 10C(d) provides that the monitoring and enforcement requirements of section 1336 of the Safety and Soundness Act shall apply to the Banks in the same manner and to the same extent as they apply to the Enterprises. 12 U.S.C. 1430c(d). Section 10C(e) requires the Director to annually report to Congress on the performance of the Banks in meeting the housing goals under section 10C. 12 U.S.C. 1430c(e).

Sections 1331 through 1333 of the Safety and Soundness Act, as amended by HERA, require the Director of FHFA to establish new housing goals effective for 2010 and beyond for the Enterprises.

<sup>1</sup> *See* 12 U.S.C. 4562. For that reason, the proposed rule would provide that such loans not be eligible to be counted toward the Banks' housing goals either. The AMA regulation also authorizes the Banks to purchase other real-estate-related collateral, including: second liens and commercial real estate loans; small business, small farm and small agri-business loans; whole loans secured by manufactured housing regardless of whether the housing qualifies as residential real property, and state and local housing finance agency bonds, subject to prior new business activity approval by FHFA under 12 CFR part 980. *See* 12 CFR 955.2(a).

<sup>2</sup> *See* “Federal Home Loan Banks First Quarter 2010 Combined Financial Report, Combined Statement of Condition,” at 4.

<sup>3</sup> *See* “Federal Home Loan Banks Combined Financial Report for 2008” at 78–80, and “Federal Home Loan Banks Combined Financial Report for 2009” at 55–56.

The new Enterprise housing goals include four goals for conventional conforming single-family owner-occupied housing, one multifamily special affordable housing goal, and one multifamily special affordable housing subgoal. *See* 12 U.S.C. 4561, 4563(a)(2). The single-family housing goals target purchase money mortgages for low-income families,<sup>4</sup> families that reside in low-income areas,<sup>5</sup> and very low-income families,<sup>6</sup> and refinancing mortgages for low-income families. *See* 12 U.S.C. 4562. The multifamily special affordable housing goal targets multifamily housing affordable to low-income families, and the multifamily special affordable housing subgoal targets multifamily housing affordable to very low-income families. *See* 12 U.S.C. 4563. In a separate rulemaking in the **Federal Register**, FHFA has issued and sought comments on proposed new housing goals for the Enterprises for 2010 and 2011 pursuant to the requirements of sections 1331 through 1333 of the Safety and Soundness Act, as amended. 75 FR 9034 (Feb. 26, 2010).

#### 4. Banks' and Enterprises' Differences

Section 1201 of HERA, 12 U.S.C. 4513(f), requires the Director of FHFA to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity

to members, affordable housing and community development mission, capital structure, and joint and several liability, whenever promulgating regulations that affect the Banks. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that the rule is appropriate. As described below, FHFA is proposing significant differences between the Enterprise housing goals and the Bank housing goals—including establishing a volume threshold to avoid adverse impact on small PFIs—that recognize the significant differences between the Banks' businesses and purposes and those of the Enterprises.

Each Bank is a cooperative owned by financial institution members that act as both owners and customers of the cooperative. Members, as owners, are entitled to receive shares of the cooperative's earnings and access to the cooperative's products and services, including the AMA programs. A Bank is authorized to serve only members of its cooperative and, as discussed above, its primary business is providing advances to its members.

Fannie Mae and Freddie Mac have been owned by investors through their holdings of preferred or common stock shares since 1968 and 1989, respectively. An Enterprise's primary business is securitizing mortgages originated by financial institutions, and guaranteeing the timely payment of principal and interest on the mortgage-backed securities (MBS). The Enterprises also purchase mortgages for their mortgage portfolios. FHFA has instructed the Enterprises to significantly reduce the size of their

mortgage portfolios over time. The Banks are restricted to purchasing loans from their members, most of which are regulated depositories. By contrast, the Enterprises have access to a broad, nationwide network of financial institutions from which they purchase mortgages. Also, unlike the Banks, for which participation in the AMA is an elective activity, the fundamental statutory purpose of the Enterprises is to bring stability in the secondary market for residential mortgages by purchasing and making commitments to purchase residential mortgages. *See* 12 U.S.C. 1451 note; 12 U.S.C. 1716.

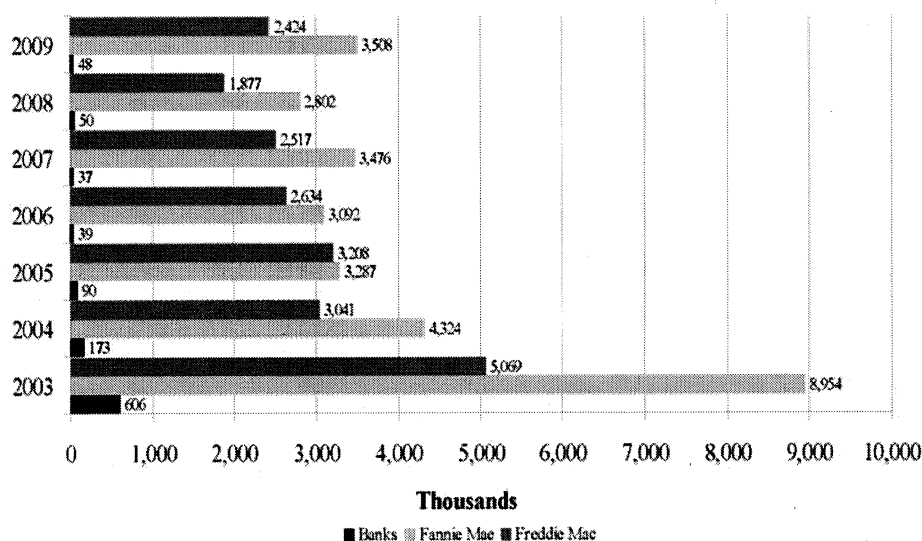
The Banks' and Enterprises' different ownership structures and associated statutory restrictions in the Bank Act and the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act (together, the Charter Acts), respectively, have a significant impact on their respective mortgage purchase activities. The Enterprises' mortgage purchase activities are substantially greater than that of the Banks. In calendar year 2009, the Banks' combined number of single-family mortgage purchases was slightly over 48,000, while Fannie Mae purchased approximately 3.51 million single-family mortgages and Freddie Mac purchased approximately 2.42 million single-family mortgages. The disparity between the Banks' and Enterprises' mortgage purchase businesses was great even during the peak years of the AMA programs. In 2003, the Banks purchased approximately 606,000 single-family mortgages, which was only 4.3 percent of the approximately 14.02 million single-family mortgages purchased by the Enterprises in that year (*see* Figure 1).

<sup>4</sup> "Low-income" is defined as income not in excess of 80 percent of area median income. *See* 12 U.S.C. 4502(14).

<sup>5</sup> "Families in low-income areas" is defined to include families living in census tracts where the median income does not exceed 80 percent of the area median income and families with incomes not in excess of the area median income that either live in a minority census tract or in a designated disaster area. *See* 12 U.S.C. 4502(28).

<sup>6</sup> "Very low-income" is defined as income not in excess of 50 percent of area median income. *See* 12 U.S.C. 4502(24).

**Figure 1. The Banks' and the Enterprises' Mortgage Purchase Activity**



Note: The source for the Banks' mortgage purchase activity data was the FHFA's AMA database.

The sources for the Enterprises' mortgage purchase activity data were the 2003 through 2009 Annual Housing Activities Report tables. The data include all single family mortgages purchased by the Enterprises.

### III. The Proposed Rule

The proposed rule would define housing goals for the Banks in terms similar to the single-family housing goals for the Enterprises. Separate goals would be established for AMA-approved mortgages on owner-occupied single-family housing. The goals for purchase money mortgages would separately measure performance on purchase money mortgages for low-income families, for families in low-income areas, and for very low-income families. The goal for refinancing mortgages would measure performance on refinancing mortgages for low-income families.

### IV. Applicability of Bank Housing Goals to 2010 and Beyond

HERA requires FHFA to establish 2009 and 2010 interim target housing goals for the Banks that facilitate an orderly transition and are consistent with those of the Enterprises. In order to facilitate an orderly transition, FHFA is proposing to establish housing goals for 2010 and beyond. The Banks' administrative and monitoring challenges would be reduced by enabling the Banks to establish policies and procedures to meet the housing goals requirements with the knowledge that these requirements will not be changed the following year. Further, FHFA believes this approach would facilitate a more orderly transition to housing goals than the alternative, which would entail establishing interim

target housing goals in the third quarter of 2010 and establishing new housing goals in the fourth quarter of 2010 or first quarter of 2011. The Banks' unique ownership structure and mission is such that FHFA needed to add criteria to the Bank housing goals that are not necessary for those of the Enterprises, and FHFA required additional time to develop these criteria. In addition, establishing interim target housing goals for 2009 and 2010 and then replacing them with housing goals for 2011 that differ significantly could create administrative and monitoring challenges for the Banks.

Pursuant to the requirements of HERA, a Bank that fails to meet a housing goal in 2010 and beyond would be required to submit a housing plan if FHFA determined that the housing goal was feasible for that year and that a housing plan was appropriate. See 12 U.S.C. 4566. FHFA appreciates that a Bank's capacity to meet the housing goals is affected by when the housing goals requirements are finalized and that a Bank may have difficulty meeting a housing goal for 2010. For this reason, when determining the feasibility of the 2010 housing goals, FHFA will take into consideration whether a Bank had the capacity to adjust its AMA program in an orderly manner to meet a housing goal and whether a Bank had sufficient opportunity to meet a housing goal. Additionally, FHFA will study the Banks' performance in 2010 and the operations of their AMA programs to

gain information on whether the housing goals will require the Banks to make significant changes to their MPF or MPP programs.

### V. Market-Based Housing Goals

The proposed rule would establish market-based housing goals for the Banks in a manner largely consistent with the proposed market-based housing goals for the Enterprises. The proposed rule would measure the Banks' single-family housing goals performance relative to the *actual* goals-qualifying shares of the primary mortgage market during the year in their districts. FHFA believes that the advantages of comparing the Bank's performance to actual market performance outweigh the disadvantages. A more detailed discussion of the proposed market-based approach and its legal justification is included in the proposal for the new Enterprise housing goals. See 75 FR at 9035–9036 (Feb. 26, 2010).

A disadvantage of this approach is that public information on the goals-qualifying shares of the single-family primary mortgage market is not available until the release of Home Mortgage Disclosure Act (HMDA) data in late summer of the following year. However, FHFA will conduct a monthly survey of single-family mortgage originations pursuant to section 1324(c) of the Safety and Soundness Act, as amended by HERA, and make data collected under that survey available to

the public. 12 U.S.C. 4544(c). Release of that data is likely to provide detailed information on home mortgage lending activity more frequently and in a timelier manner than does the public release of the data collected under HMDA. FHFA will use the survey data to supplement HMDA data in its monitoring of Bank housing goals performance.

Proposed § 1281.11 would establish single-family housing goals that include an assessment of a Bank's performance as compared to the actual share of the market that fits the criteria for each goal. FHFA is proposing to calculate the actual goals-qualifying shares of the district-level primary mortgage market during a year using all mortgages originated in the geographic boundaries of each Bank district (meaning that the properties securing the mortgages are located in the district), including mortgages originated both by members and non-members. A Bank would meet a housing goal if its annual performance meets or exceeds the actual share of the market in that district that fits the criteria for a particular housing goal for that year. A Bank would fail to meet a goal if it falls short of the actual market share for that goal in the year. All mortgages purchased by a Bank that meet the requirements of the proposed regulation would count toward the Bank's goal performance, regardless of where the mortgages are located; but the market share against which the Bank's performance would be evaluated would be the market share of mortgages located in the district as described above. The housing goals would not apply until an individual Bank reached the dollar volume threshold.

FHFA is proposing this approach after considering several alternatives. Because Banks can only purchase AMA-approved mortgages from their members, and because Banks are permitted to, and often do, purchase AMA-approved mortgages originated outside of their districts, defining a Bank's mortgage market based on loans originated within the district does not completely reflect the market a Bank serves. To address this, FHFA considered defining the district-level mortgage market as those mortgages originated by each Bank's members, regardless of the location of the property securing the mortgage. However, the majority of members have never sold mortgages to a Bank, and therefore, this approach would not accurately reflect the market served by a Bank. Additionally, smaller members and nonmetropolitan members are not subject to the data reporting requirements of HMDA, which could

have a significant impact on determining the goals-qualifying share in districts such as the Des Moines and Topeka Bank districts with a large number of such members.

FHFA also considered limiting the market to those members that sold AMA-approved mortgages to their Banks in a given year. However, the issues with measuring the market based on all mortgages originated by a Bank's members that are discussed above would also exist for this approach. There could also be variations in the goals-qualifying share resulting from changes in member participation in the AMA program. Such variations would make it difficult for the Banks to establish policies and procedures for meeting the housing goals requirements.

FHFA also considered assigning weights to each AMA-approved mortgage purchased by a Bank to reflect the variations in the share of goals-qualifying mortgages in districts. This approach would assign more weight to a mortgage purchase in a district where the goals-qualifying share of the market was lower, so that the Banks in such districts would not be disadvantaged. FHFA concluded that such an approach would be impractical, because FHFA would not be able to produce the weights until district-level shares of goals-qualifying mortgages were known. As a result, the Banks would not have an opportunity to modify their mortgage purchase activities in response to the weighting values. Such a mortgage-weighting approach could also lead a Bank to increase its mortgage purchase activities outside its district in a manner that could adversely impact members that operate only within its district. The mortgage-weighting approach would increase the complexity of calculating housing goals performance, thus making the process less transparent and potentially more subjective.

FHFA also considered proposing the inclusion of a benchmark level for each housing goal to measure a Bank's performance. Specifically, a Bank would meet a housing goal if its annual performance met the benchmark level or the actual share of the market that fits the criteria for a particular housing goal for that year. A Bank would fail to meet a goal if it fell short of both the benchmark level for that goal and the actual market share for that goal in the year. Benchmark levels for performance could provide more certainty for the Banks in establishing strategies for meeting the housing goals.

If benchmark levels were adopted for the Bank housing goals, FHFA would set the benchmark levels equal to the benchmark levels for the corresponding

Enterprise housing goals. FHFA has proposed to establish benchmark levels for the Enterprise housing goals based on FHFA's national market size estimates. *See* 75 FR at 9037–9051 (Feb. 26, 2010). FHFA also considered the possibility of setting benchmark levels based on district-level market size estimates but concluded that the market sizes could not be reliably estimated in advance. Bank members with large residential lending businesses often originate mortgages outside the states that comprise the district of the Bank of which they are a member. For this reason, the geographic market being served by the Banks is not limited to areas within their respective districts. In addition, large Bank members have affiliates that may be members of different Banks, which makes it possible for these affiliates to sell mortgages originated in one Bank district to another Bank. For these reasons, FHFA is not proposing to set benchmarks for the Banks.

FHFA seeks comment on whether it would be appropriate to establish benchmark levels as a means of measuring the Banks' housing goals performance, in addition to measuring performance based on a Bank's actual share of goal-qualifying mortgages relative to its district-level market share, and if so, whether it would be appropriate to set benchmark levels for the Bank housing goals equal to the benchmark levels for the Enterprise housing goals. *See* 75 FR at 9051 (Feb. 26, 2010).

## VI. Volume Threshold

The proposed rule would establish a dollar volume threshold of \$2.5 billion that a Bank must exceed before it is subject to the housing goals. The threshold is designed to take into consideration the Banks' unique mission and ownership structure and the current status of the AMA programs. Several Banks that continue to participate in the AMA do so principally as a service to their members. The large majority of members participating in the AMA are small asset size institutions. Since the inception of the AMA programs, approximately 88 percent of PFIs that sold mortgages to the Banks had total assets of under \$1 billion. From January 1, 2009 to June 30, 2009, the percentage was even higher at 93 percent. Faced with risk management requirements, monitoring for compliance, and reporting of achievement on the housing goals, a Bank with a small AMA program might elect to discontinue offering an AMA product to its members. Discontinuance of an AMA

program could adversely impact PFIs, such as those in rural areas, that may have limited or no access to the secondary market because of the higher per-mortgage sales cost associated with delivering a relatively small number of mortgages to purchasers, or the inability of these PFIs to meet purchasers' mortgage servicing requirements.

FHFA is proposing to establish a volume threshold that would need to be met before a Bank would be subject to the proposed housing goals. The volume threshold is intended to ensure that Banks with significant AMA volume in any year would be subject to the housing goals, while Banks with a relatively low annual volume of purchases of AMA-approved mortgages, *i.e.*, \$2.5 billion or less, can continue to serve all PFIs without being subject to the housing goals. FHFA believes it is important that the housing goal mission objective of expanding access to mortgage finance to low-income families and families in low-income areas be balanced against the Banks' need to provide liquidity to small members and the communities they serve.

To establish the proposed volume threshold, FHFA used 2008 HMDA mortgage origination data since these data are the most reliable and accurate mortgage data available to FHFA at this time. Using these data, FHFA calculated the total unpaid principal balance (UPB) of conforming, first lien mortgages secured by owner-occupied, single-family residences (mortgages for home improvement and Home Ownership Equity Protection Act (HOEPA)) mortgages were excluded to be consistent with the market estimate approach for the Enterprise housing goals), which equaled \$986 billion (approximately \$1.0 trillion). FHFA is proposing that the volume threshold should be equal to approximately 0.25 percent of the market, *i.e.*, \$2.5 billion. Assuming the average UPB of the mortgages a Bank purchases equals \$200,000, a Bank would need to purchase only 12,500 mortgages in a given year to meet the volume threshold.

The proposed volume threshold of \$2.5 billion would be reasonable in light of the history of the AMA program.

FHFA considered the volume of mortgages purchased by the Banks during the period when the Banks had their largest presence in the national market, which was from 2002 to 2004. During this period, seven Banks in 2002, eight Banks in 2003 and four Banks in 2004 had annual volume of AMA-approved mortgages greater than \$2.5 billion and would have been subject to the housing goals. A significant percentage of Banks' annual volume of AMA-approved mortgages exceeded \$5.0 billion in 2002 and 2003: four Banks in 2002 and seven Banks in 2003. (See Table 1). Given this, FHFA considered proposing to set the volume threshold at \$5.0 billion. The proposed volume threshold of \$2.5 billion would be mid-way between the higher volume threshold and housing goals that would apply without regard to the volume of mortgages purchased by the Bank. FHFA requests comments on whether a volume threshold should apply, whether the proposed threshold of \$2.5 billion is appropriate, and whether a higher or lower threshold should apply.

Table 1

**Banks' AMA Mortgages Purchased  
Total Unpaid Principal Balance by Year  
(Dollars in Millions)**

Bank	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Boston	\$32	\$644	\$3,123	\$9,912	\$4,091	\$3,415	\$371	\$174	\$620	\$328
New York	\$571	\$131	\$268	\$539	\$707	\$450	\$184	\$176	\$138	\$147
Pittsburgh	\$3,643	\$6,448	\$10,959	\$14,306	\$3,769	\$1,222	\$473	\$131	\$515	\$414
Atlanta	\$267	\$449	\$514	\$1,798	\$912	\$1,014	\$503	\$914	\$163	\$0
Cincinnati	\$0	\$556	\$1,683	\$7,586	\$3,546	\$1,748	\$1,160	\$1,509	\$1,027	\$3,239
Indianapolis	\$82	\$371	\$5,539	\$4,780	\$1,905	\$3,325	\$1,636	\$468	\$496	\$564
Chicago	\$767	\$3,406	\$5,824	\$16,915	\$4,991	\$1,842	\$1,129	\$1,355	\$2,684	\$43
Des Moines	\$6,469	\$3,519	\$4,997	\$17,515	\$1,907	\$469	\$361	\$370	\$1,065	\$1,519
Dallas	\$2,219	\$2,024	\$1,429	\$1,938	\$569	\$332	\$225	\$179	\$190	\$0
Topeka	\$11	\$200	\$266	\$808	\$1,058	\$326	\$228	\$254	\$764	\$1,159
San Francisco	\$0	\$0	\$522	\$8,497	\$532	\$72	\$18	\$0	\$0	\$0
Seattle	\$418	\$1,489	\$8,005	\$6,651	\$1,561	\$86	\$0	\$0	\$0	\$0
System	\$14,479	\$19,236	\$45,128	\$91,245	\$25,549	\$14,300	\$6,289	\$5,530	\$7,643	\$7,413

FHFA considered proposing a volume threshold that would exclude mortgages acquired from small members when calculating a Bank's annual volume of AMA-approved mortgages for purposes of the volume threshold. If small members were excluded for purposes of the volume threshold, FHFA would establish criteria for determining which members should be excluded, such as excluding members with total assets of less than \$1.0 billion. An alternative would be to exclude members that originate a small number of mortgages, or members that are not required to submit HMDA data to their primary regulator. FHFA requests comments on whether any of these alternatives would be appropriate, what criteria would be appropriate for determining which

members should be excluded, and whether affiliates should be considered in applying such criteria.

In developing the proposed rule, FHFA also considered other approaches for establishing volume thresholds for the Bank housing goals. FHFA considered a district market share approach that would apply housing goals to a Bank if its purchases of AMA-approved mortgages exceeded one percent of all mortgages originated in its district. The rationale behind the district market share approach was that a Bank would have a material impact on the mortgage market serving its district if it purchased at least one percent of the mortgages originated in its district.

FHFA also considered a dollar and volume loan approach, which was first

raised by FHFB in the May 2000 proposed rulemaking for the AMA regulation. In that proposed rule, FHFB decided to defer establishing housing goals until “\* \* \* such time as the conventional residential mortgage programs of the Banks, in the aggregate, have achieved a size and scope indicative of a mature program. \* \* \*” See 65 FR 25676, 25685 (May 3, 2000). As an example of a “mature program,” FHFB proposed annual aggregated acquisition volume for the System of at least 100,000 loans or \$10 billion, which FHFB considered to be of national scope. FHFB also discussed a volume threshold of 75,000 mortgages acquired, so long as seven Banks accounted for at least 10 percent of the AMA acquisitions volume for a given year.



FHFA also considered the feasibility of adopting a volume threshold based on the percentage of AMA-approved mortgages purchased to Bank assets. For example, a Bank would be subject to housing goals if its purchases of AMA-approved mortgages exceeded 10 percent of the Bank's assets. FHFA considered such an approach because at some level of annual mortgage purchases, a Bank is no longer simply providing a service to its members, but is engaging in a profitable line of business to augment its primary line of business—advances to its members. At such a point, it would appear to be reasonable to also apply housing goals to this line of business.

FHFA requests comments on the volume threshold alternatives discussed above and on any other alternatives that might be used.

## VII. Analysis of Proposed Rule

### A. Definitions—Proposed § 1281.1

Proposed § 1281.1 would set forth definitions applicable to the Bank housing goals provisions. A number of the definitions are the same as those applicable to the Enterprises for their proposed new housing goals, and other definitions have been modified to reflect their applicability under the AMA programs. In order to maintain consistency between the Enterprise housing goals and the Bank housing goals where feasible, FHFA will consider public comments on the definitions proposed in the Enterprise housing goals and any resulting changes to the Enterprise housing goals in determining whether conforming changes are needed in the Bank housing goals. See 75 FR 9034 (Feb. 26, 2010).

*Definition of “families in low-income areas.”* The definition of “families in low-income areas” includes families with incomes at or below 100 percent of AMI who reside in “minority census tracts,” which is defined by HERA to mean a census tract that has a minority population of at least 30 percent and a median family income of less than 100 percent of AMI. 12 U.S.C. 4502(29).

In addition, the definition of “families in low-income areas” includes families with incomes at or below 100 percent of AMI who reside in “designated disaster areas.” Consistent with the proposed definition for the new Enterprise housing goals, the proposed rule would define “designated disaster areas” as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by the Federal

Emergency Management Agency (FEMA), exceeds \$1,000 per household for that census tract.

*Definition of “mortgage.”* The definition of “mortgage” would not include personal property manufactured housing loans, pending further review of the appropriate treatment of such loans under the Enterprise and Bank housing goals.

*Designated disaster areas.* The definition of “families in low-income areas” includes families with incomes at or below 100 percent of AMI who reside in “designated disaster areas.” The proposed rule would define “designated disaster areas” as areas at the census tract level and include only census tracts in counties approved for individual assistance within the declared major disaster area where the average real property damage severity, as reported by FEMA, exceeds \$1,000 per household for that census tract.

Disaster areas are declared when an area is adversely affected by some unforeseen event. However, not all disasters impact housing to the same degree, and the severity of the impact varies within the declared area. Presidential Major Disaster Declarations are defined by FEMA at the county level in the area affected by the major disaster and can be declared to be eligible for public assistance, individual assistance or both. Public assistance is available to local governments for the repair, replacement or clean-up of public infrastructure. Individual assistance is broken down further into two categories, housing needs and “other than housing needs.”<sup>7</sup> Housing needs include repair, replacement and construction of homeowner residences. The proposed rule would limit the definition of “designated disaster areas” to those counties eligible for individual assistance, and it would establish a minimum average real property damage severity.

For purposes of complying with the Community Reinvestment Act (CRA), regulators have made the determination that “[e]xaminers will consider institution activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be

extended.”<sup>8</sup> To accommodate the Banks’ business planning requirements, for purposes of the low-income areas housing goal, the proposed rule would treat a designated disaster area as effective beginning no later than January 1 of the year following the FEMA designation and continuing through December 31 of the third full calendar year following the FEMA designation. If data are available in a particular case to support treatment as a designated disaster area from an earlier date, FHFA may provide for such treatment.

FHFA welcomes comments on the proposed definitions in § 1281.1.

### B. Housing Goals—Proposed §§ 1281.10 and 1281.11

*General.* Proposed § 1281.10 provides an overview of the contents of this subpart. Although the final rule establishing the new housing goals for the Banks will not be published for effect until later in 2010, FHFA will evaluate performance under the housing goals established for 2010 on a calendar year basis.

*Volume Threshold.* Proposed § 1281.11(a) would establish a volume threshold that would trigger application of the housing goals to a Bank. Specifically, a Bank that in a calendar year purchased AMA-approved mortgages with a total UPB greater than \$2.5 billion would be subject to the housing goals for that year.

*Market-Based Housing Goals.* Proposed § 1281.11(b) would provide that compliance with a housing goal would be measured by comparing a Bank’s performance with the actual share of the market in the Bank’s district. Proposed § 1281.11(b) would establish criteria for determining the size of the market for each Bank district based on HMDA data on mortgages secured by property located in that Bank district. The criteria for establishing the size of the market reflect the types of mortgages that would be counted for purposes of the housing goals and that would typically be eligible for purchase by a Bank.

*Bank Housing Goals.* Proposed § 1281.11(c) through 1281.11(f) would establish four single-family housing goals applicable to any Bank that met the volume threshold in a particular year. Goals would be established for purchase money mortgages for low-income families, for families in low-income areas, and for very low-income

<sup>7</sup> Federally declared disaster areas are managed by FEMA and can be tracked at FEMA’s Web site. See <http://www.fema.gov/news/disasters.fema>.

<sup>8</sup> The Department of the Treasury, the Federal Reserve Board and the Federal Deposit Insurance Corporation, *Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice*, 74 FR 498, 509 (Jan. 6, 2009).



families. A goal would also be established for refinancing mortgages for low-income families. Unlike the new Enterprise housing goals, these Bank housing goals would not include a multifamily special affordable housing goal or multifamily special affordable housing subgoal, as the Banks have not been approved to purchase multifamily loans under the AMA programs. The single-family housing goals would be based on an evaluation of the Bank's performance relative to the market for each housing goal in each year.

#### *C. General Counting Requirements—Proposed § 1281.12*

Proposed § 1281.12 would set forth general requirements for the counting of Bank AMA-approved mortgage purchases toward the achievement of the housing goals. Performance under the single-family housing goals would be evaluated based on the percentage of all AMA-approved mortgages on single-family, owner-occupied properties purchased by a Bank that meet a particular goal.

Proposed § 1281.12(a) would provide that performance under each of the single-family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b). The numerator is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied single-family properties that count toward achievement of a particular housing goal. The denominator is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties.

Proposed § 1281.12(b) would provide that when a Bank lacks sufficient data or information, e.g., income of mortgagor, to determine whether the purchase of a mortgage counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, but may not be included in the numerator. The proposed rule would not allow the Banks to use missing data estimation methodologies as used by the Enterprises, in light of the complexity of developing an estimation methodology that would be suitable for the Banks. FHFA invites comment on whether a method for estimating missing affordability data would be feasible for the Bank housing goals.

The provisions in proposed § 1281.12(c) through (f), which address credit toward multiple goals, application of median income, sampling and newly available data, respectively, are consistent with the provisions proposed for the Enterprise 2010 housing goals.

The MPF program allows Banks to purchase a percentage of a mortgage or mortgage pool initially acquired by another Bank under the program. For purposes of receiving credit under one of the housing goals, each mortgage will be assigned to the Bank that initially acquired the mortgage regardless of whether an interest in the mortgage was later sold to another Bank.

In September 2008, FHFA approved the Chicago Bank's request to establish the MPF Xtra program, under which the Bank would buy certain qualified, conforming mortgages from eligible members for immediate sale to Fannie Mae. The MPF Xtra program is not an AMA program authorized under 12 CFR part 955.<sup>9</sup> Under the MPF Xtra program, the Bank serves essentially as a conduit or intermediary with respect to the sale of the mortgages to Fannie Mae. The mortgages may be counted by Fannie Mae toward compliance with its housing goals. If the mortgages were also to be considered for purposes of the Bank housing goals, double-counting of the mortgages could occur. For these reasons, under the proposed rule, mortgages purchased by a Bank pursuant to the MPF Xtra program would not be considered for purposes of the Bank housing goals.

#### *D. Special Counting Requirements—Proposed § 1281.13*

Proposed § 1281.13 would set forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals, a number of which are discussed further below.

Proposed § 1281.13(b) would specify the types of transactions that shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under

the housing goals. The intent of this section is to specify the counting treatment for transactions in which the Banks are authorized to engage under the approved AMA programs. The counting rules do not purport to authorize the purchase of any types of mortgages, but are intended solely to indicate whether such mortgages shall receive full, partial or no credit toward the housing goals. Accordingly, transactions in which the Banks are not authorized to engage under the approved AMA programs are not included in paragraph (b). The Bank counting rules may differ from the counting rules for the proposed new Enterprise housing goals. For example, the Banks are not authorized to purchase private label securities (PLS) under the AMA programs; therefore, it is not necessary to state in the proposed rule that Bank purchases of PLS shall not be counted for purposes of the housing goals. On the other hand, while the Banks are authorized to purchase non-conventional loans under the AMA authority, HERA amended the Safety and Soundness Act to prohibit such loans from counting toward the Enterprise housing goals and, thus, purchases of such loans by the Banks are specifically excluded from counting in paragraph (b).

Proposed § 1281.13(b) would make clear that where a mortgage falls within one of the categories excluded from consideration under the housing goals, the mortgage should be excluded even if it otherwise would fall within one of the special counting rules in proposed § 1281.13(c). For example, a non-conventional mortgage that would be excluded from consideration pursuant to proposed § 1281.13(b)(1) could not be counted even if it otherwise would be counted as a seasoned mortgage under proposed § 1281.13(c)(2).

*Home Equity Conversion Mortgages.* Proposed § 1281.13(b)(1) would exclude the purchases of all non-conventional single-family mortgages, including Home Equity Conversion Mortgages (HECMs), from counting towards the Banks' housing goals—that is, such purchases would be excluded from both the numerator and denominator in calculating goal performance. This is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only conventional mortgages. See 12 U.S.C. 4562(a).

*Mortgages financing secondary residences.* Proposed § 1281.13(b)(6) would prohibit the counting of mortgage

<sup>9</sup> In May 2007, FHFA also approved the Atlanta Bank's request to offer the Global Mortgage Alliance Program (GMAP), under which the Bank would facilitate the sale of certain qualified conforming mortgage loans from eligible members to another of its members—Global Mortgage Alliance, LLC, which would then securitize those loans. To date, no transactions have occurred under GMAP. The GMAP is not an AMA program authorized under part 955. Both the MPF Xtra and GMAP programs were separately authorized under the Banks' incidental authority contained in sections 11(a) and 11(e)(1) of the Bank Act. See 12 U.S.C. 1431(a), 1431(e)(1).

purchases to the extent they finance any dwelling units that are secondary residences. This is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1332(a) of the Safety and Soundness Act to restrict the Enterprise single-family housing goals to include only purchases of owner-occupied mortgages. See 12 U.S.C. 4562.

*Subordinate liens.* Proposed § 1281.13(b)(8) would exclude the purchases of subordinate lien mortgages (second mortgages) from counting towards the Banks' housing goals. This exclusion is consistent with the counting treatment for the proposed new Enterprise housing goals, as HERA amended section 1331 of the Safety and Soundness Act to provide that the single-family housing goals are limited to purchase money or refinancing mortgages. See 12 U.S.C. 4561. This would exclude "piggy-back" liens that may be acquired by a Bank along with the corresponding first lien mortgage and subordinate lien mortgages, such as home equity loans, acquired separately by a Bank where the Bank does not also acquire the corresponding first lien mortgage.

*Previously counted mortgages.* Proposed § 1281.13(b)(9) would prohibit the counting of mortgages toward performance under the housing goals if the mortgage has previously been counted for purposes of the performance of the Bank under the housing goals. In order to limit excessively burdensome recordkeeping that could result, the rule would make clear that this limitation only extends back for five years. Although the Banks have not previously been subject to housing goals, this language is included for applicability in future years.

*Construction-to-permanent loans.* Proposed § 1281.13(b)(10) would exclude purchases of mortgages secured by properties that have not been approved for occupancy from consideration for purposes of the housing goals.

*Housing goals credit for certain transactions.* Proposed § 1281.13(c) would specifically provide that certain types of transactions be counted for purposes of the housing goals, including mortgages on cooperative housing and condominium units, seasoned mortgages, and refinancing mortgages. Proposed § 1281.13(c) would not include certain types of transactions that are eligible for housing goals credit under the Enterprise housing goals, including credit enhancements for goal-qualifying mortgages, entering into risk sharing agreements with federal agencies to finance qualifying

mortgages, and purchasing mortgage revenue bonds backed by qualifying mortgages. Such transactions would not be eligible for Bank housing goals credit because of the more limited scope of the approved AMA programs. Proposed § 1281.13(c) would also make clear that where a transaction falls under more than one of the special counting rules in § 1281.13(c), all of the applicable requirements must be satisfied in order for the loan to be counted for purposes of the housing goals.

*HOEPA mortgages and mortgages with unacceptable terms and conditions.* Proposed § 1281.13(d) would provide that HOEPA mortgages and mortgages with unacceptable terms and conditions must be counted in the denominator as mortgage purchases but may not be counted in the numerator, regardless of whether the mortgages would otherwise qualify based on the affordability and other counting criteria. This proposed treatment is consistent with past practice for the Enterprises and with section 1332(i) of the Safety and Soundness Act, as amended by HERA, which provides that no credit may be given for mortgages that FHFA determines are "unacceptable or contrary to good lending practices." 12 U.S.C. 4562(i).

*FHFA guidance.* Proposed § 1281.13(e) would provide that FHFA may provide guidance on the treatment of any transactions under the housing goals. Such guidance may be provided in response to a request from a Bank, or it may be provided at the initiation of FHFA.

*Private label securities.* Because FHFA is proposing to count only mortgages purchased through AMA programs in determining each Bank's housing goal performance, and the Banks are not authorized to purchase PLS through these programs, PLS would not be counted in determining a Bank's housing goals performance.

*Housing finance agency obligations.* FHFA also considered whether to apply the housing goals to the Banks' purchase of state or local housing finance agency obligations. However, because FHFA is proposing to count only mortgages purchased through AMA programs in determining each Bank's housing goal performance, and the Banks are not authorized to purchase state or local housing finance agency obligations through these programs, state or local housing finance agency obligations would not be counted in determining a Bank's housing goals performance.

#### *E. Housing Goals Enforcement—Proposed §§ 1281.14 and 1281.15*

Proposed § 1281.14 would provide that the Director shall determine whether each Bank has exceeded the volume threshold on an annual basis. For any Bank that has exceeded the volume threshold, the Director would also determine whether the Bank has met the housing goals, in accordance with the standards established under the Safety and Soundness Act, as amended by HERA. If the Director determines that a Bank has failed to meet any housing goal, the Director shall provide notice to the Bank in writing of such preliminary determination.

Proposed § 1281.15 would include requirements for submission of a housing plan by a Bank for failure to meet any housing goal that is determined to be feasible by FHFA. The requirement to submit a housing plan would be at the discretion of the Director.

#### *F. Reporting Requirements—Proposed §§ 1281.20 through 1281.23*

As required for the Enterprises, proposed §§ 1281.20 through 1281.23 would establish reporting requirements for the Banks with respect to their housing goals performance. Proposed § 1281.21(a) would require the Banks to collect and compile computerized loan-level data on each AMA mortgage purchased, as described in the FHFA's Data Reporting Manual (DRM). These reporting requirements would apply to each Bank, regardless of whether in a particular year the Bank expects to exceed the volume threshold and thus be subject to the housing goals.

Proposed § 1281.21(b) would require each Bank to submit to the Director, on a semi-annual basis, a Mortgage Report containing aggregations of the loan-level mortgage data for year-to-date AMA mortgage purchases, and year-to-date dollar volume, number of units, and number of AMA mortgages on owner-occupied properties purchased that do, and do not, qualify under each housing goal. The loan-level data that would be required to be reported are currently collected by FHFA on a semiannual basis. For 2010–2011, the Enterprises would be required to submit quarterly Mortgage Reports, as advances in technology have made more frequent submissions less burdensome, and the additional data provided will facilitate FHFA's monitoring of Enterprise performance under the housing goals. FHFA will consider quarterly reporting for the Banks in future years. The Enterprises are also required to submit

Annual Housing Activities Reports (AHARs) to FHFA. The proposed rule would not require the Banks to submit AHARs, but FHFA will consider requiring such reports in the future.

Proposed § 1281.22 would require each Bank to provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

Proposed § 1281.23 would set forth the data integrity process for Bank housing goals data. The proposed rule would require the senior officer of each Bank who is responsible for submitting any report, data or other information for which certification is requested by the Director, to certify such report, data or information. FHFA would determine on an annual basis the official housing goals performance figures for any Bank that is subject to the housing goals, and may resolve any error, omission or discrepancy by adjusting the Banks' official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year's goal performance.

FHFA will implement the data integrity process pursuant to its general regulatory authority over the Banks. FHFA expects that the Banks will work cooperatively with FHFA to identify and resolve any discrepancies or errors in the housing goals data reported to FHFA.

## VIII. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small

entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

### List of Subjects in 12 CFR Part 1281

Credit, Federal home loan banks, Housing, Mortgages, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA proposes to amend chapter XII of title 12 of the Code of Federal Regulations, by adding new part 1281 to subchapter E to read as follows:

## PART 1281—FEDERAL HOME LOAN BANK HOUSING GOALS

### Subpart A—General

Sec.

1281.1 Definitions.

### Subpart B—Housing Goals

1281.10 General.

1281.11 Bank housing goals.

1281.12 General counting requirements.

1281.13 Special counting requirements.

1281.14 Determination of compliance with housing goals; notice of determination.

1281.15 Housing plans.

### Subpart C—Reporting Requirements

1281.20 General.

1281.21 Mortgage reports.

1281.22 Periodic reports.

1281.23 Bank data integrity.

Authority: 12 U.S.C. 1430c.

### Subpart A—General

#### § 1281.1 Definitions.

As used in this part:

*Acquired Member Assets (AMA)*

*program* means a program that authorizes a Bank to hold assets acquired from or through Bank members or housing associates by means of either a purchase or a funding transaction, subject to the requirements of 12 CFR parts 955 and 980, or successor regulations.

*AMA-approved mortgage* means a mortgage that meets the requirements of the AMA program at 12 CFR part 955, and is approved to be implemented under 12 CFR part 980, or successor regulations.

*Balloon mortgage* means a mortgage providing for payments at regular intervals, with a final payment (balloon payment) that is at least 5 percent more than the periodic payments. The periodic payments may cover some or

all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specific period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

*Bank* means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

*Bank Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

*Bank System* means the Federal Home Loan Bank System, consisting of the 12 Banks and the Office of Finance.

*Borrower income* means the total gross income relied on in making the credit decision.

*Conforming mortgage* means, with respect to a Bank, a conventional AMA-approved single-family mortgage having an original principal obligation that does not exceed the dollar limitation in effect at the time of such origination and applicable to such mortgage under 12 CFR 955.2(a)(1)(i) and 12 U.S.C. 1717(b)(2), as these sections may be amended.

*Conventional mortgage* means a mortgage other than a mortgage as to which a Bank has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

*Data Reporting Manual (DRM)* means the manual prepared by FHFA in connection with the Banks' reporting requirements, as may be supplemented from time to time, including reporting requirements under this part.

*Day* means a calendar day.

*Designated disaster area* means any census tract that is located in a county designated by FEMA as adversely affected by a declared major disaster, where individual assistance payments were authorized by FEMA, and where average damage severity, as reported by FEMA, exceeds \$1,000 per household in the census tract. A census tract shall be treated as a "designated disaster area" for purposes of this part beginning on the January 1 after the FEMA designation of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the FEMA designation.

*Director* means the Director of FHFA, or his or her designee.

*Dwelling unit* means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family

property, multifamily property, or other residential or mixed-use property.

*Families in low-income areas* means:

(1) Any family that resides in a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income;

(2) Any family with an income that does not exceed area median income that resides in a minority census tract; and

(3) Any family with an income that does not exceed area median income that resides in a designated disaster area.

*Family* means one or more individuals who occupy the same dwelling unit.

*FEMA* means the Federal Emergency Management Agency.

*FHFA* means the Federal Housing Finance Agency.

*HOEPA mortgage* means a mortgage covered by section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)), as amended by the Home Ownership Equity Protection Act (HOEPA), as implemented by the Board of Governors of the Federal Reserve System.

*HMDA* means the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801, *et seq.*), as amended.

*HUD* means the United States Department of Housing and Urban Development.

*Low-income* means income not in excess of 80 percent of area median income.

*Median income* means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Banks annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

*Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with 12 CFR 1263.20 or 1263.24(b), or successor regulation(s).

*Metropolitan area* means a metropolitan statistical area (MSA), or a portion of such an area, including Metropolitan Divisions, for which median family income estimates are determined by HUD.

*Minority* means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) Black or African American—a person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*Minority census tract* means a census tract that has a minority population of at least 30 percent and a median income of less than 100 percent of the area median income.

*Moderate-income* means income not in excess of area median income.

*Mortgage* means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. "Mortgage" includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

*Mortgage data* means data obtained by the Director from the Bank or Banks under this part and/or the Data Reporting Manual.

*Mortgage purchase* means a transaction in which a Bank bought or otherwise acquired a mortgage.

*Mortgages with unacceptable terms or conditions* means a single-family mortgage, including a reverse mortgage, or a group or category of such mortgages, with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of \$1,000, or an alternative amount requested by a Bank and determined by the Director as appropriate for small mortgages;

(i) For purposes of this definition, points and fees include:

(A) Origination fees;

(B) Underwriting fees;

(C) Broker fees;

(D) Finder's fees; and

(E) Charges that the member imposes as a condition of making the loan, whether they are paid to the member or a third party;

(ii) For purposes of this definition, points and fees do not include:

(A) Bona fide discount points;

(B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;

(C) The cost of mortgage insurance or credit-risk price adjustments;

(D) The costs of title, hazard, and flood insurance policies;

(E) State and local transfer taxes or fees;

(F) Escrow deposits for the future payment of taxes and insurance premiums; and

(G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount;

(2) An annual percentage rate that exceeds by more than 8 percentage points the yield on Treasury securities with comparable maturities as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit was received;

(3) Prepayment penalties, except where:

(i) The mortgage provides some benefits to the borrower in exchange for the prepayment penalty (e.g., a rate or fee reduction for accepting the prepayment premium);

(ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;

(iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments;

(4) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage

(5) Underwriting practices contrary to the Interagency Guidance on Nontraditional Mortgage Product Risks (71 FR 58609) (Oct. 4, 2006), the Interagency Statement on Subprime

Mortgage Lending (72 FR 37569) (July 10, 2007), or similar guidance subsequently issued by federal banking agencies;

(6) Failure to comply with fair lending requirements; or

(7) Other terms or conditions that are determined by the Director to be an unacceptable term or condition of a mortgage.

*Nonmetropolitan area* means a county, or a portion of a county, including those counties that comprise Micropolitan Statistical Areas, located outside any metropolitan area for which median family income estimates are published annually by HUD.

*Owner-occupied housing* means single-family housing in which a mortgagor resides, including two- to four-unit owner-occupied properties where one or more units are used for rental purposes.

*Purchase money mortgage* means a mortgage given to secure a loan used for the purchase of a single-family residential property.

*Refinancing mortgage* means a mortgage undertaken by a borrower that satisfies or replaces an existing mortgage of such borrower. The term does not include:

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage; or

(5) A conversion of a balloon mortgage note on a single-family property to a fully amortizing mortgage note where the Bank already owns or has an interest in the balloon note at the time of the conversion.

*Residence* means a property where one or more families reside.

*Residential mortgage* means a mortgage on single-family or multifamily housing.

*Seasoned mortgage* means a mortgage on which the date of the mortgage note is more than one year before the Bank purchased the mortgage.

*Second mortgage* means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

*Secondary residence* means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

*Single-family housing* means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

*Very low-income* means income not in excess of 50 percent of area median income.

## Subpart B—Housing Goals

### § 1281.10 General.

Pursuant to the requirements of the Bank Act (12 U.S.C. 1430c), this subpart establishes:

(a) Three single-family owner-occupied purchase money mortgage housing goals, and one single-family refinancing mortgage housing goal;

(b) A volume threshold for the application of the housing goals to a Bank;

(c) Requirements for measuring performance under the housing goals; and

(d) Procedures for monitoring and enforcing the housing goals.

### § 1281.11 Bank housing goals.

(a) *Volume threshold.* The housing goals established in this section shall apply to a Bank for a calendar year only if the unpaid principal balance (UPB) of the Bank's purchases of AMA-approved mortgages in that year exceeds \$2.5 billion.

(b) *Market-based housing goals.* A Bank that is subject to the housing goals shall be in compliance with a housing goal if its performance under the housing goal meets or exceeds the share of the market that qualifies for the housing goal. The size of the market for each housing goal shall be established annually by FHFA for each Bank district based on data reported pursuant to the Home Mortgage Disclosure Act for a given year. Unless otherwise adjusted by FHFA, the size of the market for each Bank district shall be determined based on the following criteria:

(1) Only owner-occupied, conventional loans secured by property located in that Bank district shall be considered;

(2) Purchase money mortgages and refinancing mortgages shall only be counted for the applicable housing goal or goals;

(3) All mortgages flagged as HOEPA loans or subordinate lien loans shall be excluded;

(4) All mortgages with original principal balances above the conforming loan limits for single unit properties for the year being evaluated (rounded to the nearest \$1,000) shall be excluded;

(5) All mortgages with rate spreads of 300 basis points or more above the

applicable average prime offer rate as reported in the Home Mortgage Disclosure Act data shall be excluded; and

(6) All mortgages that are missing information necessary to determine appropriate counting under the housing goals shall be excluded.

(c) *Low-income Families Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(d) *Low-income Areas Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for families in low-income areas shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(e) *Very Low-income Families Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of purchase money AMA-approved mortgages on owner-occupied single-family housing that consists of mortgages for very low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

(f) *Refinancing Housing Goal.* For a Bank that is subject to the housing goals, the percentage share of such Bank's total purchases of refinancing AMA-approved mortgages on owner-occupied single-family housing that consists of refinancing mortgages for low-income families shall meet or exceed the share of such mortgages in the market as defined in paragraph (b) of this section.

### § 1281.12 General counting requirements.

(a) *Calculating the numerator and denominator for single-family housing goals.* Performance under each of the single family housing goals shall be measured using a fraction that is converted into a percentage. Neither the numerator nor the denominator shall include Bank transactions or activities that are not AMA-approved mortgage purchases as defined by FHFA or that are specifically excluded as ineligible under § 1281.13(b).

(1) *The numerator.* The numerator of each fraction is the number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-

occupied single-family properties that count toward achievement of a particular single-family housing goal.

(2) *The denominator.* The denominator of each fraction is the total number of AMA-approved mortgage purchases of a Bank in a particular year that finance owner-occupied, single-family properties. A separate denominator shall be calculated for purchase money mortgages and for refinancing mortgages.

(b) *Missing data or information for single-family housing goals.*—(1) When a Bank lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular single-family housing goal, that mortgage purchase shall be included in the denominator for that housing goal and shall not be included in the numerator for that housing goal.

(2) Mortgage purchases financing owner-occupied single-family properties shall be evaluated based on the income of the mortgagors and the area median income at the time the mortgage was originated. To determine whether mortgages may be counted under a particular family income level (*i.e.*, low- or very low-income), the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1281.1.

(c) *Credit toward multiple goals.* A mortgage purchase by a Bank in a particular year shall count toward the achievement of each housing goal for which such purchase qualifies in that year.

(d) *Application of median income.* For purposes of determining an area's median income under § 1281.1, the area is:

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

(2) 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.

(e) *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.

(f) *Newly available data.* When a Bank uses data to determine whether a mortgage purchase counts toward achievement of any housing goal, and new data is released after the start of a calendar quarter, the Bank need not use

the new data until the start of the following quarter.

#### **§ 1281.13 Special counting requirements.**

(a) *General.* FHFA shall determine whether a Bank shall receive full, partial, or no credit toward achievement of any of the housing goals for a transaction that otherwise qualifies under this part.

(b) *Not counted.* The following transactions or activities shall not be counted for purposes of the housing goals and shall not be included in the numerator or the denominator in calculating a Bank's performance under the housing goals, even if the transaction or activity would otherwise be counted under paragraph (c) of this section:

(1) Purchases of non-conventional single-family mortgages;

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

(3) Options to acquire mortgages;

(4) Rights of first refusal to acquire mortgages;

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

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

(7) Single family refinancing mortgages that result from conversion of balloon notes to fully amortizing notes, if a Bank already owns, or has an interest in, the balloon note at the time conversion occurs;

(8) Purchases of subordinate lien mortgages (second mortgages);

(9) Purchases of mortgages that were previously counted by a Bank under any current or previous housing goal;

(10) Purchases of mortgages where the property has not been approved for occupancy; and

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

(c) *Other special rules.* Subject to FHFA's determination of whether a Bank 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 transactions and activities identified in this paragraph (c) shall be treated as mortgage purchases as described. A transaction or activity that is covered by more than one paragraph below must satisfy the requirements of each such paragraph. The mortgages from each such transaction or activity shall be included in the denominator in calculating a Bank's performance under the housing goals, and shall be included in the numerator, as appropriate.

(1) *Cooperative housing and condominiums.* The purchase by a Bank

of a mortgage on a cooperative housing unit ("a share loan") or a mortgage on a condominium unit shall be treated as a mortgage purchase for purposes of the housing goals.

(2) *Seasoned mortgages.* The purchase of a seasoned mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals, except where the Bank has already counted the mortgage under any current or previous housing goal within the five years immediately preceding the current performance year.

(3) *Purchase of refinancing mortgages.* The purchase of a refinancing mortgage by a Bank shall be treated as a mortgage purchase for purposes of the housing goals only if the refinancing is an arms-length transaction that is borrower-driven.

(d) *HOEPA mortgages and mortgages with unacceptable terms or conditions.* The purchase by a Bank of HOEPA mortgages and mortgages with unacceptable terms or conditions, as defined in § 1281.1, shall be treated as mortgage purchases for purposes of the housing goals and shall be included in the denominator for each applicable single-family housing goal, but such mortgages shall not be counted in the numerator for any housing goal.

(e) *FHFA review of transactions.* FHFA may determine whether and how any transaction or class of transactions shall be counted for purposes of the housing goals. FHFA will notify each Bank in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals.

#### **§ 1281.14 Determination of compliance with housing goals; notice of determination.**

(a) *Determination of compliance with housing goals.* On an annual basis, the Director shall determine whether each Bank has exceeded the volume threshold. For each Bank that has exceeded the volume threshold in a year, the Director shall determine the Bank's performance under each housing goal.

(b) *Failure to meet a housing goal.* If the Director determines that a Bank has failed to meet any housing goal, the Director shall notify the Bank in writing of such preliminary determination. Any notification to a Bank of a preliminary determination under this section shall provide the Bank with an opportunity to respond in writing in accordance with the following procedures:

(1) *Notice.* The Director shall provide written notice to a Bank of a preliminary determination under this section, the reasons for such determination, and the

information on which the Director based the determination.

(2) *Response period.*—(i) *In general.* During the 30-day period beginning on the date on which notice is provided under paragraph (b)(1) of this section, the Bank may submit to the Director any written information that the Bank considers appropriate for consideration by the Director in finally determining whether such failure has occurred or whether the achievement of such goal was feasible.

(ii) *Extended period.* The Director may extend the period under paragraph (b)(2)(i) of this section for good cause for not more than 30 additional days.

(iii) *Shortened period.* The Director may shorten the period under paragraph (b)(2)(i) of this section for good cause.

(iv) *Failure to respond.* The failure of a Bank to provide information during the 30-day period under this paragraph (b)(2), as extended or shortened, shall waive any right of the Bank to comment on the proposed determination or action of the Director.

(3) *Consideration of information and final determination.*—(i) *In general.* After the expiration of the response period under paragraph (b)(2) of this section, or upon receipt of information provided during such period by a Bank, whichever occurs earlier, the Director shall issue a final determination on:

(A) Whether the Bank has failed to meet the housing goal; and

(B) Whether, taking into consideration market and economic conditions and the financial condition of the Bank, the achievement of the housing goal was feasible.

(ii) *Considerations.* In making a final determination under paragraph (b)(3)(i) of this section, the Director shall take into consideration any relevant information submitted by a Bank during the response period.

#### § 1281.15 Housing plans.

(a) *Housing plan requirement.* If the Director determines that a Bank has failed to meet any housing goal and that the achievement of the housing goal was feasible, the Director may require the Bank to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Bank will take to achieve the housing goal for the next calendar year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Bank shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Bank to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plan.* The Director shall review and approve or disapprove a housing plan as follows:

(1) *Approval.* The Director shall review each submission by a Bank, including a housing plan submitted under this section and, not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines it necessary. The Director shall approve any plan that the Director determines is likely to succeed, and conforms with the Bank Act, this part, and any other applicable provision of law.

(2) *Notice of approval and disapproval.* The Director shall provide written notice to a Bank submitting a housing plan of the approval or disapproval of the plan, which shall include the reasons for any disapproval of the plan, and of any extension of the period for approval or disapproval.

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by a Bank, the Bank shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Bank 15 days to submit a new plan.

(f) *Enforcement of housing plan.* If the Director finds that a Bank has failed to meet any housing goal, and that the achievement of the housing goal was feasible, and has required the Bank to submit a housing plan under this section, the Director may issue a cease and desist order, or impose civil money penalties, if the Bank refuses to submit such a plan, fails to submit an acceptable plan, or fails to comply with the approved plan. In taking such action, the Director shall follow procedures consistent with those provided in 12 U.S.C. 4581 through 4588 with respect to actions to enforce the housing goals.

### Subpart C—Reporting Requirements

#### § 1281.20 General.

This subpart establishes data submission and reporting requirements to provide the Director with the mortgage and other information relating to the Banks' performance in connection with the housing goals, as supplemented from time to time in the Banks' Data Reporting Manual (DRM).

#### § 1281.21 Mortgage reports.

(a) *Loan-level data elements.* To implement the data collection and submission requirements for mortgage data, and to assist the Director in monitoring the Banks' housing goal activities, each Bank shall collect and compile computerized loan-level data on each AMA-approved mortgage purchase, as described in the DRM. The Director may, from time to time, issue a list in the DRM specifying the loan-level data elements to be collected and maintained by the Banks and provided to the Director. The Director may revise the DRM list by written notice to the Banks.

(b) *Semi-annual mortgage reports.* Each Bank shall submit to the Director, on a semi-annual basis, a mortgage report. The second semi-annual mortgage report each year shall serve as the annual mortgage report and shall be designated as such. Each mortgage report shall include:

(1) Aggregations of the loan-level mortgage data compiled by each Bank under paragraph (a) of this section for year-to-date AMA-approved mortgage purchases, in the format specified in writing by the Director;

(2) Year-to-date dollar volume, number of units, and number of AMA-approved mortgages on owner-occupied properties purchased by each Bank that do, and do not, qualify under each housing goal as set forth in this part; and

(3) Year-to-date computerized loan-level data consisting of the data elements required under paragraph (a) of this section.

(c) *Timing of reports.* Each Bank shall submit its first semi-annual mortgage report within 45 days of the end of the second quarter. Each Bank shall submit its annual mortgage report within 60 days after the end of the calendar year.

(d) *Revisions to reports.* At any time before submission of its annual mortgage report, a Bank may revise its first semi-annual mortgage report for that year.

(e) *Format.* The Banks shall submit to the Director computerized loan-level data with the mortgage report, in the



format specified in writing by the Director.

#### **§ 1281.22 Periodic reports.**

Each Bank shall provide to the Director such reports, information and data as the Director may request from time to time, or as may be supplemented in the DRM.

#### **§ 1281.23 Bank data integrity.**

(a) *Certification.*—(1) The senior officer of each Bank who is responsible for submitting the annual mortgage report, or for submitting any other report(s), data or other information for which certification is requested in writing by the Director, shall certify such report(s), data or information.

(2) The certification shall state as follows: “To the best of my knowledge and belief, the information provided herein is true, correct and complete.”

(b) *Adjustment to correct errors, omissions or discrepancies.* FHFA shall determine on an annual basis the official housing goals performance figures for a Bank that is subject to the housing goals. FHFA may resolve any error, omission or discrepancy by adjusting the Bank’s official housing goals performance figure. If the Director determines that the year-end data reported by a Bank for a year preceding the latest year for which data on housing goals performance was reported to FHFA contained a material error, omission or discrepancy, the Director may increase the corresponding housing goal for the current year by the number of mortgages that the Director determines were overstated in the prior year’s goal performance.

Dated: May 24, 2010.

**Edward J. DeMarco,**  
*Acting Director, Federal Housing Finance Agency.*

[FR Doc. 2010–12849 Filed 5–27–10; 8:45 am]

**BILLING CODE 8070–01–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 23**

[Docket No. CE308; Notice No. 23–10–02–SC]

#### **Special Conditions: Cirrus Design Corporation Model SF50 Airplane; Function and Reliability Testing**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This action proposes special conditions for the Cirrus Design Corporation SF50 airplane. This airplane will have a novel or unusual design feature(s) associated with the complex design and performance features consistent with larger airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** We must receive your comments by June 28, 2010.

**ADDRESSES:** Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. Mark your comments: Docket No. CE308. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

#### **FOR FURTHER INFORMATION CONTACT:**

J. Lowell Foster, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Room 301, Kansas City, MO 64106; telephone (816) 329–4125; facsimile (816) 329–4090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite interested persons to take submit such written data, views, or arguments as they desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### **Background**

On April 29, 2010, Cirrus Design Corporation applied for a type certificate for their new Model SF 50 “Vision” Jet. The SF50 is a low-wing, five-plus-two-place (2 children), single-engine turboprop-powered aircraft. It incorporates an Electronic Flight Information System (EFIS), pressurized cabin, retractable gear, and a V-tail. The turboprop engine is mounted on the upper fuselage/tail cone along the aircraft centerline. It is constructed largely of carbon and fiberglass composite materials. Like other Cirrus products, the SF50 includes a ballistically deployed airframe parachute.

The model SF50 has a maximum operating altitude of 28,000 feet, where it cruises at speeds up to 300 KTAS. Its V<sub>MO</sub> will not exceed 0.62 Mach. The maximum takeoff weight will be at or below 6000 pounds with a range at economy cruise of roughly 1000 nm. Cirrus intends for the model SF50 to be certified for single-pilot operations under 14 CFR part 91 and 14 CFR part 135 operating rules. *The following operating conditions will be included:*

- Day and Night VFR.
- IFR.
- Flight into Known Icing.

#### **Discussion**

Before Amendment 3–4, Section 3.19 of Civil Air Regulation (CAR) part 3 required service testing of all airplanes type certificated on or after May 15, 1947. The purpose of the testing was to “ascertain whether there is reasonable assurance that the airplane, its components, and equipment are reliable, and function properly.”

Amendment 3–4 to CAR part 3 became effective January 15, 1951, and deleted the service test requirements in Section 3.19 for airplanes of 6,000 pounds maximum weight or less. The introductory text published in Amendment 3–4 explained that most of the significant changes in the amendment stemmed from “the desire for simplification of the rules in this part with respect to the smaller airplanes, specifically those of 6,000 pounds maximum weight or less, which would be expected to be used mainly as personal airplanes.” The introductory material also stated the service test requirement was removed for airplanes