achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

(i) *Counting mortgages toward the Home Purchase Subgoals*—(1) *General.* The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§ 1282.12 through 1282.14. However, performance under the subgoals shall be counted using a fraction that is converted into a percentage for each subgoal and the numerator of the fraction for each subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year. For purposes of each subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit.* For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each subgoal that applies to the Enterprise's mortgage purchase.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

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

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in § 1282.16(c)(8);

(3) Purchases of non-conventional mortgages except:

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

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

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

(iv) As provided in § 1282.14(e)(3);

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

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

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

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

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

(10) Purchases of mortgages on one- to four-unit properties with maximum original principal obligations that exceed:

(i) The nationwide conforming loan limits for properties of a particular size; or

(ii) 150 percent of the nationwide conforming loan limits for properties of a particular size located in Alaska, Guam, Hawaii and the Virgin Islands; and

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

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

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

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

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

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

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

(2) *Real estate mortgage investment conduits (''REMICs'').* (i) An Enterprise's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

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

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

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

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

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

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

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

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the Enterprises and any Federal agency where the units would otherwise count toward achievement of the

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housing goal under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.* (i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.,* affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals. Where an Enterprise purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where an Enterprise purchases both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where:

(i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year; or

(ii) FHFA determines, based upon a written request by an Enterprise, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as otherwise provided in this part, the purchase of a refinanced mortgage by an Enterprise is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

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

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

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

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

(9) *Expiring assistance contracts.* Actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997, shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and in accordance with paragraphs (b) and (c)(1) through (c)(10) of this section.

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

(ii) Where an Enterprise undertakes more than one action to assist a single

project or where an Enterprise engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the Enterprise must submit the transaction to FHFA for a determination on appropriate goals counting treatment.

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Making Homes Affordable Program announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved]

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in §1282.2 shall not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Director shall monitor the practices and processes of the Enterprises to ensure that they are not purchasing loans that are contrary to good lending practices as defined in §1282.2. Based on the results of such monitoring, the Director may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices shall not receive credit toward the three housing goals.

(14) *Seller dissolution option.* (i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases and receive credit toward the achievement of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraphs

(c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

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

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

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

(a) *Moderate-income* means:

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

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes: