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Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
400 Seventh Street SW, 8th Floor
Washington, DC 20024
By email through www.fhfa.gov/open-for-comment-or-input

Re: **RIN 2590–AA65 – Proposed Rule on Enterprise Affordable Housing Goals**

Dear Mr. Pollard,

Fannie Mae welcomes the opportunity to submit comments on the Federal Housing Finance Agency ("FHFA") Proposed Rule on Enterprise Housing Goals for 2015-2017 ("Proposed Rule").[1]

Fannie Mae was established in the wake of the Great Depression to provide reliable access to mortgage credit in all communities across the United States. Since then, we have provided the financing that has enabled tens of millions of U.S. families to buy or rent a home.

For many American families, however, finding a place to call home has rarely been more difficult. Resources needed to obtain mortgage credit have been strained as consumer debt has reached its highest percentage of total debt since 2004 and real median household income is at its lowest level in nearly 20 years.[2] Nearly half of all renters pay more than 30 percent of their income for housing, and more than a quarter pay more than 50 percent of their income for housing.[3] In the most costly markets, fewer than 30 percent of renters can afford the median priced home.[4]

The nation's housing challenges demand that Fannie Mae bring renewed focus to its historic affordability mission. As FHFA notes in the preamble to the Proposed Rule, this mission includes " 'an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with [Fannie Mae's] overall public purposes, while maintaining a strong financial condition and a reasonable economic return.' "[5] To that end, working with FHFA, and

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[1] 2015-2017 Enterprise Housing Goals: Proposed Rule, 79 Fed. Reg. 54482 (Sept. 11, 2014)(to be codified at 12 C.F.R. pt. 1282).

[2] See Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing* 2014, at 14, available at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/sonhr14-color-full.pdf.

[3] Id. at 5.

[4] Id. at 20.

[5] 79 Fed. Reg. at 54482 (quoting 12 U.S.C. § 4501(7)).

consistent with FHFA's strategic plans for the conservatorship, Fannie Mae is committed to providing the opportunity to own a home to creditworthy borrowers and to increasing access to affordable rental housing for those families who choose that option. The annual housing goals will be an important measure of our success in fulfilling this commitment.

Our comments address the proposed single-family and multifamily benchmark levels, possible alternative methods for measuring Enterprise performance on the single-family goals, and certain definitions, affordability determinations, and counting rules that impact achievement of the goals. We are also responding to FHFA's specific request for comments on blanket loans on manufactured housing parks.

I. Single-Family Housing Goals

A. Proposed Alternatives for Measuring Enterprise Performance

Since 2010, FHFA has measured Enterprise performance on the single-family housing goals by comparing it to both (1) benchmark levels that are set prospectively based on estimations of market size, and (2) actual market levels that are determined retrospectively based on data reported under the Home Mortgage Disclosure Act ("HMDA").[6] Under the current rule, an Enterprise has met a goal if it achieves either the benchmark for that goal or the market level for that goal. FHFA now requests comments on which of three alternative methods FHFA should use to measure performance on the single-family housing goals in 2015-2017:

- Alternative 1: Maintain the current two-part approach (benchmarks set prospectively plus actual market levels determined retrospectively).

- Alternative 2: Measure performance against benchmarks only.

- Alternative 3: Measure performance against actual market levels only.[7]

Fannie Mae believes that the two-part approach in the current rule serves a valuable function. FHFA's prospective benchmarks provide forecasted targets against which the Enterprises can calibrate and manage their resources.[8] In contrast, sole reliance on predetermined benchmarks, based on multi-year mortgage market forecasts, risks adverse, unintended consequences for the housing market and may raise safety and soundness concerns. For example, as FHFA has repeatedly recognized and market data affirm, it is impossible to fully anticipate market realities years in advance, even in more stable economic environments. Therefore, a set of goals establishing only fixed benchmarks carries the risk that the goal targets will be out of step with actual market conditions. In addition, if it becomes readily apparent that one or both of the Enterprises are falling short of the benchmark targets, it may become increasingly inefficient economically to acquire the last loans needed to achieve the targets. The price pay-up

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[6] Id. at 54489.

[7] Id. at 54489-90.

[8] See 12 U.S.C. § 4561(b) (acknowledging "the need for the enterprises to reasonably and sufficiently plan their operations and activities in advance, including operations and activities necessary to meet [the] annual goals").

needed to acquire those loans may also have the effect of bidding up the price to the Enterprises of other loans that would have come to the Enterprises anyway. This would be an inefficient use of Enterprise funds.

Using actual market data provides an important "reality check" that diminishes the likelihood of such distortions and reinforces other post-crisis regulatory changes that aim to ensure that mortgage credit is extended in a manner that is in the interest of all market participants, including borrowers. It also makes it less likely that additional rulemakings or other regulatory action will be needed to address changing market conditions. Therefore, it seems both prudent and logical to maintain the current two-part approach of benchmarks plus look-back.

Neither of the purported disadvantages of the current approach identified in the preamble to the proposed rule supports a change in methodology. FHFA questions whether the single family housing goals may provide less of an incentive for the Enterprises to serve the targeted parts of the market in years when the Enterprises anticipate that the retrospective market levels will end up lower than the benchmarks.[9] In practice, however, the Enterprises will always strive to meet the benchmarks rather than wager on HMDA data that is not available until months after the rating period closes to meet their housing goals requirements.

FHFA also questions whether the look-back might be less meaningful in years when the Enterprises purchase a large percentage of the single-family conventional conforming mortgage market, because it "would effectively compare the performance of the Enterprises to their own activity."[10] The risk is that the market evolves over the three-year period covered by the rule, and private capital provides an increasingly competitive option for goals-eligible loans. In fact, steps such as increasing guarantee fees have already been taken to reduce the role of the Enterprises and encourage other financial institutions to re-enter the market. Success in these efforts could produce a very different set of market realities during the period covered by the rule, with the result that the prospective benchmarks, in the absence of the retrospective approach, would lead to infeasible outcomes or require pricing that is counter to safety and soundness.

It is also important to recognize that the Enterprises act independently and compete against each other, even in conservatorship, and that neither Enterprise has a controlling share of the market. The performance of each Enterprise individually (and they are assessed individually for their compliance with the housing goals), is compared against the overall performance of a primary market that includes both loans that are sold to the other Enterprise and loans that are retained by lenders or sold to other secondary market participants.

Accordingly, Fannie Mae requests that, consistent with Alternative 1, the existing regulatory language in 12 CFR § 1282.12(a) be maintained.

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[9] 79 Fed. Reg. at 54489.

[10] Id.

B. Benchmarks

FHFA has proposed single-family benchmark levels for 2015-2017 that the agency would consider adopting under Alternative 1, as follows:

Goal	Description	Current Benchmark	Proposed Benchmark for 2015-2017 [change]
Low-Income Families Home Purchase Goal	Single-family owner occupied purchase money mortgage affordable to low-income families (defined as income equal to or less than 80 percent of area median income).	*23*	*23 [0]*
Very Low-Income Families Home Purchase Goal	Single-family owner occupied purchase money mortgage affordable to very low-income families (defined as income equal to or less than 50 percent of area median income).	*7*	*7 [0]*
Low-Income Areas Home Purchase Subgoal	Acquisitions of single-family owner occupied purchase money mortgage loans affordable to families in low-income census tracts or to moderate income families in high-minority census tracts.	*11*	*14 [+3]*
Low-Income Families Refinancing Goal	Refinancing of single-family owner occupied properties affordable to low-income families.	*20*	*27 [+7]*

In establishing benchmark levels, FHFA must consider the following statutory factors:

1. National housing needs;
2. Economic, housing, and demographic conditions, including expected market developments;
3. The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;
4. The ability of the Enterprise to lead the industry in making mortgage credit available;
5. Such other reliable mortgage data as may be available;
6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and
7. The need to maintain the sound financial condition of the Enterprises.[11]

Fannie Mae believes that, with one exception, the proposed single-family benchmark levels reflect an appropriate analysis and application of these statutory factors.

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[11] 12 U.S.C. § 4562(e)(2)(B)(2).

The exception is the proposed benchmark level for the very low-income families home purchase goal. FHFA's forecast for the very low-income share of the overall market for home purchase mortgages is 5.8 percent for 2015, 5.7 percent for 2016, and 5.6 percent for 2017.[12] Nonetheless, FHFA proposes to set the very low-income families home purchase goal benchmark level for these years at 7 percent – substantially higher than the projected market share – in order to "encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-income families."[13]

However, Fannie Mae is already committed to serving this market in a number of ways that are designed to increase credit access, while simultaneously promoting safety and soundness and sustainable financing. Among other things, these efforts include:

- Providing standard product eligibility at a 620 credit score and with a 95 percent LTV.
- Utilizing targeted products such as MyCommunityMortgage® and Community Seconds® that provide additional financing flexibility for borrowers of modest means.
- Acquiring loans though our housing finance agency partners, including HFA Preferred™ and HFA Preferred Risk Share™, that have lower mortgage insurance requirements or substitute loss sharing with the HFA for more costly mortgage insurance and can provide financing for properties with a 97 percent LTV.
- Reintroducing our acquisition of loans from the U.S. Department of Housing and Urban Development's Section 184 program and the U.S. Department of Agriculture's Rural Development 502 program that serve Native American and rural communities.
- Changing requirements for loans to borrowers with derogatory credit events (e.g., foreclosure, short sales, deed-in-lieu transfers, and bankruptcy) to facilitate earlier requalification.

In addition, setting the benchmark significantly higher than the projected market size could have the unintended negative consequence of suggesting that Fannie Mae should undertake efforts that may not contribute to a safe and sustainable market. Even under Alternative 1, which allows Fannie Mae to achieve a goal by meeting either the prospective benchmark level or the actual market level as determined retrospectively based on HMDA data, Fannie Mae's activities will be directed towards meeting the benchmark; as previously discussed, Fannie Mae does not rely on HMDA data that only becomes available after the assessment period is over, thus providing no opportunity for correction.

Accordingly, Fannie Mae respectfully requests that the very low-income families home purchase goal be reduced to 6 percent, a justifiable stretch above FHFA's projected market levels.

II. Multifamily Housing Goals

FHFA proposed one goal for multifamily low-income housing units, one subgoal for very low-income housing units, and a new subgoal for low-income housing units in small multifamily properties. We address the first two together and the new proposed subgoal for small multifamily properties separately.

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[12] 79 Fed. Reg. at 54486. Fannie Mae's forecast for this market is very similar: 5.5 percent for 2015, 5.6 percent for 2016, and 5.3 percent for 2017.

[13] Id.

A. Low-Income and Very Low-Income Multifamily Goals.

Fannie Mae takes seriously its mission to expand affordable rental housing. This is underscored by the fact that Fannie Mae has exceeded its multifamily low-income housing goal and its very low-income housing subgoal in every year since they were established in 2010.

Year	**Goal**	**Benchmark**	**Fannie Mae Performance**	
			Total	**Over Benchmark**
2010	Low-income	177,750	214,997	+37,247
	Very low-income	42,750	53,908	+11,158
2011	Low-income	177,750	301,224	+123,474
	Very low-income	42,750	84,244	+41,494
2012	Low-income	285,000	375,924	+90,924
	Very low-income	80,000	108,878	+28,878
2013	Low-income	265,000	326,597	+61,597
	Very low-income	70,000	78,071	+8,071

Fannie Mae is also committed to meeting the multifamily benchmarks set forth in the Proposed Rule, which are fixed at their 2014 levels of 250,000 low-income units and 60,000 very low-income units.[14] However, we agree with FHFA's observations that the multifamily market has changed and will continue to change in ways that will make the proposed goals difficult to meet; this includes a sharp decline in the Enterprises' market share and an overall trend of increased competition from the private sector.[15]

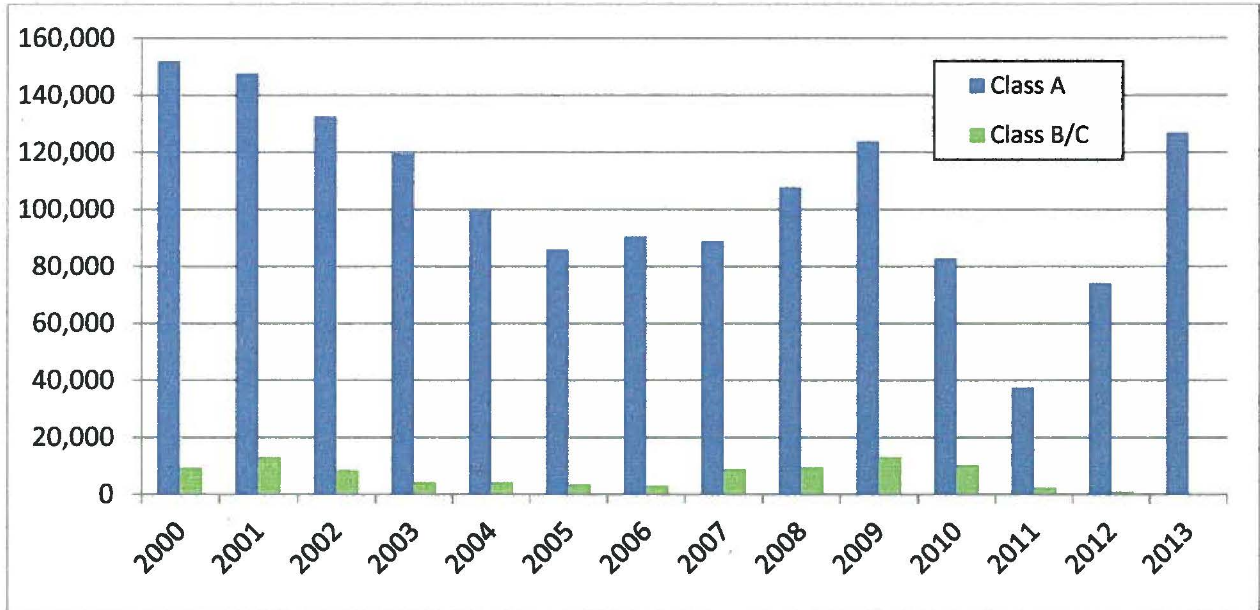
Also contributing to this challenge is the fact that while FHFA correctly observes that there have been "recent increases in volume for multifamily building permits and housing starts,"[16] very little of this new construction is targeting class B and C properties as illustrated in Figure 1 below. Class B and C properties generally provide more affordable units than class A properties.

[14] Id. at 54484. The Proposed Rule sets lower multifamily goals for Freddie Mac. Id.

[15] Id. at 54491-93.

[16] Id. at 54493.

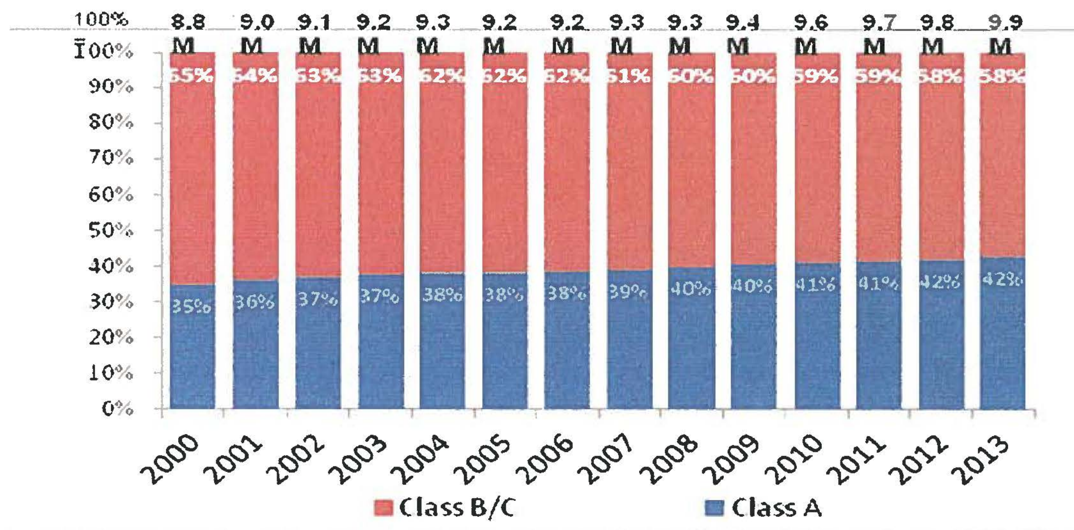
Figure 1: Multifamily Completions by Class Type



Source: Reis

Moreover, while it is still a sizeable share of the overall multifamily housing stock, the number of class B and C properties has been shrinking. As seen in Figure 2 below, such properties now account for just 58 percent of all multifamily properties, compared to 65 percent as recently as 2000.

Figure 2: Multifamily Inventory by Class Type



Source: Reis, based on multifamily sample tracked

Unlike the two-pronged benchmark plus market share look-back approach available to measure single-family goals performance, multifamily goals assessment is limited solely to meeting a benchmark. Thus, significant care must be taken not to set too aggressive a benchmark lest it drive increased costs for

mortgage acquisitions by the Enterprises. If the benchmarks remain as proposed, we respectfully reserve our right to make a future request to FHFA to reduce them if the facts and circumstances require such a change.

B. Low-Income Housing Subgoal for Small Multifamily Properties.

For the first time, FHFA has proposed a new low-income housing subgoal for small multifamily properties. The proposed levels for the subgoal for Fannie Mae are: 20,000 units in 2015, 25,000 units in 2016, and 30,000 units in 2017.[17]

FHFA proposes to define "small multifamily property" to mean "any multifamily property with at least 5 dwelling units but no more than 50 dwelling units."[18] This definition is a significant departure from both Enterprises' definitions for their respective small loan products.[19] It also differs from the Mortgage Bankers Association's definition of "very small loan" as including amounts of less than $1 million, and its definition of "small loans" as including amounts from $1-3 million.[20]

Fannie Mae believes that serving the market for affordable 5-50 unit properties is a significant component of our mission and looks forward to working with FHFA and other stakeholders to help address any unmet needs of this market. However, given that this represents FHFA's initial effort to establish a housing goal for the small multifamily loan market utilizing an entirely new definition, and the Enterprises' initial effort to meet such a goal, we believe that great care must be taken to ensure that the goal is meaningful and attainable while maintaining the sound financial condition of the Enterprises.

1. Better Data is Required

We believe the existing data and related information is insufficient to establish appropriate benchmarks at this time for a number of reasons, including;

- FHFA has used Census Bureau data to size the small multifamily property market, concluding, for example, that "[s]mall multifamily properties represent one-third of all multifamily rental units."[21] However, the Census Bureau data is inappropriate for this purpose because it refers to the number of units in a structure (i.e., a building) not in a project or entire property. So, for example, if there is a multifamily project that has 10 buildings with 30 units each, for purposes of sizing the market the Census Bureau classifies this as 300 small multifamily units. However, if

[17] Id. at 54498. The Proposed Rule sets lower benchmarks for Freddie Mac. Id.

[18] Id. at 54496.

[19] Fannie Mae defines small mortgage loans as "Loans in an amount less than or equal to $3,000,000 or, for Mortgage Loans secured by Properties located in certain designated MSAs ... less than $5,000,000." Fannie Mae Multifamily Selling and Servicing Guide, Part IIIB- 9-1. Freddie Mac, which only recently announced its new small balance loan offering, identified the loan amount for this initiative as being from $1-5 million. See http://www.freddiemac.com/multifamily/product/pdf/small_balance_loan.pdf

[20] Mortgage Bankers Association, Annual Report on Multifamily Lending 7 (Oct. 2013).

[21] 79 Fed. Reg. at 54496.

Fannie Mae financed this same project under the proposed new definition, it would be considered a single property with 300 units and would not qualify for goals credit as a 5-50 unit property. Thus, the proposed use of the Census Bureau data potentially overstates the size of the market, which is likely to drive an unrealistic goal.

- Most lenders who finance 5-50 unit properties are regional and local banks and credit unions. Given that this sector has increased its lending over the past year, it is unclear whether additional liquidity is needed in the 5-50 unit market at this time. Better data needs to be developed about the unmet needs of this specific market segment.

- While FHFA urges that the Enterprises meet their goals by financing properties with 25-50 units, it is not clear that there are sufficient properties of this size seeking financing to meet the proposed subgoal. In fact, according to the most recent American Housing Survey, the 25-50 unit segment of multifamily units, regardless of whether they are for rent or owned, total just 4.5 million units out of a total of about 22 million 5+ multifamily units, both owned and rented;[22] again, this is based on total number of units by structure, not by property/project.

2. The Proposed Goals

Fannie Mae has been a leader in financing 5-50 unit small loans. In 2013 and during the first half of 2014, Fannie Mae's 5-50 unit acquisitions totaled $1.5 billion and $0.3 billion respectively. As of the end of Q2 2014, Fannie Mae had a 5-50 unit small loan book of $16 billion. This has been achieved notwithstanding the challenges inherent in 5-50 unit financings – the fragmented nature of the market, the lack of economies of scale, the less sophisticated profile of the typical small loan borrower, and the lack of standardization. Fannie Mae is committed to continuing its support of this market segment that serves as a key source of workforce rental housing located close to transportation and jobs.

However, given the challenges with the data described above, it is difficult for Fannie Mae to fully evaluate the proposed subgoal. Nonetheless, it is clear that the proposed goal of 20,000 units for 2015 is likely to be 40 to 50 percent higher than what we project we can meet based on current production. In addition, we have several other observations.

First, Fannie Mae believes it would not be able to meet the proposed 5-50 unit subgoal levels solely through its Delegated Underwriting and Servicing ("DUS"®) flow business.[23] That is because DUS lenders retain a risk position in loans they sell to Fannie Mae through a loss-sharing agreement with Fannie Mae, and may be reluctant to increase their exposure to 5-50 unit loans given the relatively high serious delinquency ("SDQ") [24] rates of such loans. As illustrated in Figure 3, from 2009 through Q2 2014, our multifamily 5-50 unit DUS flow has realized higher SDQs than our DUS flow business of loans with more

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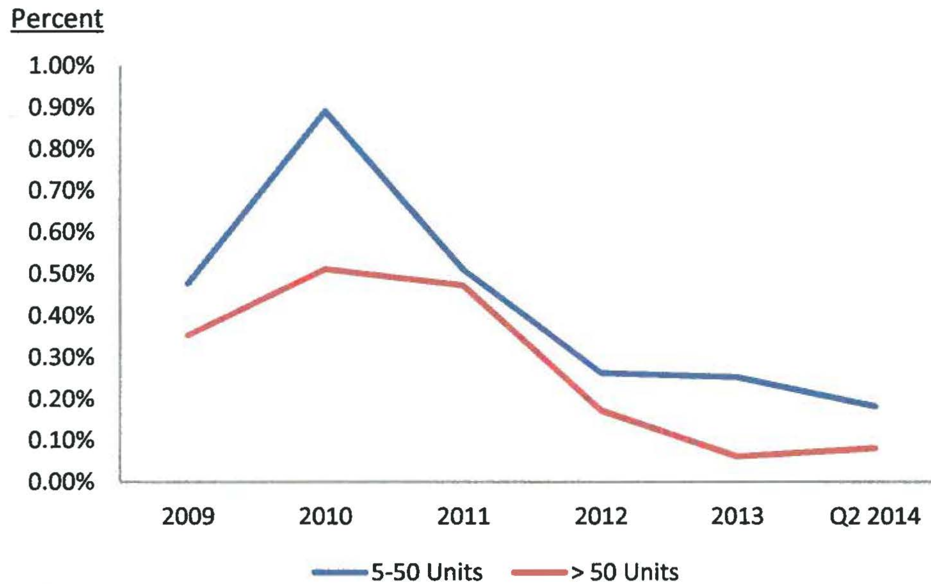
[22] U.S. Census Bureau *2011 American Housing Survey*, Table C-01-AH, General Housing Data – All Housing Units (National) (*"2011 American Housing Survey").*

[23] This business includes the purchase of individual loans originated by our approved DUS lenders, who have delegated authority to sell loans to Fannie Mae. These loans are underwritten and serviced by the lenders according to specific published guidelines, and the DUS network is the primary platform through which Fannie Mae provides liquidity to the multifamily market.

[24] We classify multifamily loans as SDQ when payment is 60 days or more past due.

than 50 units. Thus, increasing financing of 5-50 unit loans would likely introduce increased credit risk for DUS lenders and for Fannie Mae as well.

Figure 3: ***SDQs of DUS flow for 5-50 units compared to SDQs of DUS flow for >50 units***

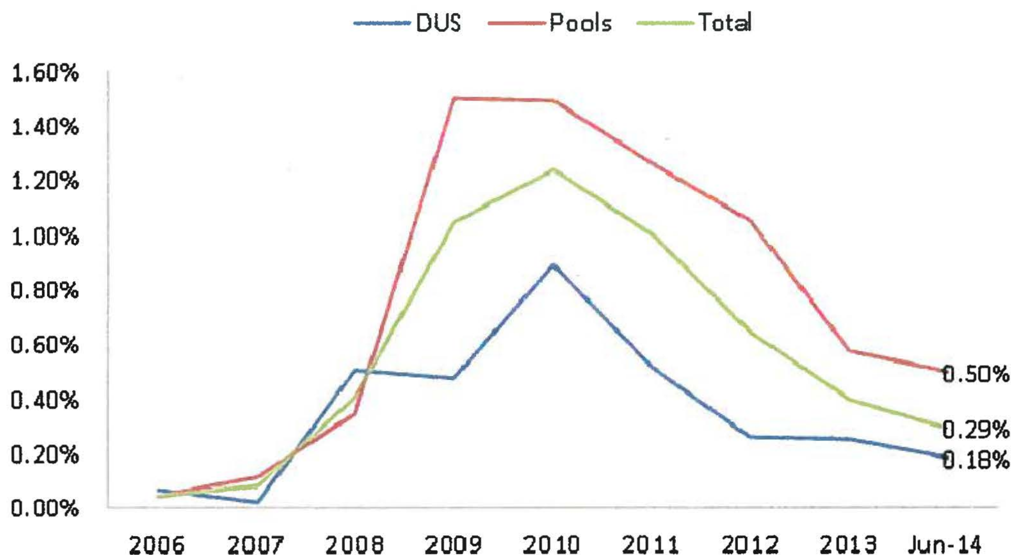


Source: Fannie Mae.

Second, without further inquiry and analysis, it is unclear whether the non-DUS small multifamily property lenders that regularly finance 5-50 unit properties are willing to engage with the Enterprises. Moreover, should such engagement be possible, it is unknown on what terms this activity could be undertaken. Finally, it is unknown whether these lenders are able to meet appropriate counterparty requirements.

Third, it is unclear whether the proposed goals can be met without Fannie Mae re-entering the pools purchase business, which it is reluctant to do. For purposes of this discussion, the "pools purchase business" means the acquisition of an aggregation of seasoned (as opposed to newly originated) permanent mortgage loans on multifamily rental properties, originated pursuant to a lender's underwriting standards and evaluated against Fannie Mae's underwriting standards, with representations, warranties and (typically) with the lender assuming a top loss risk position. Fannie Mae made such acquisitions most recently in 2006-2008, but has not engaged in these transactions since then. These purchases performed poorly as compared to our traditional flow product, as illustrated in Figure 4 below. Moreover, our current portfolio limitations and the challenges associated with securitizing these loans may impede significant pool purchases.

***Figure 4:* <u>*SDQs of DUS 5-50 units compared to SDQs of 5-50 pools*</u>**
<u>Percent</u>
Source: Fannie Mae



Accordingly, for the reasons discussed above, we recommend that either (a) the proposed 2015 benchmark for the new subgoal be significantly reduced or (b) implementation of the subgoal be delayed until better data can be developed.

III. <u>Other Proposed Changes</u>

A. <u>Definitions</u>

Fannie Mae suggests changes be made to the following definitions set forth in the Proposed Rule.

1. <u>Dwelling Unit (Proposed § 1282.1)</u>[25]

Some shared properties (e.g., assisted living units) may have a kitchenette for cooking purposes rather than a full kitchen, but are affordable residential units that appropriately qualify for housing goals. In addition, some residential units in seniors housing do not have cooking facilities for safety reasons. Accordingly, we suggest the definition of "Dwelling Unit" be revised to read as follows:

> Dwelling unit means a room or unified combination of rooms with complete plumbing and kitchen *or kitchenette* facilities 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,

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[25] 79 Fed. Reg. at 54504.

multifamily property, or other residential or mixed-use property. *If a dwelling unit does not have a kitchen or kitchenette for safety and health reasons (e.g., Alzheimer's units in seniors housing), it shall be considered a dwelling unit if it has a complete plumbing system.*

2. Skilled Nursing Unit (Proposed § 1282.1)[26]

Seniors housing is an industry that is highly regulated by federal, state, and local authorities. This regulatory framework may take the form of licensing individuals who work at seniors housing (e.g., nurses, doctors, pharmacists, and home health care workers) and licensing the units themselves (e.g., independent living, memory, assisted living, and skilled nursing units). In addition, as residents or regulators demand increased access to care, the medical services associated with any particular unit have expanded (e.g., residents of independent living units may have access to on location doctors, assisted living and memory care units may have access to 24-hour registered nurses, etc.)

Accordingly, Fannie Mae believes that defining "skilled nursing unit" by reference to "licensed medical care services" is ambiguous and runs the risk of including units that are affordable residential units that appropriately qualify for housing goals. Accordingly, for clarification purposes, Fannie Mae suggests revising the proposed definition to incorporate FHFA's stated objective of distinguishing these principally medical units from residential units as follows:

> Skilled nursing unit means a *seniors housing unit, the principal purpose of which is to provide 24-hour skilled medical services on a temporary basis rather than to serve as a residence.* ~~unit in a multifamily property that is dedicated to providing licensed medical care services to individuals who are age 55 and over.~~

B. Determining Affordability

1. Subsidies and Rent Restrictions (Proposed § 1282.15(d)(2))[27]

FHFA proposes a new counting rule that permits affordability of rents to be determined based on affordability restrictions imposed by local, state, or federal affordable housing subsidy requirements. As explained in the Proposed Rule, this permits the Enterprises to "automatically receive goals credit for any units they finance that are deemed to be affordable by the applicable subsidy program."[28] Fannie Mae suggests that this proposal be expanded to include limited equity cooperatives that are similarly subject to restrictions that set their rent at a level affordable to low- or very low-income families, by revising the counting rule to read as follows:

> (2) Affordability of rents based on subsidy program *or other rent restriction requirements*. Where a multifamily property is subject to an affordability restriction under a housing subsidy program *or other rent restriction* that establishes the maximum

[26] Id.

[27] Id. at 54506-07.

[28] Id. at 54501.

permitted income level for a tenant or a prospective tenant or the maximum permitted rent, the affordability of units in the property may be determined based on the maximum permitted income level or maximum permitted rent established under such housing program *or other rent restriction* for those units. This income level shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17, or as provided in § 1282.18 if family size is not known.

It should be noted that unless they are included within this definition, Fannie Mae believes that limited equity cooperatives very well may not be eligible for housing goals treatment despite their clear affordability. This is because market rate rents without rent restrictions are typically used for comparison purposes when evaluating limited equity cooperative units, as comparable rent restricted rents are generally unavailable. Thus, if limited equity cooperatives are evaluated under proposed § 1282.16(c)(5), they will be evaluated at a market rent level.

2. Blanket Loans on Cooperative Housing (Proposed § 1282.16(c)(5))[29]

Proposed § 1282.16(c)(5) terminates the existing practice of using estimation methodology to determine the eligibility of cooperative units for housing goals treatment where an Enterprise finances the blanket loan on the property. Instead, the Proposed Rule provides that the comparable market rents that were used by the lender for underwriting the blanket loan would be used for this purpose.

Fannie Mae has no objection to this change with one exception. As suggested in our comment directly above, where the cooperative units are subject to rent restrictions, then we believe the affordability of the units should be based on the maximum permitted rent established under such rent restrictions for those units. This can be achieved by determining affordability for such units under proposed § 1282.15(d)(2), as Fannie Mae has suggested that it be revised. To this end, we suggest that proposed § 1282.16(c)(5) be revised to read as follows:

> (ii) The purchase of a mortgage on a cooperative building or a mortgage on a condominium project shall be treated as a mortgage purchase for purposes of the housing goals. The purchase of a mortgage on a cooperative building shall be counted in the same manner as a mortgage purchase of a multifamily rental property, except that affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan *unless affordability can be determined under § 1282.15(d)(2)*. If the underwriting rents are not available *or affordability cannot be determined under § 1282.15(d)(2)*, the loan shall not be treated as a mortgage purchase for purposes of the housing goals. The purchase of a mortgage on a condominium project shall be counted in the same manner as a mortgage purchase of a multifamily rental property.

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[29] Id. at 54507.

3. Seniors Housing (Proposed § 1282.16(c)(15))[30]

The Proposed Rule would not permit housing goals credit for senior housing units with large up-front fees "because the existence of the large up-front fees makes it difficult to assess affordability, and because in most instances the large up-front fees mean that the units would not be affordable to low-income or very low-income families anyway."[31] Excluded from this prohibition are "applications processing fees, first-month advanced rent payments, or security deposit fees."[32]

Fannie Mae believes it will be difficult to apply the proposed exclusion because there is no consistent use of terms in the seniors housing industry to describe what is included in these fees. For example, seniors properties typically do not use the term "security deposit," and may or may not use "rent payment," but may use terms such as "community fee" or "residential fee." Accordingly, we suggest that in lieu of the proposed exclusion, a base amount of $12,500 be established as the limitation on up-front fees, which would be simpler to apply and would incorporate various terms and phrases. This amount is being suggested as we believe it reflects current pricing in the market for these types of fees and can reasonably be expected to do so through 2017. The definition could be revised to incorporate this concept as follows:

> (15) Seniors housing units. The purchase of a mortgage on seniors housing units where life or health care services are included in the rent shall be treated as a mortgage purchase for purposes of the housing goals, unless prospective residents are required to pay an entrance fee *in excess of $12,500* ~~(other than application processing fees, first-month advanced rent payments, or security deposit fees),~~ in addition to any monthly rent or service fee. Seniors housing units that do not include additional services in the rent shall be treated as multifamily dwelling units for purposes of the housing goals. Seniors housing units that include additional services in the rent shall be treated as multifamily dwelling units with missing data for purposes of determining affordability.

D. Publication of Housing Goals Guidance on FHFA Website (Proposed § 1282.16(e))[33]

The Proposed Rule sets forth a new section which requires FHFA to post on its website any determination that it may make regarding the appropriate treatment of particular transactions or classes of transactions under the housing goals as provided under the existing § 1282.16(e). Fannie Mae supports enhancement of the transparency of the housing goals process.

However, often when such a determination is requested by an Enterprise (or arises in the context of other discussions with FHFA) it is accompanied by the submission of confidential Enterprise business information to FHFA. Frequently this information is protected pursuant to 12 C.F.R. Part 1214 or is subject to an exemption under the Freedom of Information Act.[34] We believe that ensuring the

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[30] Id.

[31] Id. at 54502.

[32] Id. at 54507.

[33] Id.

[34] 5 U.S.C. § 552 *et seq.*

continued protection of this confidential business information will facilitate full and frank exchanges between the Enterprises and their regulator that might otherwise be discouraged if the information were potentially subject to release.

Accordingly, we suggest that proposed § 1282.16(e) be clarified to read as follows:

> (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, including treatment of missing data. FHFA will notify each Enterprise in writing of any determination regarding the treatment of any transaction or class of transactions under the housing goals. FHFA will make any determinations available to the public on FHFA's Web site, *www.fhfa.gov, provided, however, that confidential business information submitted by an Enterprise in connection with or relating to any such determination shall be either excluded or redacted from the determination.*

IV. Blanket Loans on Manufactured Housing Communities[35]

A. Housing Goals Treatment

Fannie Mae is pleased that FHFA is considering allowing blanket loans on manufactured housing communities to be counted for purposes of the multifamily housing goals and urges it to do so.

Allowing goals credit for blanket loans on manufactured housing communities is consistent with the Housing and Economic Recovery Act of 2008 ("HERA"). HERA sets very broad parameters for the types of transactions that should be counted for goals purposes, directing only that FHFA consider whether they are substantially equivalent to mortgage purchases and either create a new market or add liquidity to an existing market.[36] Purchases of blanket loans on manufactured housing communities are comparable to purchases of blanket loans on cooperative buildings and condominium projects, which have long been treated as mortgage purchases for purposes of the multifamily housing goals. Indeed, acquisition of a mortgage on a manufactured housing community falls directly within the definition of "mortgage purchase" under the existing rule.[37] Moreover, as FHFA recognizes, financing blanket loans on manufactured housing communities provides liquidity to a segment of the housing market that focuses on low-income and very low-income families, and also supports housing in rural areas, where real estate loans can be difficult to obtain on economical terms.[38]

Manufactured homes account for an outsized share of low-cost housing, particularly among owner-occupants. Whereas manufactured homes account for approximately seven percent of all owner-occupied homes, they represent 16 percent of owner-occupied units with monthly housing costs of less

[35] 79 Fed. Reg. at 54502-03.

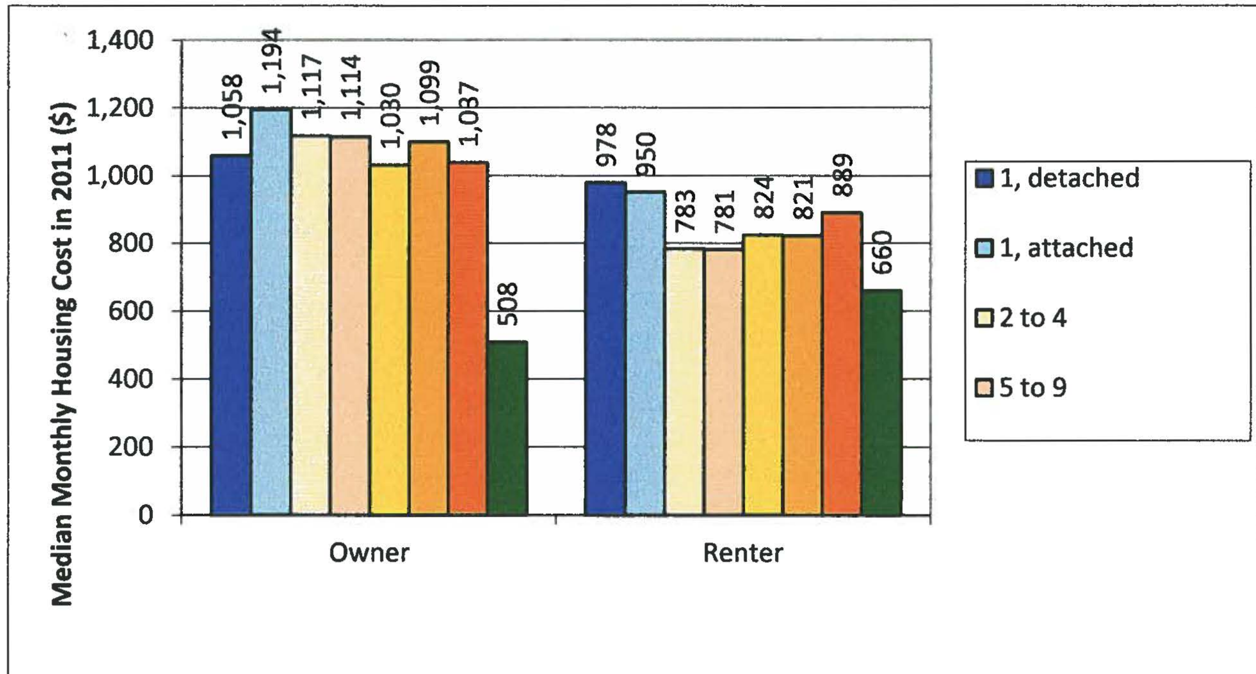
[36] See 12 U.S.C. § 4562(i).

[37] Under 12 CFR § 1282.1 (b) "Mortgage purchase" is defined as meaning "a transaction in which an Enterprise bought or otherwise acquired a mortgage or an interest in a mortgage for portfolio, resale or securitization."

[38] 79 Fed. Reg. at 54503.

than $500.[39] As shown in the chart below, the median monthly housing cost for owner-occupied manufactured homes[40] is only $508, less than half that of other housing types; the median monthly housing cost for renters[41] is also substantially lower for manufactured homes than for other forms of housing.

Figure 5: Manufactured Homes Typically Cost Less Than Other Housing Types.



Source: 2011 American Housing Survey. Median renter costs exclude renters paying no cash rent.

Substantial gaps also exist between the cost of new manufactured homes and the cost of new site-built single-family homes. In 2013, the average price per square foot of a new manufactured home was $43.54, less than half the $93.70 per square foot cost of a new site-built single-family structure, excluding land.[42]

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[39] *2011 American Housing Survey*, Table C-12-OO, "General Characteristics by Units in Structure—Owner-Occupied Units."

[40] Monthly housing costs for owner-occupied units include payments for mortgages or installment loans, real estate taxes (including taxes on manufactured homes and manufactured home sites if the site is owned), property insurance, homeowner association fees, cooperative/condominium fees, manufactured home park fees, land rent, and utilities. Maintenance and repair costs are excluded. *2011 American Housing Survey* at A-19.

[41] Monthly housing costs for renters include the contract rent, utilities, property insurance, and the manufactured home park fee. Id.

[42] 7 U.S. Census Bureau, "Cost & Size Comparisons: New Manufactured Homes and New Single-Family Site-Built Homes (2007-2013), available at http://www.census.gov/construction/mhs/pdf/sitebuiltvsmh.pdf.

Another reason that these loans should be counted for housing goals purposes is that Congress was quite clear as to what types of transactions should not be given housing goals credit, and its reasoning does not apply to the financing of manufactured housing communities:

> No credit toward the achievement of the housing goals and subgoals established under this section may be given to the purchase of mortgages, including any transaction or activity of an enterprise determined to be substantially equivalent to a mortgage purchase, that is determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises, pursuant to regulations issued by the Director.[43]

Products that have been denied housing goals credit under this provision have included, for example, private label securities given FHFA's observation in its 2010 housing goals rulemaking that:

> [W]hile PLS account for 12 percent of all mortgages outstanding, PLS account for 34 percent of serious delinquencies. As delinquencies in PLS portfolios triggered downgrades, 90 percent of the PLS holdings of the Enterprises experienced a downgrade. In light of that record, the final rule, like the proposed rule, excludes PLS from consideration under the housing goals.[44]

No such finding has been made as to Fannie Mae's financing of manufactured housing communities, nor could it be as this product is consistent with good lending practices and has proven to be a sound investment. As of June 30, 2014, it represented three percent of Fannie Mae's guaranty book of business with $5.4 billion of financing outstanding, but only .01 percent of its serious delinquencies. Moreover, Fannie Mae's underwriting requirements are designed to ensure that these investments remain sound ones:

- The loan must be secured by the land and infrastructure supporting the community, property used to provide common amenities, and any individual manufactured homes owned by the borrower and offered for rental.
- Standard DUS loan terms apply, with no minimum or maximum loan amount and for terms of five to 30 years.
- Loan-to-value ratios are not to exceed 80 percent.
- Communities must be stabilized, with at least 90 percent occupancy.

Fannie Mae also establishes quality standards designed to enhance the residents' experience including:

- Communities must be professionally managed.

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[43] 12 U.S.C. §4562(i).

[44] 2010–2011 Enterprise Housing Goals; Enterprise Book-entry Procedures; Final Rule, 75 Fed. Reg. 55892, 55925 (Sept. 14, 2010).

- Generally, only five percent of homes may be tenant occupied to facilitate a sense of community and pride of ownership, thus protecting home values.

- Roads and off street parking must be paved (subject to local laws).

- Utilities must be underground or private facilities that meet certain criteria.

- Homes in the community must conform to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.[45]

- Landscaping and entrance signage must be high quality and well maintained, and amenity packages must be competitive in the market place.

Accordingly, for the reasons set forth above, we believe that the financing of manufactured housing communities should qualify for housing goals treatment.

B. Investor-Owned Manufactured Housing Communities

FHFA asked whether goals eligibility should include investor-owned manufactured housing communities. Fannie Mae believes this inquiry should be answered affirmatively. As discussed above, Congress placed few limitations on the categories of transactions that should be permitted to qualify for goals treatment other than that they be substantially equivalent to mortgage purchases, not contrary to good lending practices, and consistent with safety and soundness. Investor-owned communities meet this test and thus there does not appear to be any statutory basis for rejecting this product while approving resident-owned communities for housing goals purposes. Moreover, financing investor-owned communities provides liquidity to an important affordable housing product insofar as they represent the vast majority of manufactured housing communities. Finally, as FHFA notes, there are many positive benefits to continued investment in this product, including the provision of favorable financing terms and the eligibility standards that Fannie Mae requires.

C. Definition of Manufactured Housing Community

FHFA asked for comment on its proposed definition of a "manufactured housing park."[46] Because both of the Enterprises refer to such a property as a "manufactured housing community,"[47] Fannie Mae suggests that FHFA use that term in the final rule. In addition, given that the financing of a manufactured housing community includes more than just the land, Fannie Mae recommends that the proposed definition be revised to read as follows:

> *Manufactured Housing Community* means a tract of land under unified ownership developed for the purpose of providing individual rental spaces for the placement of

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[45] 42 U.S.C. §§ 5401 *et seq.*

[46] 79 Fed. Reg. at 54503.

[47] See Fannie Mae Multifamily Selling and Servicing Guide Part III b-6-1; Freddie Mac Multifamily Seller/Servicing Guide Chapter 22.

manufactured homes within its boundaries *and includes residential amenities, utility services, landscaping, roads, and other infrastructure.*

D. Proposed Occupancy Requirement

FHFA indicated it is considering limiting housing goals credit to occupied units in the communities. Fannie Mae believes this would be inappropriate as the loan amount it makes available to a borrower when financing a manufactured housing community takes into account the entire number of units available, not just the units occupied. In this respect it is not dissimilar to the financing or the housing goals treatment of units in a bricks and mortar building and we see no reason for treating them differently. In addition, given our underwriting standard that any manufactured housing community we finance be stabilized (for example, with a 90 percent occupancy), any discrepancy between occupied and unoccupied units is likely to be small.

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Fannie Mae appreciates having the opportunity to comment on the Proposed Rule. If you have any questions or require additional information, please contact the undersigned at (202) 274-8660 or at Jeffery_hayward@fanniemae.com.

Sincerely,

Jeffery Hayward
SVP and Head of Multifamily Mortgage Business