Freddie Mac
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**Via Electronic Submission – RegComments@fhfa.gov**

October 28, 2014

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Eighth Floor
400 Seventh Street, SW
Washington, DC 20024

**Re: Comments – RIN2590-AA65 (Enterprise Housing Goals)**

Dear Mr. Pollard:

Freddie Mac is pleased to submit our enclosed comments on the Federal Housing Finance Agency's proposed rule regarding the 2015-2017 Enterprise Housing Goals.

Freddie Mac is committed to our statutory mission to provide liquidity, stability and affordability to the U.S. housing market. We commend FHFA for its thoughtful development of the proposed rule and look forward to working toward our shared objective of supporting affordable and sustainable homeownership and rental opportunities across the country.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Wendell J. Chambliss

Wendell J. Chambliss
Vice President and Deputy General Counsel
Mission, Legislative and Regulatory Affairs Department
Legal Division

Enclosure

## Overview

Freddie Mac appreciates the opportunity to provide comments on the Federal Housing Finance Agency's (FHFA) proposed rule to implement the 2015-2017 Enterprise Housing Goals (the Proposal).[1]

We strongly support FHFA's efforts to advance affordable housing goals in the context of the Enterprises' overall public mission and safety and soundness principles. We take seriously our statutory obligation to "facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with [our] overall public purposes, while maintaining a strong financial condition and a reasonable economic return."[2] Freddie Mac recognizes that, even in conservatorship, we must fulfill the public purposes for which we were chartered: "provid[ing] ongoing assistance to the secondary market for residential mortgages—including activities relating to mortgages on housing for low-and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities"; and "promot[ing] access to mortgage credit throughout the Nation."[3] While the housing market has recovered significantly from its nadir during the recent financial crisis, Freddie Mac believes that continued advancement of its public mission is critical to the country's economic stability and growth. Homeownership is a vital element in neighborhood stabilization and a pathway out of poverty. As housing prices rise, Freddie Mac's mission of making credit available to low- and moderate-income families becomes increasingly important. And, our multifamily business continues to act as a market leader in providing crucial support to the rental market. Accordingly, we support FHFA's efforts to develop a regulatory goals framework designed to further the Enterprises' role in making homes affordable.

Our comments on the Proposal are organized as follows:

**Section I** discusses Freddie Mac's broad public purposes, its affordable housing mission, and the overlay of safety and soundness. We believe that these foundational principles should

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1 79 Fed. Reg. 54482 (Sept. 11, 2014).

2 12 USC 4501(7).

3 12 USC 1451(b)(3) & (4).

guide FHFA's rulemaking and any assessments thereunder. In addition, we provide information concering our support of affordable housing during 2013 (the most recent year for which complete data is available).

**SECTION II** discusses the proposed single-family goals. Freddie Mac supports FHFA's first alternative measure of the Enterprises' performance on the single-family housing goals, which continues to measure against both a benchmark level and a market level. We believe that the advantages of the two-part approach significantly outweigh any potential disadvantages.

**SECTION III** discusses the proposed multifamily goals. Freddie Mac continues to play a vital role in the multifamily mortgage market, which is integral to our affordable housing mission. We agree that as our multifamily business continues to grow, our support for affordable housing should similarly increase. However, we support FHFA's proposal that Freddie Mac's multifamily goal levels continue to be lower than Fannie Mae's, reflecting the smaller overall unit volume of our multifamily business. We also support the proposed establishment of a small multifamily housing subgoal and, in recognition that we have only recently obtained conservator approval to operate in this space, we appreciate that the requirements for this subgoal increase year-over-year. We also recommend that FHFA define "small multifamily property" consistent with the statutory definition.

**SECTION IV** discusses the proposed counting rules. We commend FHFA for its efforts to codify existing informal counting guidance and update outdated guidance that no longer reflects the current housing market and changed demographics. We recommend a number of revisions and clarifications to the proposed counting rules that would strengthen and support Freddie Mac's efforts to "facilitate the financing" of affordable housing as envisioned by Congress.

## I. FREDDIE MAC'S AFFORDABLE HOUSING MISSION

Freddie Mac is a strong supporter of sustainable homeownership opportunities for low- and moderate-income families. To that end, Freddie Mac regularly evaluates market conditions, the credit environment, and the performance of our mortgage purchases in an effort to ensure that our business practices serve our mission; we must provide liquidity and stability to the mortgage market and promote affordable housing.

In 2013, Freddie Mac purchased more than 162,000 mortgages of first-time homebuyers, representing 37.6 percent of the market's owner-occupied, purchase money mortgages for which information on the borrower's ownership history is available. Freddie Mac facilitated homeownership opportunities for first-time homebuyers through its support of housing finance agencies under the Housing Finance Agency (HFA) Initiative.

Freddie Mac's ongoing efforts to facilitate relationships with community-oriented lenders supported our ability to source mortgages from these institutions. We renewed our Community Lending Alliance with the American Bankers Association and continued the alliance relationships with the Independent Community Bankers of America and the Credit Union National Association. In 2013, 496 lenders took advantage of our alliance offerings. Approximately 15 percent of the dollar volume of the mortgages that Freddie Mac purchased from community and regional lenders came from participants in the Community Lending Alliances. Freddie Mac purchased approximately $8.2 billion in mortgages from minority-owned lenders and women-owned lenders.

Additionally, in 2013, Freddie Mac prudently managed our credit risk, provided mortgage credit risk leadership to the marketplace, and helped lenders make sustainable home loans. For example, Freddie Mac streamlined and simplified our condominium project eligibility requirements and enhanced the benefits of our Relief Refinance Mortgage offering to increase lender participation and attract more borrowers.

On the multifamily side, Freddie Mac helps meet the need for affordable rental housing by credit enhancing or purchasing multifamily mortgages originated by numerous financial institutions. Working through our networks of lenders, Freddie Mac supports the financing of affordable apartment communities across America through a variety of products and services. During 2013, Freddie Mac continued to serve as a stable source of liquidity and continued our support of the multifamily market and the nation's renters, as evidenced by our $25.9 billion of multifamily loan purchases and issuance of other guarantee commitments. Also in 2013, Freddie Mac provided financing for more than 1,600 properties amounting to more than 388,000 apartment units. More than 89 percent of these apartments were affordable to low- and moderate-income families. Based on the most recent market data, we estimate Freddie Mac financed approximately 17 percent of the overall multifamily market in 2013. Our purchase and guarantee volume for 2013 was 90 percent of 2012 levels, consistent with FHFA's mandate to reduce our 2013 purchase volume by at least 10 percent from the 2012 level.

## II. SINGLE-FAMILY AFFORDABLE HOUSING GOALS

*Performance Measure*

Freddie Mac strongly supports FHFA's proposed Alternative 1 for determining Enterprise performance under the single-family affordable housing goals.[4]

Since 2010, the single-family housing goals have measured Enterprise performance by comparing it both to a prospectively-set benchmark and to the actual market level, as measured retrospectively based on HMDA data. Prior to 2010, performance was measured solely against a benchmark goal set in advance using estimated market data. The pre-2010 goals-setting process sought to forecast economic conditions and mortgage market activity for multiple years in advance. FHFA recognized the difficulties inherent in such an exercise and moved in 2010 to the current framework, adding a retrospective measurement against actual market data.

Projecting market size and composition is a challenging task even in a relatively stable economic environment. In particular, the interest rate environment, housing prices, consumer confidence levels, household income and the unemployment rate can change rapidly, having a profound effect on the volume and goals-qualifying composition of the Enterprises' mortgage purchase composition. The current framework eliminated exclusive reliance on uncertain market forecasts, but retained incentives for the Enterprises to strive to meet proposed benchmarks and enabled the Enterprises to plan their mortgage purchase operations and related activities.

[4] See proposed 12 CFR 1282.12 (79 Fed. Reg. 54482, 54504 (Sept. 11, 2014)).

We believe that the status quo, which measures performance both against a benchmark of the goals-qualifying shares of the Enterprises' mortgage purchases, as well as relative to the actual goals qualifying shares of the primary mortgage market, strikes the right balance in providing the Enterprises with known targets, while recognizing that actual market performance may make meeting such targets an infeasible.

## III. MULTIFAMILY AFFORDABLE HOUSING GOALS

### *(a) Benchmarks*

Freddie Mac's multifamily business is an affordable housing business. Almost every loan we finance supports affordable rental housing. Historically, roughly 90 percent of the loans we finance in any given year support low- and moderate-income households who earn no more than area median income. We welcome the challenge implicit in FHFA's proposal to gradually increase Freddie Mac's multifamily benchmark over the next three years. Nonetheless, we believe that the historical difference in the volume of business at each Enterprise warrants the continuation of distinct benchmark levels.

### *(b) Small Multifamily Property Subgoal*

FHFA proposes to implement a low-income housing subgoal for small multifamily properties.[5] The Proposal would define "small multifamily properties" solely by the number of units. Freddie Mac supports the implementation of the subgoal. However, we recommend that FHFA instead define "small multifamily properties" as either properties with five to 50 units or a loan balance of up to $5 million dollars.

In discussing the Enterprises' reporting on smaller multifamily properties, Congress defined "multifamily housing of a smaller or limited size" as "multifamily projects of [five] to 50 units (as such numbers may be adjusted by the Director) or on mortgages of up to $5,000,000 (as such

[5] Proposed 12 CFR 1282.13(d) (79 Fed. Reg. 54482, 54506 (Sept. 11, 2014)).

amount may be adjusted by the Director.)"[6] We recommend that FHFA use this definition in implementing the low-income housing subgoal for small multifamily properties.

In addition, data on small multifamily properties is currently reported based on loan balance rather than property size, which would necessitate the use of loan balance to estimate the size of the market for multifamily properties that have between five and 50 units. The preamble to the Proposal recognizes the difficulty that arises in attempting to correlate data sets that rely on different reporting formats. We would argue that such a correlation is unnecessary for this subgoal. Given that the size of the market is one of six statutory factors required to be considered in setting a goal, we think that it would be appropriate for FHFA to set the subgoal based on actual, versus estimated, market data.

Accordingly, we recommend that FHFA define "small multifamily property" consistent with Congress, as properties with five to 50 units or a loan balance of up to $5 million.

*(c) Reduced Cap on Estimating Affordability for Multifamily Properties*

Freddie Mac recommends that FHFA not implement the proposed reduction from 10 percent to five percent in the cap on multifamily units for which the Enterprises are permitted to estimate the rental amount.[7] The Enterprises may use estimated rent for purposes of determining affordability in the case of missing data or information. Currently, the Enterprises are permitted to estimate affordability for up to 10 percent of the multifamily units in any given year. However, a reduction to five percent may not prove workable in combination with other proposed changes, particularly those related to seniors housing and manufactured housing.

Historically, while estimation has been used to determine affordability for seniors housing units where services are provided, the Enterprises have not been required to count those units toward the existing 10 percent cap. The Proposal would no longer exclude seniors housing from the cap on estimating affordability. FHFA notes in the preamble to the Proposal that the volumes of such purchases by the Enterprises are relatively small, and that estimation would continue to be

[6] 12 USC 4563(a)(3).
[7] Proposed 12 CFR 1282.15(e)(3) (79 Fed. Reg. 54482, 54507 (Sept. 11, 2014)).

possible even with a five percent cap. However, we are concerned that, as we increase our volumes of purchases of seniors housing, we may exceed that cap.

Further, as discussed more below, we are supportive of FHFA's proposal to permit counting of manufactured housing parks (we recommend FHFA use the phrase "manufactured housing communities," as that is the term used in the industry)[8] for purposes of the affordable housing goals. Freddie Mac has only recently entered the manufactured housing community (MHC) market, but we intend to be competitive in this space. While we recommend that the Enterprises use rent to determine affordability for manufactured housing communities, we acknowledge that estimation is another alternative. If FHFA determines it is appropriate for the Enterprises to count MHCs using estimation, our increasing volume may take us above the proposed five percent threshold. Accordingly, we recommend that the cap on estimating affordability for multifamily properties remain at 10 percent.

## IV. COUNTING RULES

### *(a) Definitions*

Dwelling Unit. Freddie Mac is very concerned about the proposed revisions to the definition of Dwelling Unit and would strongly urge FHFA to maintain the current definition.

The Proposal would revise the definition of a Dwelling Unit as "a room or unified combination of rooms with complete plumbing and kitchen facilities intended for use, in whole or in part, as a dwelling unit by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property."[9] The preamble to the Proposal indicates that this revision is intended to address shared living arrangements, where separate individuals rent separate bedrooms but share common areas and cooking and sanitary facilities. For purposes of determining affordability, the rent for such a unit would be the aggregate of all rent payments made by all of the individuals residing in the dwelling unit, even if each individual who resides in a bedroom has entered into a separate lease agreement or

[8] See, *infra*, at IV(b).

[9] Proposed 12 CFR 1282.1 (79 Fed. Reg. 54482, 54504 (Sept. 11, 2014)).

if the bedrooms have separate locks. We recommend that FHFA exclude this revision from the final regulations as the proposed definition does not take into consideration market forces around shared living arrangements, may restrict the availability of safe, affordable housing for seniors and students, and excludes single-room occupancy (SRO) living space – the availability of which is crucial to homelessness prevention.

When the Department of Housing and Urban Development (HUD) initially proposed its affordable housing goals regulations, it proposed that a dwelling unit be defined as: "single, unified combination of rooms designed for use as a dwelling by one family and includes a dwelling unit in a single family property, multifamily property, condominium, cooperative, or planned unit development project."[10] In recognition that such a definition would not count significant affordable housing in the forms of single-room occupancy housing, or group living arrangements that may lack individual kitchen or bathroom facilities in each unit, HUD revised the definition in its final rule to what it is today: "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."[11]

Shared living arrangements represent an important segment of the affordable housing market. We believe goals credit should be available to count dwelling units where a bedroom is rented to a tenant pursuant to a separate and independent lease. Thus, in the example cited in the preamble to the Proposal, assuming each of the four tenants had a separate and independent lease, but nonetheless shared the common areas and cooking and sanitary facilities, affordability under the housing goals should be determined by individual rent of each bedroom, subject to its separate and independent lease. This practice reflects the reality that shared living arrangements frequently are used by unrelated persons who, but for the unaffordability or unavailability of other housing options, otherwise would not choose to live together. Operators may lease each bedroom with a lock as a separate unit; the unit may or

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[10] 60 Fed. Reg. 9154, 9182 (Feb. 16, 1995).
[11] 12 CFR 1282.1.

may not have a bathroom and/ or kitchen-type facilities. In our counting, we have followed the operator's lead, recognizing that the existence of shared facilities does not alter the individual's financial responsibility for the unit. On the other hand, if an apartment is rented by one or more tenants pursuant to one lease agreement, affordability should be determined by the rent paid pursuant to the lease agreement irrespective of the number of bedrooms. In this latter case, we would treat this shared housing as any other sort of multifamily housing.

The proposed definition of Dwelling Unit could also restrict students' access to safe, affordable housing. We believe that, consistent with past practices, units in student housing apartment projects should continue to be counted toward the affordable housing goals as currently counted. It is well-established that education is a critical factor in overcoming poverty.[12] A college degree is frequently required for even entry-level jobs.[13] However, the cost of a post-secondary education continues to rise. Between 2000-01 and 2010-11, prices for undergraduate tuition, room, and board at public institutions rose 42 percent, and prices at private not-for-profit institutions rose 31 percent, in both cases after adjustment for inflation.[14] Approximately 85 percent of post-secondary students rely on financial aid to finance their education costs and, in 2012, the average student loan debt was approximately $27,000.[15] Two out of five student borrowers will be delinquent on their repayments within the first five years. As the costs of a higher education continue to rise, the availability of affordable housing for students becomes increasingly important. Providing housing for students is clearly consistent with the policy underlying the Enterprises' affordable housing goals.

In addition, the proposed definition of Dwelling Unit could also restrict seniors access to safe, affordable housing. For safety, health and other reasons, units in assisted living or other seniors

[12] The Global Partnership for Education states that investing in education is the single most effective means of reducing poverty. http://www.globalpartnership.org/who-we-are/the-value-of-education/.
[13] Catherine Rampell, It Takes A BA to Find a Job as a File Clerk, NY Times (Feb. 19, 2013) *available at* http://www.nytimes.com/2013/02/20/business/college-degree-required-by-increasing-number-of-companies.html?_r=0.
[14] http://nces.ed.gov/programs/digest/d12/tables/dt12_384.asp.
[15] Between academic years 2006-07 to 2010-11, the percentage of first-time, full-time undergraduate students at 4-year degree-granting institutions receiving any financial aid increased from 75 to 85 percent. National Center for Education Statistics available at http://nces.ed.gov/fastfacts/display.asp?id=31.
http://www.asa.org/policy/resources/stats/

housing facilities may lack a kitchen, with food being provided as a service by the facility. Nonetheless, the unit is indisputably the resident's home. As we discuss in more detail below, seniors access to affordable housing is a current issue of critical – and increasing—significance. We do not believe that the intentional and necessary absence of kitchen facilities should exclude an otherwise affordable unit from counting toward the multifamily housing goals.

The proposed definition of Dwelling Unit also would exclude SRO residences from counting. SROs are a form of housing in which one or two people are housed in individual rooms (sometimes two rooms, or two rooms with a bathroom or half bathroom) within a multiple-tenant building. SRO tenants typically share bathrooms and/or kitchens, while some SRO rooms may include kitchenettes, bathrooms, or half-baths. Although many are former hotels, SROs are primarily rented as permanent residences. SROs provide a flexible, affordable, and independent private living space for extremely low-income individuals. They often serve as the final safety net to help prevent homelessness and as transitional housing out of homelessness. The affordable housing goals provide a measure of the Enterprises' performance of their public mission—the support of affordable housing for low- and moderate- income families. SROs house exactly those populations, and excluding SROs from counting toward the affordable housing goals would distort the accurate measurement of an Enterprise's performance.

We believe that the revisions to the housing goals should not exclude important types of affordable housing, and we do not think that determination of whether particular types of housing count towards goals credit should turn on whether bathrooms and kitchens are shared. Accordingly, we believe the following requirements, while perhaps not dispositive, should be considered in determining the appropriate definition of a dwelling unit within a particular shared living arrangement: whether there are separate and independent leases for each bedroom; whether a separate rent amount is identifiable and reported for each bedroom; and, whether each bedroom has a separate entrance/door and lock. We urge FHFA to re-consider the proposed revision so that the final rule takes into consideration how student housing, seniors housing and SROs are structured and configured. For all of the above reasons, we do not believe that the existing definition of Dwelling Unit should be modified.

Rent. For reasons similar to those discussed above regarding the definition of Dwelling Unit, we recommend that FHFA revise its proposed definition of Rent. In common parlance, "rent" is the amount one pays pursuant to a lease. The current method of counting reflects the market for determining rents; the rent that can be charged for each room in a four bedroom apartment does not necessarily equal the rent that can be charged for renting that same four bedroom apartment under one lease. There may not be a demand for a four bedroom apartment, while there may be great demand for one room in that shared space. A landlord may be able to charge $500 per month for each of the four rooms, but that would not necessarily equate to being able to charge $2000 per month for the whole apartment. We would argue that aggregating the individual rents does not provide an accurate determination of affordability, does not recognize the reality of the residents' economic circumstances and does not bear on the market for each bedroom. Accordingly, we recommend that the first clause of the proposed definition of Rent be revised as follows:

> Rent means the actual or average rent by unit size for a dwelling unit [or, in a manufactured housing community, a homesite.][16] (i) When the contract rent includes all utilities, rent equals the contract rent. (A) Rent concessions shall not be considered, i.e., the contract rent is not decreased by any rent concessions. (B) Rent is net of rental subsidies, i.e., the contract rent is decreased by any rental subsidy.

Utility Allowance. Freddie Mac recommends that FHFA permit the Enterprises to use another alternative measure to incorporate the cost of utilities into an affordability determination. We agree that the nationwide average utility allowance does not adequately account for significant deviations in utility costs across census tracts, and we appreciate that FHFA has included alternatives to this measure in the Proposal. Specifically, the Proposal would permit the use of a utility allowance established by a state or local housing finance agency or under the HUD Section 8 Program for the area where the property is located.[17] While

[16] Discussed, *infra*, at IV(b).
[17] Proposed 12 CFR 1282.1 (79 Fed. Reg. 54482, 54504 (Sept. 11, 2014)).

these methods would likely more accurately reflect actual utility costs, the administrative burden of using either method is significant.

Accordingly, we propose that FHFA permit the Enterprises to use a factor of rent as a proxy for utility costs. According to our internal data, where utilities are paid by the owner of a property they usually constitute approximately 16 percent of the overall operating expenses. Total operating expenses are usually equal to approximately 50 percent of the total rent amount. Thus, a reasonable proxy for the cost of utilities would be 8 percent of total rent. In fact, based on data from the 2013 Survey of Operating Income & Expenses in Rental Apartment Communities,[18] the 8 percent figure may be high. According to that data, the range of utility cost as a share of effective rent varies from 4.7 percent in market rent to 13.6 percent in subsidized rent.

Accordingly, we recommend revising section (ii) of the definition of Rent to add the following after (ii)(D):

Or (E) An additional 8 percent of the contract rent to account for the cost of utilities.

*(b) Manufactured Housing Communities*

FHFA requested comment on whether it should change its policy regarding excluding from goals credit blanket loans on manufactured housing communities and, to the extent the policy is changed, how blanket loans on manufactured housing communities should be treated. We address FHFA's questions and requests for comment, below.

<u>Definition of Manufactured Housing Communities.</u> We support FHFA's proposed definition of a "manufactured housing park" as a "tract of land under unified ownership developed for the purpose of providing individual rental spaces for the placement of manufactured homes within its boundaries." However, we recommend that FHFA revise the definition to refer to a "manufactured housing community."

[18] Christopher Lee, 2013 Survey of Operating Income & Expenses in Rental Apartment Communities.

Counting Manufactured Housing Communities. Freddie Mac believes that the 2015-2017 affordable housing goal regulations should allow blanket loans on MHCs to be counted for purposes of the multifamily housing goals. We suggest that MHCs be counted in the same manner as other multifamily properties: using rents. Given that Freddie Mac has only recently entered this market, we do not recommend an increase in the levels of the multifamily housing goals at this time.

In the preamble to the Proposal, FHFA references a separate, upcoming proposed rulemaking on the duty to serve underserved markets. Given that the two statutory provisions are focused on distinct requirements, we do not believe it is necessary or appropriate to exclude MHCs from counting toward the affordable housing goals simply because the purchase of such loans will also support the duty to serve. Manufactured homes are an important segment of the housing market, accounting for between seven and eight percent of all one- to four-family housing units.[19] Residents of manufactured homes have lower net worth and assets than other families. Median annual income for families that live in manufactured homes is $26,000, or approximately half that of other families.[20] Manufactured housing is found throughout rural communities in the United States where such housing is one of, or perhaps the only, form of affordable and easily accessible housing options available for many low-income and very low-income persons.[21]

Manufactured homes may be placed on individual parcels that are owned by the manufactured-homeowner, or the homes may be placed on rented land, including on leased lots within manufactured home communities. MHCs generally require a homeowner or renter to pay ground rent, which may include fees for shared amenities, services, and utilities. Historically,

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[19] *See* Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data And Matched HMDA–Credit Record Data, Federal Reserve Bulletin, Vol. 99, No. 4, (Nov. 2013), available at http://www.federalreserve.gov/pubs/bulletin/2013/pdf/2012_HMDA.pdf, citing the 2011 American Housing Survey, available at www.census.gov/housing/ahs/data/national.html.
[20] Manufactured housing Consumer Finance in the United States, CFPB (Sept. 2014), *available at* files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf, p. 8.
[21] Manufactured housing is more prevalent in rural areas. About two-thirds of all occupied manufactured homes in the U.S. are located outside of metropolitan statistical areas (MSAs), and 14 percent of homes in non-MSA counties are manufactured homes. *Id.*

around 25–30 percent of manufactured homes have been placed within manufactured housing communities, though the share of new homes placed in communities has grown in recent years.[22] Clearly manufactured housing serves exactly those populations intended to be targeted by the affordable housing goals, and providing financing for MHCs is critical to supporting manufactured housing. Therefore, the Enterprises should be permitted to count blanket loans on MHCs toward the multifamily affordable housing goals.

While we acknowledge that the rents do not include the full costs of housing for residents – who typically either rent or own manufactured homes located in the MHC – we believe that using the rental cost for the homesite to determine affordability will not overstate the affordable housing being supported and is significantly more accurate than any currently known alternative. Data indicates that MHCs almost exclusively serve very-low, low- and moderate-income families. Using an estimation method would result in significant undercounting, as MHCs tend to have a disproportionately high population of very-low income and low-income families as compared to an overall census tract. We also note that FHFA's proposed methodology for counting blanket loans on cooperative buildings,[23] which are functionally analogous to MHCs, would be ineffective, since MHCs are often located in rural areas where market comparables are notoriously difficult to obtain. Therefore, we believe that using the rents for the homesites in an MHC is the most effective method of counting the number of affordable dwelling units supported by that financing. We have proposed alternative regulatory language to the definition of Rent, *supra*.

In the alternative, if FHFA determines to use the estimation method to count MHCs, we recommend that FHFA revisit this issue in 2016. In the interim, FHFA and the Enterprises can work to gather information to determine the most appropriate mechanism to accurately count MHCs for affordability purposes. It will also give FHFA time to assess the appropriate

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[22] *Id.*

[23] FHFA proposes to require the use of comparable market rents used in underwriting a blanket cooperative loan to determine affordability. We discuss this proposal, *infra*, at IV(c). Proposed 12 CFR 1282.16(c)(5)(ii) (79 Fed. Reg. 54 54482, 54507 (Sept. 11, 2014)).

interplay between the affordable housing goals and the new regime implementing the Enterprises' duty to serve underserved populations.

Investor-Owned v. Cooperatively Owned Manufactured Housing Communities. FHFA requests comment on whether goals credit should be restricted to MHCs cooperatively owned by residents. We do not think such a restriction is appropriate. Investor-owned MHCs make up the majority of total MHCs and the fact that these MHCs are owned by investors does not diminish the significance of these properties in making affordable housing available. Accordingly, we recommend that FHFA define the term "multifamily property" to include manufactured home communities as follows:

> *Multifamily housing* means a residence consisting of more than four dwelling units. The term includes cooperative buildings, condominium projects and manufactured home communities.

*(c) Affordability for Blanket Loans on Cooperative Housing*

FHFA is proposing to require the Enterprises to determine the affordability of blanket loans on cooperative housing based solely on the comparable market rents used in underwriting the blanket loan.[24] Freddie Mac believes that the current method of determining affordability for blanket loans on cooperative housing is appropriate. However, should FHFA revise the methodology as proposed, we request clarification in consideration of Freddie Mac's business practices.

The Proposal would significantly change the method by which Freddie Mac determines affordability of multifamily units underlying a co-op blanket loan, by limiting such determination to be based solely on comparable market rents used by the lender in underwriting the blanket loan. The Proposal would further restrict affordability determinations if comparable underwriting rents are not available for the blanket loan, as the underlying

[24] Proposed 12 CFR 1282.16(c)(5)(ii) (79 Fed. Reg. 54 54482, 54507 (Sept. 11, 2014)).

multifamily units would not be treated as mortgage purchases for purposes of the multifamily housing goals.[25]

In determining the percentage of low- and very low-income eligible multifamily units in cooperative properties, the Enterprises currently are permitted to use income or actual rents or, if either of those is unavailable, to estimate rent by means of a specific methodology (or "rent proxy").[26] In the preamble to the Proposal, FHFA indicates that in some geographic areas, particularly parts of New York City, using the current "rent proxy" methodology may "significantly overstate the number of low- and very low-income units" in certain census tracts due to the large number of lower-income cooperatives in close proximity to luxury market rate housing.[27] While this is theoretically true, we are unaware of any data or analysis sufficient to support revision of the current rule. Accordingly, we recommend that the current method of determining affordability for blanket loans on coops remain in place.

Should FHFA determine to implement the proposed revision, Freddie Mac seeks clarification that the comparable market rents used in underwriting the loan are not limited to those used by the lender. Freddie Mac does not rely on the delegated model in its multifamily business; rather, we re-underwrite every property for which we provide financing. Accordingly, Freddie Mac places a value on the blanket loan while re-underwriting the loan directly, and does not strictly rely on those values ascertained by an appraiser or other third party. Freddie Mac is concerned that the preamble reference to lender comparables may be interpreted to prohibit use of the market comparables used by Freddie Mac in its own underwriting. If FHFA declines to continue permitting the Enterprises to use the estimation method to count co-op blanket loans, Freddie Mac proposes that the second sentence of 12 CFR 1282.16(c)(5)(ii) be clarified as follows:

> 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

[25] *See* proposed 12 CFR 1282.16(c)(5)(ii).
[26] 12 CFR 1282.15(e).
[27] *See* 79 FR 54482, 54501 (Sept. 11, 2014).

affordability must be determined based solely on the comparable market rents used in underwriting the blanket loan, whether by the lender or by the Enterprise.

*(d) Seniors Housing*

Skilled Nursing Units. In the Proposal, the term Skilled Nursing Units is defined as "a unit in a multifamily property that is dedicated to providing licensed medical care services to individuals who are age 55 and over."[28] FHFA is proposing to exclude Skilled Nursing Units from goals credit eligibility.[29] For the reasons described below, Freddie Mac believes that FHFA should revise the proposed definition of Skilled Nursing Units to clarify that this definition is not intended to capture assisted living and independent living facilities where medical services may be provided to residents, but is rather focused on those units that are exclusively dedicated to providing constant and extensive medical care.

"Seniors housing" encompasses a variety of living arrangements. In the multifamily context, it ranges from retirement communities, where the only defining feature is the age of the resident, to nursing homes, where the resident may require nearly constant care. There are also properties that include some variant of both – independent living facilities and assisted living facilities – where some degree of care is provided to support the resident's continued independence. More recently, the market has trended toward continuing care retirement communities (CCRCs) where a senior may move into a unit needing no services and will be able to age in place, taking advantage of available services as they become necessary.

Given that many seniors facilities provide a range of services in residence – including various levels of medical services ranging from medication management to rehabilitation services to full nursing care – we are concerned that the proposed language could be read to exclude a large number of units that are primarily residential, that would otherwise be considered affordable and that do serve the target populations. In CCRCs, the services provided in a particular unit may evolve over time, with licensed medical care services being one of many offered. Available

[28] Proposed 12 CFR 1282.1 (79 Fed. Reg. 54482, 54504 (Sept. 11, 2014)).
[29] Proposed 12 CFR 1282.16(b)(15) (79 Fed. Reg. 54482, 54507 (Sept. 11, 2014)).

medical services are a key component to aging in place, the provision of which should not make a residence ineligible for goals counting. The medical care component does not alter the fact that these units are the tenant's home.

Freddie Mac understands that FHFA is concerned that hospital-like units not be counted, as they are not primarily residential in nature. We do not finance seniors housing where the services provided are predominantly for medical care and associated housing costs are an incidental component. The American Seniors Housing Association and the National Investment Center for the Seniors Housing and Care Industries have defined *Nursing Homes, or skilled nursing facilities*, as those facilities where the majority of individuals require 24-hour nursing and/or medical care. [30] In contrast, in assisted living facilities, residents live independently and may receive assistance with activities of daily living and some medical services. We agree with FHFA that seniors housing apartments, independent living facilities, and assisted living facilities should continue to count toward the affordable housing goals. We also agree that skilled nursing units should be excluded from counting. Accordingly, for clarification, we recommend that FHFA revise the proposed definition of a Skilled Nursing Unit as follows:

> Skilled Nursing Unit means a multifamily property unit dedicated to providing tenants aged 55 and over with 24-hour licensed medical services that go beyond assistance with activities of daily living. Activities of daily living may include management of medications, bathing, dressing, toileting, ambulating and eating.

Affordability Estimation Based on Age of Tenant. Freddie Mac appreciates that the proposed goals counting revision, requiring multifamily units to be evaluated for affordability based on rents, rather than income, aligns with Freddie Mac's general practices.[31] We also appreciate that the Proposal recognizes that there are instances where it is appropriate to consider factors other than rent in determining whether—and how—to count a unit towards the

[30] *See* http://www.nic.org/research/Classifications.pdf (available as of Oct. 28, 2014).
[31] Proposed 12 CFR 1282.15(d) (79 Fed. Reg. 54482, 54506 (Sept. 11, 2014)).

affordable housing goals.[32] Seniors housing is increasingly important as the American population ages. Therefore, where a seniors housing facility also provide services, we recommend that FHFA permit the Enterprises to rely on a declaration from the operator of a facility regarding tenant's age. Relying on that data, the Enterprises will be able to estimate affordability based on area median income for the specific age group of the tenants in that census tract.

By 2030, one in every five Americans will be over age 65, and our nation will face a severe shortage in appropriate housing to meet their needs. Incomes usually peak when households are in their late 40s and then begin to fall as the share of individuals able or needing to work declines. Even as income declines, the cost of housing continues to rise, resulting in increasing housing burdens on the elderly. One-third of adults aged 50 and over pay excessive shares of their incomes for housing. Of renters, nearly half of those aged 50-64 and six out of 10 of those aged 80 or older are cost-burdened.[33] Three and a half million seniors live below the poverty level. A 2011 HUD report to Congress found 1.47 million seniors with worst-case housing needs.[34] Increasing numbers of seniors are homeless. Housing cost burdens force seniors to cut back sharply on other necessities, such as food.[35]

Currently, because of the difficulty in parsing housing expenses and non-housing related expenses, we use the estimation method to determine affordability for seniors housing that include additional services in the rent. However, we believe that the estimation method significantly undercounts affordable units. Seniors are typically experiencing a constantly decreasing net worth. Seniors live off a combination of social security, small (if any) pensions,

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[32] For example, the Enterprises may determine affordability based on subsidy program requirements and pursuant to the special counting requirements in 12 CFR 1282.16.
[33] Housing America's Older Adults: Meeting the Needs of An Aging Population, Joint Center for Housing Studies of Harvard University (p. 13).
[34] *See* Worst Case Housing Needs - 2011 Report to Congress, U.S. Housing and Urban Development, pg. 2, available at ; "Worst case needs" is defined as very low-income renters with incomes below 50 percent of the Area Median Income (AMI) who do not receive government housing assistance and who either paid more than half of their income for rent or lived in severely inadequate conditions, or who faced both of these challenges.
[35] Housing America's Older Adults: Meeting the Needs of An Aging Population, Joint Center for Housing Studies of Harvard University (p. 15).

savings, and contributions from family members. As lifespans are always uncertain, seniors are forced to stretch their available funds to support themselves for an indeterminate time.

For each senior's facility for which we provide financing, we receive data regarding relative incomes in a ten-mile radius based on age-ranges. We believe that using a modified estimation determination that factors in a tenant's age will more accurately reflect affordability of senior's housing that provides services. Where an owner is unable or unwilling to certify to the age of the tenants, the Enterprises would revert to the current estimation method. We propose alternative regulatory language reflecting this recommendation, below.

Affordability Based on Receipt of Medicaid. Freddie Mac requests that FHFA consider allowing the Enterprises to rely on the receipt of Medicaid health care coverage due to income level in determining whether a senior's unit that includes services is eligible for counting towards the multifamily housing goals.

Generally, federal law provides Medicaid health care coverage to seniors under age 65 whose income is at or below 133 percent of the Federal Poverty level for their applicable family size. Medicaid is also available to low-income seniors 65 and older on a needs basis. Medicaid plays a critical role in financing the care of low-income households in institutional settings, including two-thirds of nursing home residents aged 65 and over. To qualify for this support, individuals must spend down or otherwise dispose of their assets.

Freddie Mac suggests that in a scenario where a tenant receives (or is eligible to receive) Medicaid health care coverage due to his or her income, the maximum allowable income levels permitted to receive Medicaid coverage should be used as a proxy for the tenant's income[36] and should be compared to the area median income for the applicable census tract. Instead of relying on estimation – a method that we believe significantly undercounts affordable seniors units – the maximum allowable Medicaid income levels would be used to determine whether

[36] For individual seniors [under age 65] for example, Freddie Mac would apply the 2014 HUD poverty guidelines, which limit income for 1 person households to no more than $11,670 per month (100% of the Federal Poverty Level) for the 48 contiguous states, $14,580 per month for Alaska, and $13,420 for Hawaii. *See* http://aspe.hhs.gov/poverty/14poverty.cfm.

the senior recipient's income is less than 80 percent or 50 percent of the area median income for purposes of the multifamily low-income housing goal or very low-income housing subgoal. In order to implement this determination of affordability, Freddie Mac anticipates that the Enterprises would use yearly federal poverty levels as a data indicator to determine whether each person in a seniors property receives or is eligible to receive Medicaid.

Up-Front Fees. In counting seniors housing units, FHFA proposes to exclude from goals credit eligibility those units where seniors are required to pay an entrance fee.[37] Freddie Mac requests that FHFA clarify the extent of prohibited up-front fees for seniors housing.

Although we believe that the Proposal is referencing large up-front fees as an indicator that a unit is not affordable, the proposed rule would exclude any fee other than application processing fees, first-month advanced rent payments or security deposits. The language would appear to exclude community fees, which are commonly charged by seniors housing facilities and are typically the equivalent of 1-2 months' rent. We propose that FHFA codify existing HUD guidance that would permit goals credit for units that require small application processing fees, first month advance rent payments, security deposit fees, and/ or similar fees.

Incorporating our recommendations related to affordability estimation based on the age of tenant and up-front fees, we propose the following revisions to Section 1282.16(c)(15) of the Proposal:

> (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 a large entrance fee (other than application processing fees, first-month advanced rent payments, security deposit fees, community fees, and/ or similar 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. An Enterprise's performance with respect to a seniors housing unit that

[37] Proposed 12 CFR 1282.16(c)(15) (79 Fed. Reg. 54482, 54507 (Sept. 11, 2014)).

includes additional services in the rent may be evaluated using estimated affordability information by multiplying the number of such units by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal and subgoal based on the area median income for the age of the tenant of the unit. If the age of the tenant is unavailable, the unit shall be treated as multifamily dwelling units with missing data for determining affordability.

*(e) Eligibility of Modifications*

We commend FHFA for maintaining goals eligibility for loan modifications made in accordance with the Making Home Affordable (MHA) program. FHFA's favorable goals treatment of MHA modifications is consistent with FHFA's finding in the 2009 affordable housing goals rulemaking that a great threat to home ownership is the risk of default and foreclosure. In addition to our commitment to MHA modifications, Freddie Mac continues to seek ways to reduce foreclosures, preserve homeownership and strengthen local communities that have been severely impacted by financial distress. Concurrent with our experience with the MHA program, we developed our own modification programs – which are largely consistent with the MHA program—to further the goal of preserving homeownership. As FHFA is aware, the MHA program is intended to wind-down in the coming year. Because Freddie Mac's loan modification programs will continue the policy goals for which the MHA program was implemented, we believe that loan modifications outside of MHA that preserve homeownership should be eligible to count toward the affordable housing goals.

Freddie Mac also recommends that modifications of multifamily mortgages be goals eligible. Interventions in the multifamily sector are designed to mitigate the risk and adverse impacts of foreclosure. Such modifications benefit tenants — the vast majority of whom are low- and moderate-income households — by preventing disinvestment and maintaining building services. This promotes decent, safe housing and helps avoid destabilizing the surrounding community.

Accordingly, we recommend the following amendments to the proposed regulatory language at Section 1282.16(c)(10):

> (10) *Loan modifications*. An Enterprise's permanent modification of a loan 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. Each such permanent loan modification shall be counted in the same manner as a purchase of a refinancing mortgage.

*(f) Affordability of Rents Based on Subsidy Program Requirements.*

FHFA proposes to permit the Enterprises to determine the affordability of rents by reference to subsidy program requirements.[38] For the reasons described below, Freddie Mac believes that FHFA should permit the Enterprises to assume compliance with income restrictions on the basis of an owner's certfication, absent a finding of non-compliance.

Freddie Mac appreciates FHFA's proposed counting rule that would enable Freddie Mac to determine affordability of certain units where a multifamily property is subject to a local, state or federal affordability restriction program.[39] In the preamble to the Proposal, FHFA indicates that the Enterprises would be required to show that the tax credit or other monitoring agency exercising regulatory oversight over the applicable subsidy program has determined that the subject units are in compliance with such affordability restrictions.[40] Typically, these restrictions are evidenced in regulatory agreements that are recorded in the land records and bind the owner of the project for some period of time. Owners are required to confirm or certify that the project is in compliance with the income restrictions in the regulatory agreement. We also note that monitoring agencies generally capture non-compliance, versus compliance. Therefore, we recommend that the Enterprises be permitted to assume compliance in the absence of a monitoring agency's finding of non-compliance. We believe that we should be

[38] Proposed 12 CFR 1282.15(d)(2) (79 Fed. Reg. 54482, 54406).
[39] *Id.*
[40] 79 FR 54482, 54501 (Sept. 11, 2014).

permitted to rely on the regulatory restrictions and an owner's certification of compliance in determining affordability.

## CONCLUSION

Freddie Mac appreciates the opportunity to comment on this important rulemaking. We look forward to engaging in an ongoing dialogue with FHFA, as well as continuing our role in ensuring the liquidity, stability and affordability of the U.S. mortgage markets.