FannieMae

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April 12, 2010

Alfred M. Pollard
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Federal Housing Finance Agency
Fourth Floor
1700 G Street, NW
Washington, DC 20552

Attention: Comments/RIN 2590-AA26

RE: 2010-2011 Enterprise Affordable Housing Goals;
Enterprise Book-entry Procedures
Proposed Rule

Dear Mr. Pollard:

Fannie Mae appreciates the opportunity to submit comments in response to the Proposed Rule, published on February 26, 2010 (the "Proposed Rule"), establishing new affordable housing goals for 2010 and 2011 for Fannie Mae and Freddie Mac (the "Enterprises").

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, requires the Federal Housing Finance Agency ("FHFA") to set housing goals for the Enterprises. Set forth in the attached document are Fannie Mae's comments on the specific goal levels set by FHFA for 2010 and 2011. We are also including Fannie Mae's comments on certain counting rules, comments on sustainability as requested by the Proposed Rule, and comments on the proposed reporting changes.

If you have questions regarding the matters addressed in the attached document, please feel free to contact the undersigned at (202) 752-7144.

Sincerely,

Timothy J. Mayopoulos
Executive Vice President, General Counsel
and Corporate Secretary

FannieMae

Comments of Fannie Mae

on the

2010-2011 Enterprise Affordable Housing Goals; Enterprise Book-entry Procedures

Proposed Rule

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The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (the "1992 Act"), requires the Federal Housing Finance Agency ("FHFA") to set housing goals for Fannie Mae and Freddie Mac (the "Enterprises"). On February 26, 2010, FHFA published the "2010–2011 Enterprise Affordable Housing Goals; Enterprise Book-entry Procedures; Proposed Rule" (the "Proposed Rule").[1] Set forth in the Proposed Rule are single family and multifamily housing goals levels for 2010 and 2011, revisions to the rules for counting mortgage purchases toward housing goals performance, revisions to reporting requirements, and several topics on which FHFA specifically solicited public comment. Below are Fannie Mae's comments on the matters set forth in the Proposed Rule.

I. Goal Levels

Consistent with the 1992 Act, FHFA has proposed three goals for single family purchase money mortgages and a single family refinance goal. FHFA has also proposed two goals for multifamily mortgages financing housing affordable to low- and very low-income families.

A. Single Family

FHFA proposed alternative housing goals performance requirements for the single family goals for 2010 and 2011. The first alternative is a benchmark level based on estimations of market size. The second alternative is market-based. If Fannie Mae does not meet the benchmark level, its performance must still be commensurate with actual market size. Actual market size will initially be determined by evaluating originations reported under the Home Mortgage Disclosure Act ("HMDA").[2]

Fannie Mae supports the use of a market-based measurement to determine goals performance. However, as discussed in the Proposed Rule, there is a substantial delay between the submission of Fannie Mae's performance numbers and the release of HMDA data. If Fannie Mae fails to meet a benchmark, several months will pass before FHFA can determine whether Fannie Mae's performance was commensurate with that of the primary market, causing a lengthy period of regulatory uncertainty. For this reason, Fannie Mae must strive to meet the benchmarks as if the alternative measurement did not exist. Therefore, it is important for FHFA to set the benchmarks as close to expected market performance as possible.

The benchmarks proposed by FHFA for the single family purchase money goals are generally consistent with Fannie Mae's estimates of the expected size of the home purchase mortgage market for 2010 and 2011, although falling within the upper range of Fannie Mae's estimates. However, current estimates indicate that the single family refinance market will be similar to the 2009 market rather than the earlier years evaluated in the Proposed Rule. Fannie Mae supports the purchase money goals at levels no higher than those proposed. For the reasons set forth below, Fannie Mae requests that FHFA re-

[1] 75 Fed. Reg. 9,034 (Feb. 26, 2010).
[2] 12 U.S.C. § 2801 *et seq.*

evaluate the refinance goal and set the benchmark at a level more consistent with expected market performance.

1. Single Family Refinance Goal

In setting the single family refinance goal, FHFA considered the seven statutory factors established by the 1992 Act:

(A) National housing needs.
(B) Economic, housing, and demographic conditions, including expected market developments.
(C) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.
(D) The ability of the enterprise to lead the industry in making mortgage credit available.
(E) Such other reliable mortgage data as may be available.
(F) The size of the refinance conventional mortgage market serving [low-income families, families that reside in low-income areas, and very low-income families], relative to the size of the overall refinance mortgage market.
(G) The need to maintain the sound financial condition of the enterprises.[3]

Fannie Mae largely agrees with the analysis performed by FHFA and with FHFA's conclusions. Fannie Mae's primary concern is with FHFA's estimates of the expected size of the refinance market. Based on Fannie Mae's analysis of the statutory factors set forth below, Fannie Mae projects that the refinance market for low-income families will not support the goal level set by FHFA. Because FHFA proposes to include certain modifications in housing goals performance, modifications are also addressed in Fannie Mae's analysis below.

(A) <u>National Housing Needs</u>

Given recent adverse economic conditions, particularly with respect to the housing market, Fannie Mae is principally focused on foreclosure prevention and stabilizing the housing market. This focus will have a significant impact on Fannie Mae's ability to meet the low-income refinance goal.

In February 2009, the Administration announced the Making Home Affordable Program – the most aggressive housing relief effort in decades. Within the Making Home Affordable Program are two subprograms: the Home Affordable Refinance Program ("HARP") and the Home Affordable Modification Program ("HAMP"). Under HARP, which is available to borrowers with Enterprise-owned or guaranteed loans, borrowers have the opportunity to refinance. This includes borrowers with low or negative equity who traditionally do not qualify for refinancing assistance. The HAMP program helps all struggling borrowers that meet specified criteria modify their loans and avoid losing their homes to foreclosure. Fannie Mae also works with borrowers who do not qualify for HAMP to find alternative solutions. In 2009, non-HAMP modifications, which presently

[3] 12 U.S.C. § 4562(e)(2)(B).

do not contribute to housing goal performance, were a significant proportion of the population of modifications completed during the year.[4]

(B) Economic, Housing and Demographic Conditions

Fannie Mae expects that declines in home prices and low interest rates will persist throughout 2010 and 2011, but that continued high rates of unemployment and underemployment and tighter underwriting standards will put downward pressure on performance under the low-income refinance goal.

The Labor Market. The recession that began in late 2007 is notable for the unprecedented stress placed on the nation's labor market. The unemployment rate peaked at a 27-year high at 10.1% in October 2009, and stands at 9.7% at present.[5] While the company expects to see improvement in conditions through 2011, progress is likely to be slow and the unemployment rate will not fall below 8% until after 2011. This is in line with FHFA's economic assumptions. Other indicators show additional stress. The average duration of unemployment reached a new record high of 31.2 weeks in March 2010, about twice the average for the post-World War II period. The number of workers in part-time jobs who want full time employment stands over 9 million, just below the all-time record of 9.2 million reached late last year.

Continued widespread joblessness, long periods of unemployment, and cutbacks in hours worked strains household budgets and contributes to a sense of uncertainty for many people. One manifestation of the turmoil in labor markets is that consumers seem to be very unwilling to take on new debt or make substantial cash outlays. Rather, consumers are reducing expenditures and building financial cushions. Consumer debt has, as a result, fallen from a peak of 114% of income in the first quarter of 2009 to 111% at the end of 2009. This remains well above the 100% figure in the first quarter of 2004 before the beginning of the housing bubble, indicating that debt reduction may be a priority for families for some time.

The Housing Market. Following a boost in the third quarter of last year due in part to tax incentives to first time homebuyers, the housing market has softened considerably. Despite the extension and expansion of the home buyer tax credit in 2010, both new and existing home sales dropped sharply in January and remained soft in February. New home sales fell for the fourth consecutive month in February to a level that surpassed the previous low recorded in early 2009. Existing home sales have fared somewhat better than new home sales and despite three consecutive sharp drops, February sales stood nearly 11% above the cycle low attained in late 2008.

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[4] Federal Housing Finance Agency, *Foreclosure Prevention & Refinance Report, Third Quarter 2009* at 10 (Jan. 2010) (stating that "the vast majority of completed loan modifications were executed outside of HAMP"). Fannie Mae also recently announced an additional alternative to a HAMP modification for borrowers who were initially approved for a HAMP modification but were not eligible for a conversion from a trial modification to a permanent HAMP modification.

[5] Bureau of Labor Statistics, *Employment Situation Summary* (Apr. 2010).

In recent weeks, mortgage applications to purchase homes have climbed modestly from the 12-year lows reached in February, according to the Purchase Index in the Mortgage Bankers Association Weekly Applications Survey. However, they remain substantially below the levels seen as recently as last October when the first time homebuyers' tax credit was reaching its maximum impact.

While the company projects improvement later this year in the purchase money mortgage market, the outlook for the refinance market is less positive. Refinance applications have remained sluggish despite very favorable mortgage rates near 5.0% for conventional fixed 30-year mortgages. As noted above, it appears that borrowers are reluctant to reduce cash reserves in the current environment, even when refinancing would result in a long-term positive financial impact. Fannie Mae's own book of refinance mortgages exhibits lower delinquency rates than for purchase mortgages, indicating that higher income households are more likely to refinance.

(C) Past Performance

Before 2010, the housing goals were structured so that single family business, including a mix of single family rental units, purchases, refinances and private label securities ("PLS"), and multifamily business were combined into one measurement. As a result, the company had at its disposal a variety of strategies to meet the goals. For example, in a high refinance year, the company could choose to purchase more multifamily business or engage in a goals-rich single family rental investor deal to help close any gaps. The current structure of the goals does not allow Fannie Mae to use one type of business to compensate for the dilutive effects of other portions of its business, leaving Fannie Mae few strategies to close a gap in housing goals performance. Because Fannie Mae has limited flexibility under the new goal structure, past performance will provide an especially unreliable gauge of future performance.

FHFA analyzed Fannie Mae's performance under the proposed refinance goal based on historical data for the years 2001 through 2008, and found that performance ranged from a high of 29.4% in 2004 to a low of 23.1% in 2008. FHFA's analysis also found that HMDA data for this goal ranged from 27% in 2004 down to 24.1% in 2008. For 2009, FHFA estimated the market size to be much lower at 20.8% and Fannie Mae estimated its performance to be 20.4%. It would be reasonable to assume that the HMDA data would also show performance in this range.

This historical Fannie Mae performance, however, unlike HMDA market performance, does not include the impact of jumbo loans. Historically, jumbo loans have scored substantially below the performance of the average housing goals population. Including jumbo loans in Fannie Mae performance for the years 2001 through 2008 depressed Fannie Mae's performance on the low-income refinance goal by as much as 2%.

The historical performance data in Table 4 of the Proposed Rule also includes the positive effect of Fannie Mae's PLS purchases. In 2009, however, Fannie Mae purchased no PLS, and the Proposed Rule contemplates excluding PLS from housing goals performance in 2010 and 2011. Accordingly, Fannie Mae's performance for the years 2001 through 2008 as shown on Table 4 is unlikely to be predictive of Fannie Mae's performance in 2010 and 2011.

(D) Market Leadership

Fannie Mae agrees with FHFA that, under current market conditions and taking the conservatorship into account, market leadership must be interpreted broadly and encompass not just numerical standards but also the ability of the Enterprises to help address the market's most pressing concerns. Fannie Mae has been a committed partner to the Treasury Department and the Obama Administration, developing alternatives to foreclosure, incenting servicers to increase the number of mortgage modifications, providing liquidity in constrained markets, and targeting especially hard-hit areas of the country with resources to help homeowners receive assistance and counseling.

Fannie Mae fully anticipates that it will continue to provide substantial assistance to the single family mortgage market in 2010 and 2011, including providing significant assistance to the low-income refinance market. However, Fannie Mae expects to see refinance activity remain near 2009 levels.

(E) Other Reliable Mortgage Data

FHFA cites a number of reliable data sources in the Proposed Rule as the basis for its determinations on the housing goals benchmark levels. It is clear, however, from the Proposed Rule and from the supporting market sizing document,[6] that the data used does not incorporate full 2009 data. HMDA data currently available, for example, only covers 2008, and 2009 data will not be available for several more months. The historical Fannie Mae data only includes information on mortgage purchases through 2008.

As FHFA notes several times in the Proposed Rule, market conditions and economic indicators for 2010 and 2011 are expected to be very similar to the conditions that existed in 2009.[7] In some cases, 2008 and earlier data show a very different view of the market. For example, FHA market share is expected to be approximately 30% in 2009, 2010 and 2011, while FHA market share ranged from 14% to 23% during the first half of 2008.[8] Private mortgage insurance activity was down more than 60% for the first nine months of 2009 from 2008 levels.[9] Accordingly, Fannie Mae requests that, in setting the low-income refinance goal for 2010, FHFA give increased weight to more recently available data, including Fannie Mae's performance under that goal for 2009, which is substantially lower than the performance shown in the Proposed Rule for 2007 and 2008.

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[6] FHFA, "Market Estimates for the 2010 and 2011 Enterprise Single-Family Housing Goals" (Jan. 22, 2010) (http://www.fhfa.gov/webfiles/15464/Market_Estimates_for_2010_and_2011_-_FINAL.pdf).
[7] 75 Fed. Reg. at 9,045, 9,055.
[8] *Id.* at 7, 11.
[9] 75 Fed. Reg. at 9,039.

(F) Market Size

In general, Fannie Mae believes that FHFA's single family market sizing estimates are reasonable. However, the refinance goal as proposed appears to be above a reasonable market level.

Fannie Mae and FHFA used regression modeling to estimate the size of the refinance market. Both Fannie Mae's and FHFA's models show that when interest rates decline, the size of the refinance market increases. Likewise, when rates increase, the size of the market should decrease. The models both agree that interest rates will rise during the period, which should lower the refinance market size all else being equal.

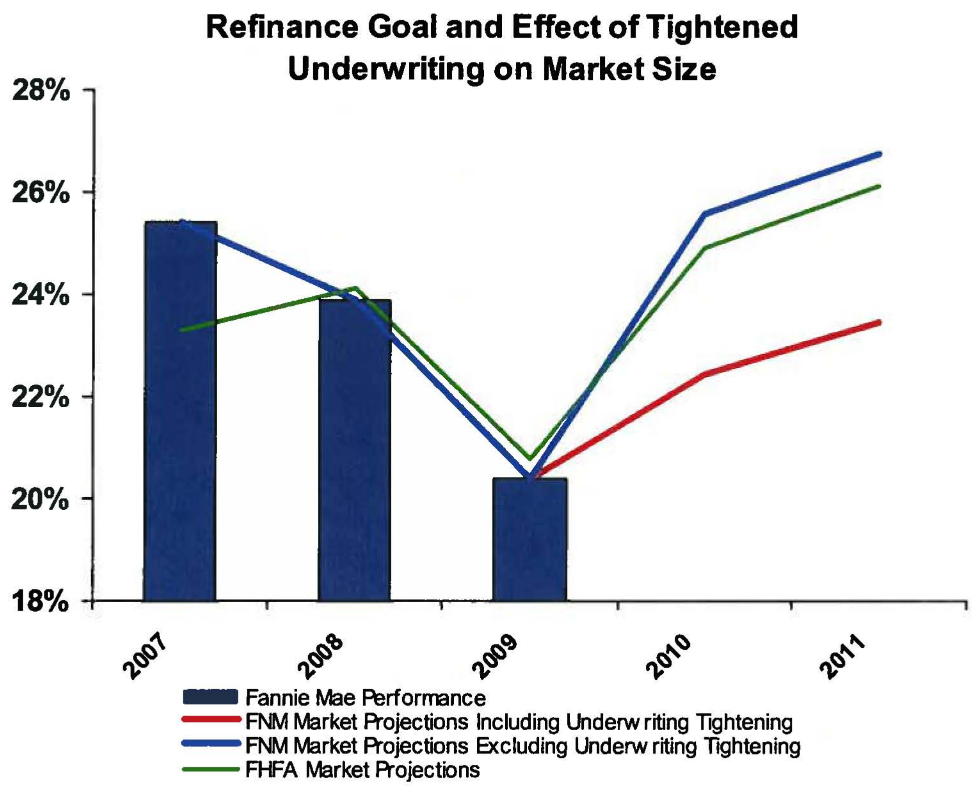
The tightening of underwriting standards also has an impact on the size of the goals-qualifying market. The Proposed Rule states:

> In general, more conservative underwriting standards in the mortgage market will likely result in fewer goals qualifying loans and a lower percentage of goal-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 and 2009 in response to declining market conditions and early payment defaults, among other factors, and such standards can be expected to remain in place in the near future.[10]

Fannie Mae's research supports the conclusion that tightened underwriting standards negatively impact the number of goals-qualifying loans available for purchase. Early in 2009, Fannie Mae made changes to underwriting standards, appraisal, and income requirements in an effort to make the refinance market more accessible. Refi Plus and DU Refi Plus increased the eligible loan-to-value ratio and streamlined origination and underwriting of certain refinance loans. Notwithstanding these steps, Fannie Mae estimates that its performance, had the low-income refinance goal been in effect for 2009, would have been 5% below the goal of 25% set for 2010.

Fannie Mae accounted for the effect of tightened underwriting on the refinance market by adding an indicator of underwriting standards from the Federal Reserve's Senior Loan Officer Survey to its model. The model shows a statistically significant negative relationship between the size of the market for the refinance goal and tightened underwriting standards. As shown in the graph below, when taking tightened underwriting standards into account, Fannie Mae's refinance estimates are lower than FHFA's estimates by 2 to 3%.

[10] *Id.* at 9,038.



Note: FNM data does not incorporate modifications.

Moreover, FHFA is proposing a benchmark of 25% for the refinance goal. This richness level was last attained in the market in 2007 and implies a return to both economic conditions and lending standards in place at that time. Such an outcome is inconsistent with the economic forecasts prepared by Fannie Mae, as well as those presented in the Proposed Rule.

(G) Financial Condition of the Enterprise

Fannie Mae was placed into conservatorship in 2008, and remains in conservatorship because, among other reasons, of the financial performance and condition of the company and the company's inability to fund itself according to normal practices and prices.[11] Moreover, in 2008 the Director of FHFA suspended Fannie Mae's allocation of funds for the Housing Trust Fund and the Capital Magnet Fund because those payments "would further contribute to the financial instability of Fannie Mae."[12] That suspension remains in place in 2010.

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[11] *See* Statement of Director James B. Lockhart III, Sept. 7, 2008, page 5.
[12] Letter from Director James B. Lockhart III to Herbert M. Allison, Jr., Nov. 13, 2008.

The market pressures on Fannie Mae's financial position continue. Credit-related expenses in 2009 were more than double credit-related expenses in 2008.[13] Credit-related expenses will remain high in 2010, because the level of nonperforming loans is expected to remain elevated for a period of time.[14] High unemployment and declining home prices are expected to continue to have a negative impact on Fannie Mae's financial position, as the company continues to incur costs to maintain liquidity in the mortgage market and preserve homeownership.[15] Fannie Mae's efforts to stabilize the housing market and minimize the company's credit losses are also expected to have a material adverse effect on the company's financial condition, at least in the short term.[16]

On December 24, 2009, the U.S. Treasury announced that it had removed the cap on its funding commitments under its preferred stock purchase agreements with Fannie Mae and Freddie Mac to "accommodate any cumulative reduction in net worth over the next three years."[17] This was one of several steps deemed necessary by the Treasury Department to help preserve the strength and stability of the housing market.[18]

While Fannie Mae has been – and will remain – focused on meeting the needs of low-income borrowers, the company has been instructed to make prudent business decisions and not "to undertake uneconomic or high-risk activities in support of the goals."[19] Accordingly, Fannie Mae requests that FHFA set the refinance goal at a level that reflects current and anticipated market conditions in 2010 and 2011, recognizes Fannie Mae's commitment to assisting hard-hit areas of the housing market, and allows Fannie Mae to address current housing needs in a sustainable manner that is also consistent with safety and soundness.

2. *Monthly Survey of Single Family Mortgage Data*

Section 1324 of the 1992 Act requires the Director of FHFA to collect loan level data on mortgages eligible for purchase by the Enterprises and mortgages not eligible for purchase by the Enterprises.[20] Among other things, this data will be used to assist the Director in determining whether the Enterprises are meeting the housing goals and complying with the duty to serve underserved markets. The data will also be used to analyze demographic and economic trends. While the Proposed Rule does not include provisions to implement this requirement, Fannie Mae anticipates that FHFA will need to undertake a number of steps to establish the monthly survey as a reliable indicator of single family mortgage market size. These steps include confirming the validity and accuracy of the sample; understanding lenders' data quality and data entry processes to ensure the data is provided uniformly; and comparing results and trends against other

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[13] Fannie Mae Annual Report on Form 10-K for the year ending December 31, 2009, at 6.
[14] *Id.* at 15.
[15] *Id.* at 16
[16] *Id.* at 9.
[17] Treasury Issues Update on Status of Support for Housing Programs (Dec. 2009) (http://www.ustreas.gov/press/ releases/20091224153459245 43.htm).
[18] *Id.*
[19] 75 Fed. Reg. at 9,035.
[20] 12 U.S.C. § 4544(c).

market data, like HMDA, to ensure the Enterprises are being compared appropriately to the market.

Fannie Mae anticipates that the survey will provide useful information to the Enterprises to gauge market activity, and to ensure that purchases are consistent with originations in the primary market. To use this survey to measure the Enterprises' performance under the goals, it will also, of course, be necessary for the monthly survey to evaluate mortgage originations in a manner consistent with how the Enterprises will be evaluated. Accordingly, the monthly survey would need to exclude, from the market sizing applied to the Enterprises, those products that are eligible for purchase by the Enterprises but not eligible for housing goals credit, including government insured loans, mortgages on investor-owned properties, private label securities, and, if applicable, unsustainable mortgages.

B. Multifamily

FHFA proposed benchmarks for multifamily mortgage purchases based on the number of units financed by the company. FHFA also requested comment on whether additional requirements should be placed on small multifamily properties. As set forth below, Fannie Mae's estimates indicate that the benchmarks set in the Proposed Rule exceed anticipated opportunity in the multifamily market. Fannie Mae also requests that FHFA adopt a definition of small multifamily properties based on the principal balance of the loan rather than number of units. Finally, Fannie Mae agrees that continued reporting on the small multifamily market would be beneficial to low- and very low-income families who occupy such housing, but does not believe that additional requirements are warranted at this time.

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

Under the Proposed Rule, for each of 2010 and 2011, Fannie Mae must finance 237,000 units of multifamily residential housing that are affordable to low-income families, and 57,000 units affordable to very low-income families.[21]

In setting these goals, FHFA considered the six statutory factors established by the 1992 Act:

(A) National multifamily mortgage credit needs and the ability of the enterprise to provide additional liquidity and stability for the multifamily mortgage market.

[21] Section 1333 of the 1992 Act specifically states that the Director is authorized to establish a single annual goal on mortgages on multifamily housing. 12 U.S.C. § 4563(a)(1). The Director is also directed to establish additional requirements related to purchases of mortgages on multifamily housing affordable to very low-income families. *Id.* § 4563(a)(2). The Director has, in the Proposed Rule, established two goals. By using the terms "single annual goal" and "additional requirements," Congress clearly intended that the requirements applicable to mortgages on very low-income mortgages not be the same as the goal for the purchase of low-income mortgages. "Additional requirements" can refer to any number of monitoring, reporting, or research activities that would benefit the market for mortgages on very low-income housing. It cannot, as stated in the statute, take the form of an additional goal.

(B) The performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years.
(C) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size.
(D) The ability of the enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing [affordable to low-income and very low-income families].
(E) The availability of public subsidies.
(F) The need to maintain the sound financial condition of the enterprise.[22]

As discussed below, Fannie Mae estimates that the proposed goal levels will be unattainable if, as expected, the current economic conditions and stressed market fundamentals continue through 2010. Further influencing the expected goal shortfall is the need to maintain prudent underwriting standards, which promote sustainable lending practices and the proper maintenance of the physical condition of the properties. Fannie Mae proposes that the goals be set at levels that reflect current market fundamentals and activity, rather than the higher historical average.

(A) Multifamily Mortgage Credit Needs

Market activity and multifamily loan production was down in 2009 and will remain low in 2010 as compared to volumes during the period 2004 through 2008. Discussions with Fannie Mae's lenders reveal that anticipated 2010 volume for multifamily mortgages has dropped significantly from even 2009 levels due to lack of acquisition activity by borrowers, reflecting continued market pressure and uncertainty. Refinance activity is also lower. The decrease in market activity is being caused by declines in rental rates, occupancy levels and property values, as well as tightened underwriting criteria intended to promote sustainable lending. Refinance activity is expected to modestly recover in late 2010 but not enough to bring projected low-income and very low-income unit performance up to the proposed goal levels.

In the past, new construction was a reliable source of new loan production, as the projects were completed and subsequently required permanent financing. However, completions of multifamily properties have slowed considerably, and are expected to remain slow into early 2011. Further, construction starts are also well below historical averages. As a result, in the short term, construction completions are not going to be a significant source of new multifamily loan production.

Acquisition activity continues to be significantly lower than in the 2007-2008 timeframe. Apartment sales ended 2009 at $14.1 billion, down 62% from 2008, not including foreclosures and other non-arms-length transaction title transfers. Acquisition volume of $37.3 billion in 2008 was down approximately the same amount (63%) from 2007 levels when apartment sales peaked at $101 billion. In addition, portfolio sales by large owners of multifamily assets have declined during this period. Having driven most of the

[22] *Id.* § 4563(a)(4).

volume in 2007, portfolio sales accounted for just $1.6 billion in 2009. The current multifamily sales market is now far below the pace of the 2001 level of $21 billion.

Multifamily capitalization rates climbed throughout 2009, rising about 35 basis points in just 12 months, which has led to declines in property values. Average multifamily capitalization rates ended 2009 at 7.27%, up from 6.92% at year end 2008, and up 151 basis points from their lowest level, 5.76%, at the end of 2005.

The spread between capitalization rates and the 10-year Treasury note is now back to pre-2005 levels. The spread still remains a good indicator of risk, and shows that investors are somewhat concerned about the inherent risk of multifamily properties, especially facing negative rent growth and rising vacancy levels over the short-term. While these spreads fell below 100 basis points during 2006 and 2007, they averaged between 350 and 400 basis points in 2009, similar to 2003 levels, when capitalization rates were also around 7.4%.

Notwithstanding a slight rise in the fourth quarter of 2009, apartment sales prices once again fell throughout 2009, to $86,839 per unit. According to the Moody's/REAL Commercial Properties Price Indices, apartment sales prices fell 20.4% from the fourth quarter of 2008 to the fourth quarter of 2009, and are down 31.2% from the fourth quarter of 2007. The current sales price decline for apartments, measured from the first quarter 2007 peak, has improved slightly, yet is still down 35.3% on an aggregate basis.

Based upon recent sales data, there is evidence that sellers of multifamily properties are starting to lower asking prices, however, buyers seem to want only well performing properties in strong locations. The lack of credit, discussed further below, exacerbates this stalemate since only well-funded buyers are currently in the market.

Refinance activity has also been adversely impacted. Banks and other lenders are not aggressively pursuing foreclosures but are instead trying to undertake as many workouts as possible. In addition, it appears that many lenders and commercial mortgage-backed securities ("CMBS") special servicers are extending matured and maturing loans for at least another 12 months, and they may end up extending these loans again in 2011. The result is a bottleneck of non-performing properties being held off the market, which, under more normal conditions, would have been forced onto the sales market either by the borrower directly, or by the lender or special servicer. As such, there are fewer properties for sale, which in turn will reduce the potential for new multifamily loan production.

Unless there is a significant change in lenders' behavior towards liquidating nonperforming loans, and more credit becomes available for a wider range of properties, the general lack of demand for multifamily financing is likely to remain at its current reduced levels for the remainder of 2010.

(B) Fannie Mae's Past Performance

Fannie Mae's performance from 2004 to 2007, a period of significantly increasing volumes in sales and loan production as a result of an accelerating and vibrant multifamily market, does not represent the current and projected state of the market in 2010 and 2011. Fannie Mae multifamily loan volume fell to $19.8 billion in 2009, 44% (approximately $15 billion) less than the 2008 level of $35 billion, and 55% less than the 2007 level of $44.3 billion, to a level of production equivalent to that of 2004. The composition of production in 2009 also changed, with a precipitous drop in seasoned loan pool purchases from financial institutions to only $154 million, down from $4.4 billion in 2008. In the past, purchases of seasoned loan pools have been a significant source of affordable units. Small loan volume also decreased as financial institutions which normally generated and sold small loans in the secondary market retrenched due to financial issues and concerns regarding the real estate market. The result of all of these factors was a decrease in low income and very low-income volume in 2009 as compared to 2008.

The average number of low-income units financed annually by Fannie Mae in the 2004 to 2008 time period was approximately 412,000.[23] The number of low-income units financed fell 46% in 2009, to approximately 240,000 units from 448,000 in 2008. Given Fannie Mae's 2010 activity to date, the company expects that the number of low-income units financed in 2010 will drop approximately another 24% from the 2009 level.[24]

The average number of very low-income units financed annually by Fannie Mae in the 2004 to 2008 time period was approximately 99,000.[25] In 2009, the number of very low-income units financed fell 35% to approximately 60,000 units from 93,000 in 2008. Fannie Mae estimates that this number is likely to fall 15% further during 2010.[26]

The data considered by FHFA also compared Fannie Mae's low-income and very low-income purchases to Freddie Mac's purchases. For example, the Proposed Rule set Fannie Mae's very low-income goal level at 57,000 units, twice as high as Freddie Mac's goal level of 28,000 units. Total loan volume as reported in the entities' press releases announcing 2009 multifamily volumes show that Fannie Mae's differential in loan volume was only 19% higher than Freddie Mac's.[27] This would seem to indicate that a

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[23] Based on performance as shown on Table 7. *See id.* at 9,053.

[24] Fannie Mae's estimates of low-income units financed include units financed by multifamily subordinate loans. It appears that FHFA's performance figures set forth on Table 7 also include multifamily subordinate loans.

[25] Based on performance as shown on Table 8. *See id.* at 9,054.

[26] Fannie Mae's estimates of very low-income units financed include units financed by multifamily subordinate loans. It appears that FHFA's performance figures set forth on Table 8 also include multifamily subordinate loans.

[27] "Fannie Mae and its DUS® Lenders Invest $19.8 Billion in 2009 to Fortify the Multifamily Rental Housing Market; Fannie Mae remains a constant source of liquidity and stability" (Feb. 1, 2010) (http://www.fanniemae.com/newsreleases/2010/4928.jhtml?p=Media&s=News+Releases). "Freddie Mac Announces 2009 Multifamily Volumes for Whole Loans and Bond Guarantee Business" (Feb. 2, 2010) (http://www.freddiemac.com/news/archives/multifamily/2010/20100202_multifamily_volumes.html).

production differential of 104% for Fannie Mae in the very low-income goal level is too high given recent production levels. Additionally, Fannie Mae's very low-income goal as stated in the Proposed Rule represents 67% of the total number of very low income units required to be financed by Fannie Mae and Freddie Mac. This figure is significantly higher than Fannie Mae's actual average share of very low-income units financed by Fannie Mae and Freddie Mac for the period 2004 through 2008, which was 50%.

(C) Market Size

The Proposed Rule states: "The multifamily mortgage market is likely to remain relatively unchanged in 2010 as compared to 2009, and the dollar amount of multifamily loans financed in 2010 will likely be similar to that of 2009, approximately $40-45 billion."[28] Recent information indicates that the estimated size of the multifamily market in 2009 was $42 billion. Fannie Mae estimates, however, based upon experience to date and the projected lack of new supply, credit, and demand, that the size of the market will be lower in 2010 if current levels of activity remain depressed. Fannie Mae believes that the proposed number of units and volume associated with the goal levels for Fannie Mae and Freddie Mac for 2010 may exceed the actual market size.

According to the American Council of Life Insurers, the life companies' multifamily mortgage commitments in 2009 totaled a mere $564 million – a new trough. From 2005 through 2007, the life insurers typically accounted for $8 to $10 billion in multifamily financings annually.

After three quarters of increasing multifamily loan holdings, bank financings similarly stalled in the fourth quarter of 2009. Between 2005 and 2007, institutions insured by the Federal Deposit Insurance Corporation ("FDIC") were responsible for between $5 billion and $10 billion annually of the net change in multifamily holdings. According to year-end data for 2009 from the FDIC, the FDIC-insured institutions reported a net change in multifamily real estate loans of $4.9 billion for all of 2009, back to 2006 levels (though still an increase from the 2008 level of $3.7 billion).[29]

(D) Market Leadership

The Proposed Rule recognizes that, because current market conditions have caused other institutions to exit the market as a source of liquidity for multifamily financing, the Enterprises "have become market leaders by default."[30] Because the Proposed Rule establishes static benchmarks for the multifamily goals that are not based on a percent of business, it is likely that, under current conditions, Fannie Mae could lead the market for multifamily financing but still not achieve the proposed benchmarks.

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[28] *Id.* at 9,055.
[29] FDIC, Assets and Liabilities of FDIC-Insured Commercial Banks and Savings Institutions (http:// www2.fdic.gov/qbp/timeseries/BalanceSheet.xls).
[30] *Id.* at 9,056.

Tables 7 and 8 in the Proposed Rule provide Fannie Mae's historical performance applying the low- and very low-income goals. However, the historical performance includes the impact of CMBS. Fannie Mae's more recent data for 2009 illustrates the impact on the Enterprises of removing CMBS from housing goals performance.

Due to the current state of the market, Fannie Mae estimates that its purchases represented approximately 47% of the multifamily loan origination market in 2009, compared to approximately 21% to 28% during the 2004-2007 timeframe. It is unlikely that Fannie Mae's performance on the multifamily goals in 2010 and 2011 would lag the market. It is more likely that Fannie Mae's performance will continue to reflect market leadership performance regardless of whether Fannie Mae meets the goals. Because FHFA could not establish a market based alternative to the goal levels, as it did with the single family goals, market activity below that projected by FHFA will necessarily cause Fannie Mae to miss one or both goals. Accordingly, it would be appropriate for FHFA to set goal levels in this rulemaking that are likely to reflect market realities.[31]

(E) The Availability of Public Subsidies

The lack of public subsidies available for multifamily housing in 2009, and projected for 2010 and 2011, will affect affordable loan production, demonstrating a significant distinction between this time period and the 2004 to 2008 time period, on which FHFA based the proposed goal levels.

Through 2007, the annual volume of units receiving Low-Income Housing Tax Credit ("LIHTC") allocations averaged 120,000 units per year. Given that it takes an average of 24-36 months for units to be placed in service after an award, these units have still been positively impacting affordable unit counts as they are occupied by qualified tenants and convert to permanent loan status. However, new LIHTC equity funding commitments from the two Enterprises ceased at the end of 2007, sending the production of new LIHTC units into a steep decline. Industry sources indicate that only approximately 45,000 new LIHTC units started construction in 2009, a decline of almost 75,000 units from the 2007 level.

(F) Financial Condition of the Enterprise

Fannie Mae supports the efforts of FHFA to align the goal levels with safety and soundness. Fannie Mae has long been concerned that the goal levels should be set in such a manner that the company can make prudent business decisions, encourage sustainable lending, and meet its mission requirements without adding undue risk to the company's portfolio or the market. Fannie Mae also takes very seriously FHFA's directive to avoid uneconomic or high risk activities in an effort to meet the goals. Failure to meet regulatory requirements is also, however, a risk that the company must

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[31] The 1992 Act provides an opportunity for Fannie Mae to petition to have the goal levels reduced. 12 U.S.C. § 4564. While Fannie Mae would utilize that option under appropriate circumstances, there appears to be sufficient information in the market at this time to set the goals at levels that would avoid the need for that analysis at the end of the year.

address in a responsible way. Accordingly, Fannie Mae encourages FHFA to set the multifamily goals at a level that will allow the company to meet its competing demands in a manner that promotes sustainable lending practices and is consistent with safety and soundness requirements.

2. *Small Multifamily Properties*

As FHFA recognized in the Proposed Rule, Fannie Mae has significant resources in place to secure small loan business, and has a long history of providing liquidity to the multifamily small loan market. In 1985, Fannie Mae began purchasing seasoned pools of small loans. With the start of the Delegated Underwriting and Servicing ("DUS") program in 1988, lenders were then able to deliver small loans directly to Fannie Mae. In 1998, Fannie Mae opened the small loan platform to non-DUS lenders to increase liquidity to this market, and in 2000, Fannie Mae adopted a "5-50" flow execution that was made available to all DUS lenders. In 2001, Fannie Mae changed its small loan platform focus to loans with principal balances of $3 million or less ($5 million in certain designated "high-cost" MSAs). In 2007, Fannie Mae created a streamlined underwriting and servicing model for small loans, with separate underwriting parameters, to address the needs of lenders and borrowers, particularly in areas with concentrated small multifamily loans.

The 1992 Act requires reporting on small multifamily properties, and allows the Director to define small multifamily properties either as those with 5 to 50 units or those having a mortgage amount up to $5 million.[32] The Proposed Rule defines small multifamily properties as projects containing 5 to 50 units. This is a definition that has historically been used by the industry, but which, in Fannie Mae's experience, is not an optimal measure.

As noted above, based upon its experience with the "5-50" execution, in 2001 Fannie Mae changed the basis of its definition of "small loans" to principal balance. Fannie Mae believes that a loan size approach to the small loan business is a more prudent way to address risk and a better way to meet the needs of the market. Fannie Mae's experience has found that institutions are looking for liquidity solutions not only for small property financing but also for small loan principal balance production, as there are issues which make origination and investment difficult for both.

Limiting housing goal counting to properties with up to 50 units excludes a large segment of properties that face financing challenges. Fixed transaction costs and lower returns from lower loan amounts constrain liquidity for properties regardless of unit count. A loan size approach allows Fannie Mae to more efficiently serve larger affordable properties with lower rental rates as well as properties with 5 to 50 units. Fannie Mae suggests that, because many properties with more than 50 units serve low- and very low-income families, FHFA's overall goal of monitoring the financing of housing affordable to these families would be better served by adopting the loan size approach to defining small properties. Fannie Mae proposes that FHFA define small multifamily properties as

[32] *Id.* § 4563(a)(3).

multifamily properties securing mortgage loans where the loan principal balance is $3 million or less ($5 million or less in certain designated "high-cost" MSAs).

The 1992 Act also allows the Director to impose additional requirements with respect to small multifamily properties, and FHFA has requested comment on whether additional requirements should be considered. Fannie Mae recognizes the important contribution that small multifamily loans make to housing for low-income families. While additional goals for small multifamily housing would not be permissible under the 1992 Act, it is appropriate for FHFA to monitor the activities of the Enterprises in serving this market. Fannie Mae does not believe that additional requirements are necessary at this time, but supports continued reporting on this area, which may inform the need for additional requirements in the future.

II. Rules for Counting

The Proposed Rule makes several changes to the existing housing goals regulations that Fannie Mae believes would have a detrimental impact on lenders or cause confusion upon implementation. These changes are addressed below.

A. Second Liens – Single Family

The Proposed Rule states that second liens would be excluded from housing goals performance under the new rules, and indicates that second liens have been an insignificant part of Fannie Mae's goals performance in the past. Because second liens are frequently not used for purchase or refinance, excluding them from the single family goals is generally consistent with the 1992 Act. However, the 1992 Act does not require that second mortgages that are also purchase mortgages be excluded.

B. Subordinate Liens – Multifamily

Because the single family parameters do not apply to the new multifamily goals, and subordinate liens provide an important source of liquidity to the multifamily mortgage market, Fannie Mae requests that FHFA continue to include in housing goals performance subordinate mortgages on multifamily properties.

Subordinate loans provide an important source of liquidity in the multifamily mortgage market. Subordinate loans are used to facilitate sales activity and minimize prepayment premiums and transaction expenses, lowering the cost of transactions for both buyers and sellers of multifamily properties. Subordinate loans in the multifamily market also provide the benefits of a refinance to existing borrowers without the additional transaction costs. They permit borrowers to refinance a loan by keeping existing first mortgages in place and draw additional funds through the subordinate loans without having to refinance the entire loan amount and incur prepayment premiums (as opposed to refinances in the single-family market where prepayment premiums are utilized less frequently).

In many cases, funds from subordinate loans are reinvested in the properties for capital expenditures and/or rehabilitation or renovation of units, ultimately benefiting the tenants. Fannie Mae only purchases subordinate loans for properties on which Fannie Mae already owns the first lien loan and, therefore, understands the performance of the first lien loans, and is able to monitor and mitigate the risks of subordinate lien loans. In addition, properties only qualify for subordinate loans if they achieve operating performance growth at or above the debt coverage and value standards required for new loans.

Fannie Mae evaluated past purchases of subordinate loans and found that they are an important component of housing goals performance. Excluding 2004, which was above normal, subordinate loans have made up as much as 5% of multifamily total mortgage loan purchases, representing as much as 10% of low-income and very low-income units that have counted toward housing goals since 2005. Excluding subordinate loans would impair Fannie Mae's ability to meet the multifamily goals, particularly under the new goal structure which is based on unit volume rather than percent of business.

Moreover, the historical performance analyzed by FHFA included units associated with subordinate loans. Excluding subordinate loan units from counting for the multifamily goals would require an adjustment of the goals to ensure alignment between historical and estimated future performance.

Because of the important function that subordinate loans have in the multifamily market, Fannie Mae requests that FHFA continue to include multifamily subordinate loans in housing goals scoring.

C. Mortgage Previously Counted by Either Enterprise

The Proposed Rule adds a new regulatory restriction that prohibits an Enterprise from including in housing goals performance any mortgage that was previously counted by either Enterprise, provided the mortgage was first counted within the preceding five years. Under current regulations, however, an Enterprise is not permitted to count a mortgage that was ever previously counted by that Enterprise. The regulations state:

> An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where (i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year . . . ."[33]

The current regulations also prohibit the Enterprises from taking credit toward performance under the special affordable housing goal for "[r]efinancings that result from the wholesale exchange of mortgages between the two Enterprises."[34] This provision

[33] 12 C.F.R. § 1282.16(c)(6).
[34] *Id.* §1282.14(g).

derives from language in the 1992 Act that purported to limit the ability of the Enterprises to take special affordable housing goal credit for the acquisition of refinanced mortgages. The regulations define "wholesale exchange" to mean "a transaction in which a GSE buys or otherwise acquires mortgages held in portfolio or securitized by the other GSE, or where both GSEs swap such mortgages."[35]

By its terms, the definition of wholesale exchange seems to contemplate a transaction between the two Enterprises. This interpretation is supported by language in the 1995 proposed housing goals regulation. Here, the U.S. Department of Housing and Urban Development ("HUD") interpreted the purpose of the restriction in the 1992 Act to "preclude the GSEs from swapping portfolios toward the end of the year in an effort to achieve the special affordable housing goal."[36] This interpretation would exclude a transaction with a third party, and would apply the restriction in a limited manner to transactions between the Enterprises.

The Proposed Rule states that, in order to avoid burdensome recordkeeping, the restriction would only extend back five years. While it is unclear how Fannie Mae would determine whether a loan was previously counted by Freddie Mac, it is not uncommon for Fannie Mae to re-acquire a mortgage purchased and counted in a previous year. For example, in the event of the dissolution of mortgage securities, Fannie Mae has processes in place that require lenders to re-deliver the underlying mortgages with a special feature code indicating that the mortgages were previously sold to Fannie Mae, so that the mortgages can be excluded from the goals scoring process. At this time, Fannie Mae does not require lenders to research prior ownership of mortgages as a condition of delivery. Fannie Mae believes that such a requirement would place a heavy burden on lenders, and should not be included in the housing goals regulation.

D. Jumbo Loans

The Federal Housing Finance Regulatory Reform Act of 2008 (the "Reform Act") established Fannie Mae's conforming loan limit at $417,000.[37] The Reform Act also provides methodologies for (i) annual increases to this loan limit to reflect increases to nationwide property values and (ii) the establishment of higher limits, not to exceed $625,500, in certain high-cost areas. The Economic Stimulus Act of 2008 ("ESA") established higher limits, not to exceed $729,750, in certain high-cost areas for mortgage loans originated between July 1, 2007 and December 31, 2008. The American Recovery and Reinvestment Act of 2009 ("ARRA") provided that, for mortgage loans originated in 2009, the higher of the applicable Reform Act limits and the applicable ESA limits would apply. In late 2009, Congress extended the ARRA methodology to mortgage loans originated in 2010.

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[35] *Id.* § 1282.2(b).
[36] 60 Fed. Reg. 9154, 9167 (Feb. 16, 1995).
[37] Higher limits apply to (i) properties in Hawaii, Alaska, Guam and the Virgin Islands and (ii) 2-4 unit properties everywhere.

The changes in the Reform Act recognized that in certain high cost areas, a median income family could not afford to purchase a median-priced home. By allowing higher conforming loan limits in high-cost areas, low-income families could receive lower-cost financing to purchase a home. The higher limits established by ESA, and extended by ARRA, typically do not address the needs of low-income families. Rather, these limits promote liquidity in the primary market for homes affordable to moderate- and middle-income families. Moreover, unless extended by Congress, the higher limits will not continue after 2010, and Fannie Mae will no longer be able to purchase such loans.

Fannie Mae requests that FHFA modify the Proposed Rule to include all conforming loans that meet the limits established by the Reform Act, which sets Fannie Mae's nationwide conforming loan limit and establishes a permanent method of calculating the loan limit in high cost areas.

E. Multifamily Credit Enhancement

Section 1333 of the 1992 Act changed the method for calculating housing goals credit for the credit enhancement of housing finance agency ("HFA") bonds. However, the Proposed Rule does not appear to incorporate the statutory language. Fannie Mae requests that FHFA incorporate the statutory language into the final rule.

Section 1333 states:

> The Director shall give full credit toward the achievement of the multifamily special affordable housing goal under this section (for purposes of section 1336) to dwelling units in multifamily housing that otherwise qualifies under such goal and that is financed by tax-exempt or taxable bonds issued by a State or local housing finance agency, if such bonds, in whole or in part-
> (1) are secured by a guarantee of the enterprise; or
> (2) are purchased by the enterprise, except that the Director may give less than full credit for purchases of investment grade bonds, to the extent that such purchases do not provide a new market or add liquidity to an existing market.[38]

The Proposed Rule generally retains the existing regulatory language for credit enhancement transactions:

> <u>Credit Enhancement</u> (i) Mortgages (or dwelling units) financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases for purposes of the housing goals only when:
> (A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency; and

[38] 12 U.S.C. § 4563(b).

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds.
(ii) When an Enterprise provides a specific contractual obligation to insure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.[39]

Fannie Mae requests that the final rule align with the statutory language.

F. Designated Disaster Areas

Section 1303(28) of the 1992 Act defines a low-income area to include families with incomes not greater than the area median income who reside in designated disaster areas.[40] To implement this provision, the Proposed Rule specifies that a designated disaster area will include any census tract (1) in a county that is designated by the Federal Emergency Management Agency ("FEMA") as adversely affected by a declared major disaster; (2) where individual assistance payments are authorized by FEMA; and (3) where average damage severity exceeds $1,000 per household in the census tract. The Proposed Rule also indicates that the area will not be included in the definition of a low-income area until the beginning of the year following the designation.

For purposes of the Community Reinvestment Act ("CRA"), a designated disaster area is "a major disaster area designated by the federal government"[41] under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act"),[42] including Major Disaster Declarations administered by FEMA. The Stafford Act defines a major disaster area as one which, as determined by the President, "causes damage of sufficient severity and magnitude to warrant major disaster assistance."[43] It does not appear that any of the bank regulatory agencies apply the $1,000 average damage severity limitation in determining whether a bank's activities under the CRA assist a designated disaster area.

While FHFA's definition of a designated disaster area appears to overlap in certain respects with the definition of a designated disaster area used for purposes of the CRA, applying the $1,000 per household average damage severity will add a layer of complexity to the determination of qualifying households, and the lack of alignment with the CRA will cause confusion for lenders. The revised housing goals structure was designed by Congress to more closely align the income categories with the CRA[44] in an effort to more efficiently serve the primary market. Fannie Mae requests that the

[39] 75 Fed. Reg. at 9,069.
[40] 12 U.S.C. § 4502(28).
[41] 75 Fed. Reg. 11,642, 11,647 (Mar. 10, 2010).
[42] 42 U.S.C. § 5121 *et seq.*
[43] *Id.* § 5122(2).
[44] *See* Federal Housing Finance Reform Act of 2007, Report of the Committee on Financial Services, United States House of Representatives, 92 (May 9, 2007).

definition of designated disaster area be more closely aligned with that used by the CRA, and the $1,000 per household restriction be removed.

G. Certification for Occupancy

The Proposed Rule would exclude from housing goals performance purchases of mortgages financing properties that have not been certified for occupancy. The proposal raises several questions. First, a large multifamily property may be completed and certified for occupancy in stages. The Proposed Rule should clarify whether the entire project is excluded if any part of it is not yet qualified, or if those units that have received certification may be included. Second, the Proposed Rule should clarify whether an Enterprise could receive housing goals credit in the year of certification rather than in the year of mortgage purchase if the property is not certified in the year of purchase.

III. Sustainability

The Proposed Rule asked for comment on using sustainability as an alternative method of assigning housing goals credit. Fannie Mae supports using the principle of sustainability in determining the appropriate size of the goals-qualifying mortgage market. This approach would provide benefits to borrowers, while also supporting the safety and soundness of the Enterprises.

One approach to incorporating sustainability into the housing goals structure would be to evaluate mortgages based on specific characteristics, assuming that certain characteristics indicate the likelihood that the loan will default – the cumulative default rate ("CDR"). Another approach would compare the spread between the yield on the loan and a benchmark interest rate, and assume that a spread in excess of an amount to be determined would indicate an unsustainable mortgage.

The Proposed Rule notes that the Enterprises currently calculate CDR as part of their business strategy. Based on historically observed loan performance, the Enterprises use a variety of loan level, property and borrower characteristics to determine the likelihood of default in both the Single Family and Multifamily business. To the extent, however, that loan-to-value ratio and credit score help to determine sustainability and are key inputs in determining CDR, the loans with the most risk are already filtered out of Fannie Mae's population of potential purchases by Desktop Underwriter and Fannie Mae's anti-predatory lending policies.

Fannie Mae supports the objective of promoting sustainable mortgage lending, but how to link housing goals eligibility to sustainability is still unclear. Consistent with the Interagency Guidance on Nontraditional Mortgage Product Risks, Fannie Mae's Single Family underwriting guidelines require that a lender determine that the borrower has the ability to repay the loan regardless of the structure chosen by the borrower (e.g., fixed- or adjustable-rate; interest only). Fannie Mae's servicing guidelines are intended to promote practices that preserve homeownership. Fannie Mae's anti-predatory lending policy requires that all loans delivered to Fannie Mae comply with fair lending laws and state and federal consumer protection laws. Notwithstanding these Fannie Mae requirements, sustainability must also be addressed by the other parties that are involved in the lifecycle of the loan. Lenders must properly qualify borrowers, servicers must take advantage of tools to avoid foreclosure, and borrowers must understand and accept the responsibilities they undertake when they become homeowners.

Sustainable multifamily lending is also a shared responsibility. Fannie Mae must promote appropriate underwriting standards, owners must have the experience and qualifications to operate and maintain the property, and lenders must properly qualify borrowers.

Given the considerations that must go into determining whether a loan is sustainable, it will be difficult to develop a system that appropriately removes unsustainable loans from the market sizing analysis. Nevertheless, sustainability is an important issue for Fannie Mae, and the company looks forward to being part of the national discussion to define and implement standards for sustainability, along with FHFA, Freddie Mac, lenders, investors, and other market participants.

IV. Reporting Issues

FHFA proposes to shorten the period of time for preparing the quarterly and annual mortgage reports. Currently the quarterly reports are due within 60 days of the end of the quarter and the annual report is due within 75 days of the end of the year. The Proposed Rule would shorten these periods to 45 days and 60 days, respectively.

As FHFA is aware, quarterly reports are currently preliminary, confidential year-to-date aggregations of loan level data. The information submitted is based on lender-delivered data, including corrections received as of the date the reports are prepared for submission. Shortening the time period for filing these reports will not require Fannie Mae to change its data collection or quality assurance processes, and therefore would not be expected to have an impact on the requirements applicable to lenders. However, because less time will be available for corrections and quality control, quarterly reports will necessarily contain more preliminary information than is currently the case. Fannie Mae proposes that, if FHFA shortens the time period for filing, that FHFA also streamline the reporting requirements. Because the creation of the data tables is outside of the rulemaking process, Fannie Mae anticipates working with FHFA and Freddie Mac to propose tables that will appropriately capture necessary regulatory information and reflect the new housing goals structure.

Prior to the submission of the Annual Mortgage Report, Fannie Mae engages in a substantial review process. Shortening the time available for this review would have a material impact on lenders and Fannie Mae. Fannie Mae will need to revise due dates for lender corrections and provide for alternative methods of data delivery (such as fatal edits at loan delivery). It may also require Fannie Mae to reduce the amount of loan level data quality review work that is done at the end of the year.

In addition, under the current reporting deadlines, the Annual Mortgage Report is submitted after the company files its annual report on Form 10-K with the Securities and Exchange Commission. The Form 10-K must be filed within 60 days of the end of the year. Fannie Mae is currently able to reconcile the data in the Annual Mortgage Report with the Form 10-K prior to filing. An earlier deadline will make it impossible to reconcile the Annual Mortgage Report and Form 10-K prior to filing with FHFA.

Given the likely impact on lenders and on data quality, as well as the lag between the submission of the Annual Mortgage Report and the availability of HMDA data, Fannie Mae requests that FHFA retain the current reporting deadlines at this time.

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Fannie Mae hopes that these comments on the Proposed Rule are helpful as FHFA works to finalize the new housing goals structure created by the Reform Act. We look forward to working with FHFA to address the important issues raised by the Reform Act and the Proposed Rule.