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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590-AB12

Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA) is publishing an Advance Notice of Proposed Rulemaking (ANPR) requesting public comment on a variety of questions related to potential changes to the regulation establishing housing goals for Fannie Mae and Freddie Mac (Enterprises). FHFA will consider public comments received on these questions in order to inform rulemaking that is planned for 2021 to establish single-family and multifamily housing goals benchmark levels for 2022 and beyond, and to make other changes to the Enterprise housing goals regulation, as appropriate.

DATES: Comments must be received on or before February 28, 2021.

ADDRESSES: You may submit your comments on the ANPR, identified by regulatory information number (RIN) 2590-AB12, by any one of the following methods:

- *Agency website*: https://www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal*: https://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the

Federal eRulemaking Portal, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590-AB12.

- *Hand Delivered/Courier*: The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AB12, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service*: The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AB12, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street, SW., Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Office of Housing & Community Investment, Division of Housing Mission and Goals, at (202) 649-3157, Ted.Wartell@fhfa.gov; Padmasini Raman, Supervisory Policy Analyst, Office of Housing & Community Investment, Division of Housing Mission and Goals, at (202) 649-3633, Padmasini.Raman@fhfa.gov; or Kevin Sheehan, Associate General Counsel, Office of General Counsel, (202) 649-3086, Kevin.Sheehan@fhfa.gov. These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400

Seventh Street, SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of this ANPR. Copies of all comments will be posted without change, including any personal information you provide such as your name, address, e-mail address, and telephone number, on the FHFA website at https://www.fhfa.gov. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this ANPR, also located on the FHFA website.

II. Advance Notice of Proposed Rulemaking

This ANPR seeks public comments on a variety of questions related to potential changes to the Enterprise housing goals regulation.[1] FHFA plans to issue a proposed rule in 2021 that would establish new benchmark levels for the Enterprise housing goals for 2022 and beyond, as well as make other changes to the regulation as appropriate. Based on the comments received in response to this ANPR, FHFA may propose revisions to the Enterprise housing goals regulation for comment in the proposed rule planned for 2021 or in a later rulemaking. FHFA invites comments on the specific questions set forth in this ANPR, and on any other issues that commenters think should be addressed as part of the rulemaking that will establish the housing goals benchmark levels for 2022 and beyond.

[1] 12 CFR part 1282.

Question 1: *Are there categories of loans that should be excluded from receiving housing goals credit under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) provisions on "unacceptable business and lending practices?"*

The Safety and Soundness Act requires FHFA to exclude "segments of the market determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises" from consideration in setting the single-family housing goals.[2] FHFA may not give credit toward achievement of the housing goals for mortgages that are "determined to be unacceptable or contrary to good lending practices, inconsistent with safety and soundness, or unauthorized for purchase by the enterprises."[3]

The current exclusions under the Enterprise housing goals regulation generally focus on types of loans or other product characteristics, rather than loans that are unacceptable or contrary to good lending practices. However, FHFA may also make exclusions based on factors considered in underwriting loans. For single-family loan purchases, the Enterprises use their own automated underwriting systems to evaluate whether a loan is eligible for purchase based on factors including, but not limited to, a borrower's creditworthiness. These automated underwriting systems assess a borrower's ability to make his or her mortgage payments over a two- or three-year time period following origination. The Enterprises establish a cut-off threshold based on their credit risk appetite, and only those loans for which the borrowers' predicted risk is deemed

[2] *See* 12 U.S.C. 4562(e)(1).
[3] *See* 12 U.S.C. 4562(i).

below that threshold are eligible to be sold to the Enterprises. The Enterprises also price loans according to their pricing grids to partially account for the risk profile of a loan.

FHFA generally considers all conventional conforming first lien mortgages that are owner-occupied as potentially eligible for single-family housing goals credit, subject to certain exclusions. For instance, under the Safety and Soundness Act, investor loans are excluded, and under the Enterprise housing goals regulation, investor loans and second loans (*i.e.*, any subordinate lien mortgages) are excluded, from consideration for the single-family housing goals.[4] As another example, mortgages for secondary residences are excluded from consideration for the single-family housing goals.[5]

FHFA requests comment on whether there are other categories of loans that should be excluded from receiving housing goals credit under the statute's "unacceptable business and lending practices" provisions. For example, should FHFA consider factors to promote borrower sustainability? How would FHFA determine and measure sustainability? Should risk-layering be considered in a manner that is distinct from the eligibility requirements of the Enterprises?[6] What criteria should be used to identify such loans? What public policies should FHFA consider when assessing certain categories of loans? Are there other loan characteristics that could be, in some instances, not in the long-term interest of the borrower, even if they are not treated as abusive or unfair under existing consumer protection statutes?

[4] *See* 12 U.S.C. 4562(a) and 12 CFR 1282.16(b)(10).
[5] *See* 12 CFR 1282.16(b)(8).
[6] Some examples of factors associated with higher risk include high debt-to-income ratio, high loan-to-value ratio, or low credit score, among others. "Risk-layering" refers to loans with more than one such factor.

Question 2: *Are there ways to determine whether the low-income areas home purchase subgoal has resulted in the displacement of residents from certain communities, or to measure the extent of any such displacement? Should FHFA consider modifying the low-income areas home purchase subgoal to address such concerns? If so, how?*

Concerns have been raised about gentrification in low-income areas and high-minority census tracts, and the potential displacement of long-time low-income residents from such areas and tracts. The current Enterprise housing goals regulation does not restrict the income of borrowers whose mortgages qualify for the low-income areas home purchase subgoal if the mortgages are on properties located in a low-income census tract. Under the regulation, the Enterprises can meet the low-income areas home purchase subgoal by acquiring home purchase mortgages that are either: (1) originated for borrowers located in low-income census tracts (defined as census tracts with median income less than or equal to 80 percent of area median income (AMI)); or (2) originated for borrowers with incomes less than or equal to AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI).[7] There are no borrower income requirements for criterion (1). While Enterprise mortgage acquisitions could qualify under either or both criteria, the share of the Enterprises' mortgage acquisitions satisfying criterion (1) has been consistently higher than the share of Enterprise mortgage acquisitions satisfying criterion (2) in recent years. For example, among the Enterprises' mortgage acquisitions in 2019, 15.0 percent of mortgages met only criterion (1), 10.2

[7] *See* 12 CFR 1281.1 and 1282.12(f).

percent met only criterion (2), and 6.4 percent met both criteria, as can be seen in Table 1 below. All of these shares have been increasing steadily since 2010.

Table 1: Composition of Low-Income Areas Home Purchase Subgoal

Distribution of Borrowers By Census Tract Location: HMDA Home Purchases

		(A)				(B)
	Grand Total	L I	L I, not H M	H M and L I	H M, not L I	H M
Year	**Low-Income Area Subgoal**	**All Low-Income Areas**	**Low-Income Areas that are not High Minority Areas**	**High Minority Areas that are also Low-Income Areas**	**High Minority Areas that are not Low-Income Areas**	**All High-Minority Areas**
2010	12.1%	9.2%	5.6%	3.6%	2.9%	6.5%
2011	11.4%	8.8%	5.5%	3.3%	2.6%	5.9%
2012	13.5%	10.3%	6.0%	4.3%	3.2%	7.5%
2013	14.1%	10.9%	6.6%	4.3%	3.1%	7.4%
2014	15.0%	12.0%	7.5%	4.6%	3.0%	7.5%
2015	15.1%	12.2%	7.6%	4.6%	2.9%	7.5%
2016	15.9%	12.9%	8.1%	4.8%	2.9%	7.7%
2017	17.0%	14.0%	8.7%	5.3%	3.1%	8.3%
2018	17.9%	14.7%	9.1%	5.5%	3.3%	8.8%
2019	18.1%	14.7%	9.0%	5.7%	3.4%	9.1%

Distribution of Borrowers By Census Tract Location: Enterprise Home Purchases

		(A)				(B)
	Grand Total	L I	L I, not H M	H M and L I	H M, not L I	H M
Year	**Low-Income Area Subgoal**	**All Low-Income Areas**	**Low-Income Areas that are not High Minority Areas**	**High Minority Areas that are also Low-Income Areas**	**High Minority Areas that are not Low-Income Areas**	**All High-Minority Areas**
2010	11.6%	8.7%	5.2%	3.5%	2.9%	6.4%
2011	10.7%	8.1%	5.1%	3.1%	2.6%	5.7%
2012	12.6%	9.3%	5.4%	3.9%	3.3%	7.2%
2013	13.4%	10.2%	6.2%	4.0%	3.2%	7.2%
2014	14.7%	11.6%	7.0%	4.5%	3.2%	7.7%
2015	15.1%	12.1%	7.4%	4.6%	3.0%	7.7%
2016	16.0%	12.8%	7.9%	4.9%	3.1%	8.0%
2017	17.5%	14.1%	8.5%	5.6%	3.4%	9.0%
2018	18.9%	15.1%	8.8%	6.3%	3.8%	10.1%
2019	18.8%	15.0%	8.7%	6.4%	3.8%	10.2%

Source: FHFA's tabulation of Home Mortgage Disclosure Act (HMDA) and Enterprises' data. Conventional conforming single-family owner-occupied 1st lien non-Home Ownership and Equity Protection Act (HOEPA) originations.

FHFA's analysis of Home Mortgage Disclosure Act (HMDA) data in Table 2 shows that both low-income areas and high-minority areas have increasing shares of borrowers with incomes at or above 100 percent of AMI, although loans to borrowers with incomes over 100 percent of AMI do not qualify for the minority areas component of the goal. For instance, the share of loans made to borrowers with incomes greater than 100 percent of AMI and residing in these low-income census tracts increased from 38.8

percent in 2010 to 44.2 percent in 2016, after dropping to 36.5 percent in 2012. This share has been relatively stable since then, with a 43.3 percent share in 2019. Nonetheless, borrowers with higher incomes have made up an increasing share of the mortgage market in low-income areas.

A similar trend exists among borrowers residing in high minority census tracts, with the share of higher income borrowers increasing from 42.5 percent in 2010 to 50 percent in 2016. That share declined to 47.8 percent in 2019 after hovering around 49 percent in 2018 and 2019.

Table 2: Borrower Income Relative to AMI (HMDA)

Borrowers Residing in Low-Income Census Tracts	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Borrower Income ≤ 50% AMI	17.8%	17.7%	19.0%	15.4%	14.1%	14.1%	12.3%	13.0%	12.6%	12.9%
Borrower Income > 50% and ≤ 80% AMI	28.0%	26.6%	29.3%	28.4%	27.9%	27.9%	27.4%	27.8%	26.7%	28.1%
Borrower Income > 80% and ≤ 100% AMI	14.3%	13.9%	13.9%	14.7%	14.9%	14.9%	15.3%	15.2%	14.5%	14.4%
Borrower Income > 100% and ≤ 120% AMI	10.1%	10.0%	10.0%	10.8%	11.3%	11.3%	11.8%	11.6%	11.0%	10.9%
Borrower Income > 120% AMI	28.7%	30.5%	26.5%	29.3%	30.9%	30.8%	32.4%	31.4%	33.6%	32.4%
Income Missing	1.0%	1.4%	1.3%	1.3%	0.9%	1.0%	0.9%	0.9%	1.5%	1.2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Borrowers Residing in High-Minority Census Tracts	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Borrower Income ≤ 50% AMI	14.9%	15.0%	14.6%	11.3%	10.1%	10.3%	9.4%	9.9%	9.9%	10.0%
Borrower Income > 50% and ≤ 80% AMI	27.1%	26.4%	26.8%	24.9%	24.4%	24.7%	24.6%	25.2%	24.4%	26.0%
Borrower Income > 80% and ≤ 100% AMI	14.6%	14.3%	14.1%	14.7%	14.8%	14.9%	15.2%	15.3%	14.9%	15.0%
Borrower Income > 100% and ≤ 120% AMI	10.9%	10.6%	11.0%	11.7%	12.0%	12.2%	12.4%	12.2%	11.8%	11.7%
Borrower Income > 120% AMI	31.6%	32.4%	32.3%	36.0%	37.8%	37.0%	37.6%	36.5%	37.5%	36.1%
Income Missing	1.0%	1.3%	1.3%	1.4%	0.9%	1.0%	0.8%	0.9%	1.5%	1.2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Definitions:

Low-income census tracts = Census tracts with median income ≤ 80% Area Median Income (AMI)

High-minority census tracts = Census tracts where (i) tract median income ≤ 100% Area Median Income (AMI); and (ii) minorities comprise at least 30 pecent of the tract population.

Source: FHFA's tabulation of HMDA data.

Table 3 shows that the share of loans made to borrowers with incomes greater than 100 percent of AMI and residing in low-income census tracts increased from 40.7 percent in 2010 to 42.8 percent in 2016. However, that share has declined since then, dropping to a low of 37 percent in 2019. This trend is similar among borrowers residing in high minority census tracts, with the share of higher income borrowers increasing from 45.4 percent in 2010 to 48.5 percent in 2016, after dropping to a low of 42.8 percent in 2012. This share has since declined to 42.8 percent in 2019.

Table 3: Borrower Income Relative to AMI (Enterprise Loans Only)

Borrowers Residing in Low-Income Census Tracts										
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Borrower Income ≤ 50% AMI	16.7%	16.3%	18.2%	14.5%	13.4%	13.4%	13.1%	13.9%	15.2%	15.3%
Borrower Income > 50% and ≤ 80% AMI	27.7%	26.3%	28.6%	28.2%	28.4%	28.4%	28.5%	29.5%	31.4%	31.8%
Borrower Income > 80% and ≤ 100% AMI	14.8%	14.4%	14.6%	15.3%	15.5%	15.6%	15.6%	15.7%	16.0%	16.0%
Borrower Income > 100% and ≤ 120% AMI	10.8%	10.9%	10.8%	11.5%	11.7%	11.8%	11.9%	11.8%	11.3%	11.3%
Borrower Income > 120% AMI	29.9%	32.0%	27.7%	30.5%	31.0%	30.7%	30.9%	29.2%	26.1%	25.7%
Income Missing	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Borrowers Residing in High-Minority Census Tracts										
	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Borrower Income ≤ 50% AMI	13.3%	12.9%	15.2%	11.5%	10.3%	10.3%	10.0%	10.5%	11.3%	11.5%
Borrower Income > 50% and ≤ 80% AMI	26.1%	24.9%	27.0%	26.1%	25.7%	25.5%	25.8%	26.9%	28.5%	29.1%
Borrower Income > 80% and ≤ 100% AMI	15.1%	14.7%	14.9%	15.5%	15.7%	15.9%	15.7%	16.0%	16.6%	16.6%
Borrower Income > 100% and ≤ 120% AMI	11.6%	11.4%	11.5%	12.4%	12.6%	12.8%	12.6%	12.6%	12.4%	12.3%
Borrower Income > 120% AMI	33.8%	36.2%	31.3%	34.6%	35.7%	35.5%	35.9%	34.1%	31.2%	30.5%
Income Missing	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Definitions:

Low-income census tracts = Census tracts with median income ≤ 80% Area Median Income (AMI)

High-minority census tracts = Census tracts where (i) tract median income ≤ 100% Area Median Income (AMI); and (ii) minorities comprise at least 30 pecent of the tract population.

Source: FHFA's tabulation of Enterprises' data.

The presence of higher-income borrowers in these areas may be a sign of improved economic indicators for the community, but there is some concern that such a trend as seen particularly in the HMDA data analysis could also be accompanied by the displacement of lower income households. Change in the mix of renters to owner-occupied households often precedes and accompanies these trends. FHFA is aware that this particular subgoal may encourage the Enterprises to focus on purchasing loans for higher-income households in low-income and high-minority areas, and FHFA is also aware of concerns about the impact of rising housing costs on current residents in low-income or higher-minority areas. However, it is possible that higher-income households would have moved into these areas even in the absence of the subgoal. In recognition of these issues, FHFA has been very conservative in setting the benchmark levels for this subgoal.

Recently, in response to the issuance of FHFA's proposed rule for the 2021 Enterprise housing goals, FHFA received two comment letters from policy advocacy organizations that referenced concerns about displacement and gentrification related to this subgoal. The comment letters supported and encouraged FHFA's efforts to monitor and analyze trends regarding this subgoal. The comment letters also requested release of additional data on borrower incomes associated with goals-qualifying loans.

FHFA requests comment on how best to achieve the policy objectives of this subgoal. Should FHFA shift the focus of this subgoal to lower-income households? Should FHFA impose an AMI limit on borrowers for mortgages that qualify for the subgoal? Should FHFA set a limit on the number or share of mortgages for borrowers with incomes over 100 percent of AMI that count towards the subgoal?

Question 3: *Should FHFA revise the low-income areas home purchase subgoal to consider loans on properties located in Opportunity Zones, and if so, how should such loans be treated?*

Opportunity Zones were created by the 2017 Tax Cuts and Jobs Act, and are designed to spur economic development and job creation in distressed communities by providing tax benefits to investors who invest in these communities.[8] Investors may

[8] Pub. L. 115-97, section 13823, 131 Stat. 2054, 2183, codified at 26 U.S.C. 1400Z-1 and 1400Z-2 (Dec. 22, 2017). Note: Pub. L. 115-97 is commonly referred to as the "Tax Cuts and Jobs Act," but that short title was omitted from the law as enacted.

defer tax on eligible capital gains by making a qualifying investment (including real estate) in a Qualified Opportunity Fund (QOF). A QOF is an investment vehicle with at least 90 percent of its holdings in a Qualified Opportunity Zone (QOZ) property. QOZs are census tracts that meet certain poverty rate and median family income requirements and that have been designated as such by the U.S. Department of the Treasury, based on nominations from the Chief Executive Officers of each State. There are around 8,700 QOZ tracts, the majority of which are low-income tracts.

Because the Opportunity Zones program is new, its impact is still largely unknown. FHFA has noted that in 2019, over 17 percent of low-income area home purchase goal loans are in QOZs. Additionally, 12 percent of multifamily low-income goal units and 20 percent of small multifamily low-income goal units are in QOZs. To help track how QOF projects are achieving the program's intended goal of community revitalization, the U.S. Impact the U.S. Impact [MB1] Investing Alliance, the Beeck Center for Social Impact + Innovation at Georgetown University, and the Federal Reserve Bank of New York partnered to create the Opportunity Zones Reporting Framework, a tool that may be used to assess the intended goal of community revitalization.[9]

FHFA requests comment on whether and how the objectives of the Opportunity Zones program would align with the purpose of the Enterprise low-income areas home purchase subgoal. Should FHFA consider giving credit under this subgoal for loans on properties located in Opportunity Zones? What criteria should FHFA use to focus on Opportunity Zones that would have the largest benefit to a community? If included in the

[9] *See* https://ozframework.org/about-index.

subgoal, how can FHFA ensure that the loans on properties in Opportunity Zones benefit these communities? How can FHFA use this subgoal to target slow-growing communities that need these loans? Should FHFA require the use of the Opportunity Zone Reporting Framework for impact tracking? Are there other public policy considerations related to Opportunity Zones that FHFA should consider?

Question 4: *Is there evidence that the Enterprise housing goals have helped expand low-income homeownership in the marketplace?*

The Safety and Soundness Act directs FHFA to evaluate Enterprise support for low-income homeownership by measuring the low-income share of the mortgages that the Enterprises have acquired.[10]

FHFA requests comment on the factors it should consider in assessing the effectiveness of the Enterprises' activities in expanding low-income homeownership. In order to improve the housing goals, how should impacts be evaluated? What are the appropriate counterfactuals to consider? Is it possible to determine whether acquired mortgages that count toward achievement of the goals would have been originated in the absence of the housing goals? FHFA specifically requests comment on whether – and under the statute, how – other support activities undertaken by the Enterprises should be considered when FHFA reviews the Enterprises' performance on the single-family housing goals.

/s/ December 14, 2020

Mark A. Calabria.
Director, Federal Housing Finance Agency.

[10] *See* 12 USC 4562(a)(1).