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) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing; and (4) promote access to mortgage credit throughout the Nation (including central cities, rural areas, and other underserved areas) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.[2]

1. The Current Fannie Mae Regulations

In 1978, the Secretary promulgated regulations governing Fannie Mae.[3] These regulations were issued under the authority of the Fannie Mae Charter Act and, among other things, implemented the Secretary's ''general regulatory power'' over Fannie Mae and established other specific regulatory powers of the Secretary, including procedures under which the Secretary must approve stock and debt issuances, changes to a statutory debt-to-capital ratio, and new conventional mortgage programs.[4] The regulations also require Secretarial approval of Fannie Mae's underwriting guidelines to implement fair housing requirements and regulate equal opportunity in employment.[5] To ensure that Fannie Mae fulfilled its Charter Act purpose of providing a secondary market for home mortgages for low- and moderate-income families, the regulations required that 30 percent of Fannie Mae's aggregate mortgage purchases be mortgage purchases financing housing secured by mortgages located in central cities and that 30 percent of its aggregate mortgage purchases be mortgages financing housing for low- and moderate-income families.[6] Housing for low- and moderate-income families under the Fannie Mae regulations included multifamily housing insured under Federal Housing Administration (FHA) programs, housing receiving housing assistance payments (HAP), and, for single-family housing, housing purchased at a price not in excess of 2.5 times the area median family income.[7]

[2] Fannie Mae Charter Act, section 301, and Freddie Mac Act, section 301(b).

[3] 24 CFR part 81.

[4] 24 CFR 81.12, 81.14, 81.15, and 81.16(c).

[5] 24 CFR 81.18 and 81.19.

[6] 24 CFR 81.16(d) and 81.17.

[7] 24 CFR 81.2(l).

2. FIRREA and the Secretary's Assumption of Regulatory Responsibility Over Freddie Mac

Section 731 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') (Pub. L. 101–73, approved August 9, 1989) amended the Freddie Mac Act. The Secretary of HUD was granted general regulatory power and essentially the same specific regulatory powers with respect to Freddie Mac as the Secretary had respecting Fannie Mae, so that the Secretary's regulatory authority was ''identical, on all relevant matters, to (the Secretary's) regulatory power over (Fannie Mae).'' [8]

3. The Federal Housing Enterprises Financial Safety and Soundness Act

Congress was concerned about the potential for loss to the taxpayers if the GSEs suffered serious losses.[9] In FIRREA, Congress required the Treasury Department, the Congressional Budget Office (CBO), and the General Accounting Office to study the regulation of the GSEs and present recommendations to the Congress.[10] These studies concluded that the current regulatory authorities over the GSEs were inadequate to protect the taxpayer and ensure that the GSEs served the public purposes for which they were chartered. All three agencies recommended that the Government be granted additional authority to regulate the GSEs. The Treasury study formed the basis for a 1991 Administration proposal to create an independent office within HUD to regulate the safety and soundness of the GSEs.

In 1991, the House of Representatives passed H.R. 2900 (102d Cong., 1st Sess. (1991)), establishing an independent office within HUD to regulate the financial safety of the GSEs.[11] The House bill also provided for the establishment of special affordable housing goals to ensure that the GSEs meet the unaddressed needs of very low-income families and lower-income families in lower income areas.[12] The Senate made substantial revisions to the House bill, including changes to clarify the Secretary's authority to establish central cities and low- and moderate-income goals and to modify provisions concerning fair housing.[13]

[8] H.R. Rep. No. 101–54, 101st Cong., 1st Sess., pt. 3, at 2 (1989), and S. Rep. No. 101–19, 101st Cong., 1st Sess. 38 (1989).

[9] *See, e.g.,* H.R. Rep. 101–54, Part 1, 101st Cong., 1st Sess. 389 (1989).

[10] FIRREA, sections 1004 (Comptroller General study) and 1404 (Treasury study), and 2 U.S.C. 621 note (Treasury study and CBO study).

[11] H.R. 2900, section 101.

[12] *Id.,* at sections 121(n) and 122(l).

In 1992—as the Department was preparing regulations governing Freddie Mac and revising its Fannie Mae regulations—Congress enacted FHEFSSA, which revamped the regulatory structure concerning the GSEs and the GSEs' Charter Acts. In FHEFSSA, Congress chose to separate authority over the GSEs' safety and soundness from authority to assure that the GSEs accomplished their public purposes. FHEFSSA established a new Office of Federal Housing Enterprise Oversight (OFHEO) charged with new regulatory powers over the financial safety of the GSEs.[14] FHEFSSA also granted the Secretary more specific powers and authorities over the housing purposes and fair lending responsibilities of the GSEs.

The Act granted the Secretary the power to establish, monitor, and enforce goals for the GSEs' purchases of mortgages financing housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing meeting the unaddressed housing needs of targeted families.[15] Although the authority to establish goals previously existed under the Charter Act and was implemented under the current Fannie Mae regulations,[16] FHEFSSA defined and expanded this authority. Moreover, the Act provided that the goals would be achieved based on income of owners and renters. The regulations, promulgated in 1978, had allowed a proxy of house price [17] that was easier to achieve.

Generally, the Act authorizes the Secretary to establish each of the goals after consideration of certain prescribed factors relevant to the particular goal.[18] However, for a transition period of calendar years 1993 and 1994, the Act established target percentage amounts for purchases by the GSEs of mortgages on housing for low- and moderate-income families and housing located in central cities—which were based on the Fannie Mae regulations—and specific dollar amounts for purchases of mortgages on special affordable

[13] S. 2733, 102d Cong., 2d Sess., sections 502, 504, and 514 (1992).

[14] Section 1311, and *see, e.g.,* section 1313. Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[15] *See generally,* sections 1331–34.

[16] *See* 24 CFR 81.16(d) and 81.17.

[17] 24 CFR 81.2(l)(3).

[18] Sections 1332(b), 1333(a)(2), and 1334(b).