

housing.<sup>19</sup> For the transition years, the Act set targets for both GSEs that low- and moderate-income and central cities mortgage purchases comprise at least 30 percent of the units financed by the GSEs' total mortgage purchases for these years.<sup>20</sup> The Act also set targets for the special affordable housing goals in the transition years,<sup>21</sup> which, unlike the other goals, were set at no less than a minimum number of dollars of mortgage purchases rather than units financed. For the transition, the Act required that the Secretary establish interim goals to improve the GSEs' performances relative to the statutory targets, so that the GSEs would meet the targets by the end of the transition period.<sup>22</sup>

The Act also established new fair lending requirements for the GSEs under which the Secretary must, by regulation, prohibit the GSEs from discriminating in their mortgage purchases because of "race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect."<sup>23</sup> Under the Act, the Secretary also must: require the GSEs to submit data to assist the Secretary in investigating whether a mortgage lender has failed to comply with the Fair Housing Act and the Equal Credit Opportunity Act (ECOA); obtain and make available to the GSEs information from other regulatory and enforcement agencies on violations by lenders of the Fair Housing Act and ECOA; direct the GSEs to take remedial action against lenders found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or ECOA; and periodically review and comment on the underwriting and appraisal guidelines of each GSE to ensure that such guidelines are consistent with the Fair Housing Act and the Act.<sup>24</sup>

The Act details the Secretary's authority to review and approve new programs of the GSEs and establishes procedures under which the GSEs may contest determinations on new program requests.<sup>25</sup> The Act affirms the Secretary's authority to require reports from the GSEs<sup>26</sup> and details specific data and reports that the GSEs must

provide.<sup>27</sup> The Act assigns the Secretary other responsibilities, including establishing a public use data base and implementing requirements for the protection of proprietary information provided by the GSEs.<sup>28</sup> The Act also requires the Secretary to establish procedures to ensure due process for the GSEs in exercising the Secretary's regulatory authorities.<sup>29</sup>

In light of the \$850 billion in mortgage-backed securities that were currently outstanding from the GSEs, their \$190 billion combined mortgage portfolios, and the GSEs' importance to the National economy, Congress determined that the taxpayers needed increased protection from potential financial losses or risks posed by the GSEs.<sup>30</sup> The Act therefore established a new independent financial regulator for the GSEs within HUD—the Office of Federal Housing Enterprise Oversight (OFHEO)<sup>31</sup>—to design and administer a stress test for capital adequacy and to carry out all regulatory functions to ensure the financial safety of the GSEs.<sup>32</sup> In establishing a new regulatory framework for regulation of the GSEs' financial safety and soundness, the Act deleted several specific authorities of the Secretary, including authority to approve stock offerings, the rate of dividends, and changes in the GSEs' debt-to-capital ratio.<sup>33</sup> The Act assigns authority to approve dividends to the Director of OFHEO<sup>34</sup> and replaces the debt-to-capital ratio with a risk-based capital standard and stress test administered by the Director of OFHEO.<sup>35</sup> Under the Act, the Secretary retains general regulatory power over both GSEs, "(e)xcept for the authority of the Director of the (OFHEO) described in section 1313(b) and all other matters relating to the safety and soundness of the (GSEs) \* \* \*."<sup>36</sup>

#### 4. Previous Proposed Rule

On August 16, 1991, the Secretary published a proposed rule to update the Fannie Mae regulations and establish new regulations governing Freddie Mac.<sup>37</sup> Prior to the promulgation of a final rule, the President signed FHEFSSA into law on October 28, 1992.

<sup>27</sup> See sections 1381 (o and p) and 1382 (r and s).

<sup>28</sup> Sections 1323 and 1326.

<sup>29</sup> Sections 1322, 1336, and 1341–49.

<sup>30</sup> See, e.g., S. Rep. No. 102–282, 102d Cong., 2d Sess. 10 (1992) (hereinafter cited as "S. Rep.").

<sup>31</sup> Section 1311.

<sup>32</sup> See generally, section 1313.

<sup>33</sup> Sections 1381 (d)(2), (e)(1), and (k), and 1382(e).

<sup>34</sup> Sections 1381(d)(2) and 1382(e).

<sup>35</sup> Sections 1361–64.

<sup>36</sup> Section 1321.

<sup>37</sup> 58 FR 41022 (1991).

Since the new Act required complete revision of the rule, the Secretary is withdrawing the former proposed rule and issuing this new proposed rule.

#### 5. Interim Housing Goals

On October 13, 1993, the Secretary published a Notice in the **Federal Register** establishing the interim goals for the GSEs' purchases of mortgages financing low- and moderate-income housing, housing in central cities, and special affordable housing—applicable to the transition years of 1993 and 1994—and requirements for implementation of the goals.<sup>38</sup>

For the transition period of 1993 and 1994, the Act established annual targets for the purchases by both GSEs of mortgages financing housing for low- and moderate-income families and housing located in central cities.<sup>39</sup> The Act set these targets at 30 percent of the units financed by mortgage purchases of the GSEs;<sup>40</sup> the targets were based on the goals established under HUD's Fannie Mae regulations.<sup>41</sup> For the transition period, the Act provided that, where a GSE was not meeting a target as of January 1, 1993, the Secretary must establish the annual goal so that the GSE would improve its performance relative to the 30 percent target.<sup>42</sup> Where a GSE was meeting a target, the Act required the Secretary to establish the goal so that the GSE would improve its performance relative to the 30 percent target.<sup>43</sup> The Act also established dollar targets for the GSEs' purchases of mortgages financing special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.<sup>44</sup> The Secretary established these goals and implementation requirements in the Interim Notice published in October 1993.<sup>45</sup>

The Notice established the goal that 30 percent of the units financed by mortgages purchased by Fannie Mae in 1993 and 1994 should be housing for low- and moderate-income families.<sup>46</sup> The Notice also established the goal that 28 percent of units financed by mortgages purchased by Fannie Mae in 1993, and 30 percent in 1994, should be on housing located in central cities.<sup>47</sup> For the year 1993, Fannie Mae exceeded

<sup>38</sup> 58 FR 53048 and 53072 (1993).

<sup>39</sup> Sections 1332(d)(1) and 1334(d)(1).

<sup>40</sup> Sections 1332(d)(1) and 1334(d)(1).

<sup>41</sup> 24 CFR 81.16(d) and 81.17.

<sup>42</sup> Sections 1332(d)(2)(A) and 1334(d)(2)(A).

<sup>43</sup> Sections 1332(d)(2)(B) and 1334(d)(2)(B).

<sup>44</sup> Section 1333 (a)(1), (d)(1), and (d)(2).

<sup>45</sup> 58 FR 53048 and 53072 (1993).

<sup>46</sup> 58 FR 53048, 53061 (1993).

<sup>47</sup> *Id.* at 53063.

<sup>19</sup> Sections 1332(d), 1333(d), and 1334(d).

<sup>20</sup> Sections 1332(d)(1) and 1334(d)(1).

<sup>21</sup> Section 1333(d)(1) and (2).

<sup>22</sup> Sections 1332(d)(2)(A) and 1334(d)(2)(A).

<sup>23</sup> Section 1325(1).

<sup>24</sup> Section 1325 (2)–(6).

<sup>25</sup> Section 1322.

<sup>26</sup> Section 1327.