the goal for low- and moderate-income housing with 35.58 percent and is performing at a rate for 1994 [48] that likely will result in Fannie Mae's exceeding the goal and achieving 40 percent. In 1993, Fannie Mae did not meet the goal for central cities and has developed a housing plan to increase its efforts for 1994.

The Notice established Freddie Mac's goal for purchases of mortgages financing housing for low- and moderate-income families at 28 percent for 1993 and 30 percent for 1994.[49] The Notice established Freddie Mac's goal for purchases of mortgages financing housing located in central cities for 1993 at 26 percent and 30 percent for 1994.[50] For the year 1993, Freddie Mac exceeded the goal for low- and moderate-income housing with 29.18 percent and is performing at a rate for 1994 [51] that likely will result in Freddie Mac's exceeding the goal and achieving 35 percent. In 1993, Freddie Mac did not meet the goal for central cities and has developed a housing plan to increase its efforts for 1994.

C. Secretary's Approach to Regulating the Enterprises

The Secretary recognizes that the GSEs occupy a unique position in this country's housing finance system. The GSEs were created by the Congress, chartered for public purposes and receive significant public benefits, but the GSEs are privately owned and operated. Because of their status as government-sponsored enterprises, the GSEs receive significant benefits not enjoyed by any other shareholder-owned corporation in the mortgage market. The explicit benefits the GSEs receive include: (1) conditional access to a $2.25 billion line of credit from the U.S. Treasury; [52] (2) exemption from securities registration requirements of the Securities and Exchange Commission and the states; [53] (3) exemption from all State and local taxes except property taxes; [54] and (4) higher demand for the GSEs' securities, since the Government gives those securities the attributes of and the same preferred investment status as Treasury debt.[55] These explicit benefits are far outweighed by an implicit benefit—the market's assumption that, even though no explicit Federal guarantee exists,[56] should a GSE fail to meet its obligations, Congress, and ultimately the American taxpayer, would assist the GSEs. As a result of this implicit guarantee, the GSEs can borrow at near-Treasury rates, and they can sell securities at prices that exceed those of wholly private firms.[57] Consequently, the GSEs' cost of doing business is less than that of other competitors in the mortgage market.

This competitive advantage, combined with the GSEs' solid management, has resulted in enormous growth for both GSEs. In 1989, the GSEs purchased $171 billion of mortgages; in 1993, $543 billion, a three-fold increase. In 1993, the GSEs collectively purchased 70 percent of the mortgages originated in the conventional conforming loan market.[58] The GSEs' profitability has more than doubled in the same period, with combined profits of $2.7 billion in 1993, compared to $1.2 billion in 1989. At the end of the first quarter of 1994, the combined dollar amount of mortgages held in portfolio and mortgage-backed securities outstanding between the two GSEs is nearly 2.5 times the thrift industry's holdings and twice as large as the holdings by commercial banks.[59]

Because they are publicly created entities that enjoy substantial publicly derived benefits, Congress requires the GSEs to carry out public purposes not required of other private-sector entities in the housing finance industry. The GSEs' Charter Acts require them to assist in the efficient functioning of a secondary market for residential mortgages, including mortgages for low- and moderate-income families, and to promote access to mortgage credit throughout the nation, including central cities, rural areas, and other underserved areas. The Charter Act requirements create an obligation for the GSEs to ensure that citizens throughout the country have the opportunity to enjoy access to the public benefits provided by these federally related entities.

The GSEs have been successful at achieving an important part of their mission of providing stability in primary mortgage markets and bringing liquidity to housing finance markets through standardization and the development of mortgage-backed securities. Many home buyers have benefitted from lower interest rates and increased access to capital as a result of the GSEs' activities. The importance of the secondary market and its impact on who is able to buy a home and which communities have access to mortgage credit is substantial. Even lenders intending to hold loans in portfolio originate loans using the GSEs' standards, so that the lenders have the option to sell to the GSEs at a future date.

The Act and the legislative history make clear that the GSEs should be serving Americans across the income spectrum and throughout the country. The GSEs do an excellent job of facilitating the availability of mortgage credit for home buyers with more than moderate incomes and for residents of suburban communities. The GSEs must also use their entrepreneurial talents and position in the marketplace to "ensure that citizens throughout the country enjoy access to the public benefits provided by these federally related entities." [60] The GSEs are not expected to provide deep subsidies for the financing of affordable housing on the scale needed to solve the nation's housing problems. However, given the purposes for which Congress created these enterprises and the substantial federal benefits that they receive, it is essential that the GSEs' activities promote the achievement of national housing goals.

D. Leading the Industry

During the consideration of the Act, Congress noted its strong concern that the GSEs were not doing enough to benefit low- and moderate-income families or the residents of underserved areas that lack access to credit.[61] The Act specifically requires that in establishing the goals, the Secretary consider the ability of the GSEs to lead the industry. The intent of the Congress was clearly stated: the GSEs should "lead the mortgage finance industry in making mortgage credit available for

[48] Fannie Mae's report on its performance under the goal for the first three quarters of 1994 provides that 43.29 percent of its mortgage purchases count toward achievement of the goal for low- and moderate-income families.

[49] 58 FR 53072, 53085 (1993).

[50] *Id.* at 53088.

[51] Freddie Mac's report on its performance under the goal for the first three quarters of 1994 indicates that 36.31 percent of its mortgage purchases count toward achievement of the goal for low- and moderate-income families.

[52] Sections 306(c)(2) of the Freddie Mac Act and 304(c) of the Fannie Mae Charter Act.

[53] Sections 306(g) of the Freddie Mac Act and 304(d) of the Fannie Mae Charter Act.

[54] Sections 303(e) of the Freddie Mac Act and 309(c)(2) of the Fannie Mae Charter Act.

[55] *See, e.g.,* 12 CFR 208, App. A, section III.C.2.

[56] The GSEs' obligations are not guaranteed by the United States. *See, e.g.,* sections 1302(4), 1381(f), and 1382(n) (requiring each GSE to state in its obligations and securities that such obligations and securities "are not guaranteed by the United States").

[57] Congressional Budget Office, Controlling the Risks of Government-Sponsored Enterprises, at 10 (April 1991).

[58] Fannie Mae Economics Department.

[59] Commercial banks held $555 billion, thrifts held $458 billion, and the GSEs held or backed $1,164 billion. Federal Reserve Bulletin, Vol. 80, No. 8, Table 1.54, at A38 (August 1994).

[60] S. Rep. at 34.

[61] *See, e.g.,* S. Rep. at 34.