

APPENDIX I: FREDDIE MAC'S STATUTORY MISSION

Congress created the GSEs to serve several important purposes: to provide liquidity, stability and support to the overall conventional, conforming mortgage market; to respond appropriately to the private capital market; and to support housing for low- and moderate-income families and families in underserved areas.¹ As is explained below, Congress explicitly intended that the GSEs serve all of these purposes fully. Furthermore, Congress explicitly intended that the GSEs serve the entire conventional, conforming mortgage market and all borrowers in it. Congress subsequently established affordable housing requirements for the GSEs to ensure affordable housing needs are served in the course of serving the entire conventional, conforming market.

Freddie Mac's Mission: Serving the Entire Conventional, Conforming Market in All Regions, in All Times

The Department's discussion of Freddie Mac's fulfillment of its statutory housing mission in the Proposed Rule focuses almost exclusively on its purchases of mortgages qualifying for the housing goals. While this is an important element of Freddie Mac's mission, Freddie Mac also has a much broader mission – to serve the entire conventional, conforming market, in all regions and at all times. Congress' ultimate goal is to ensure that Freddie Mac creates housing opportunities not for a portion of that market, but for all of the families in that market. Neither Freddie Mac, nor the Department through regulation, can disregard that mission.

1970: Congress Creates Freddie Mac to Address a National Housing Crisis

Congress created Freddie Mac as part of the Emergency Home Finance Act of 1970 to create and maintain a secondary market in conventional residential mortgages. In that same act, Congress also expanded Fannie Mae's mission to include serving the housing finance needs of the conventional conforming market.²

On a bipartisan basis, Congress sought to address what was then a crisis of access to liquid, stable and affordable mortgage credit for middle-income and working families. To deal with this crisis, just two years before, the Housing and Urban Development Act of 1968 established a national goal of 26 million homes to be built or substantially rehabilitated over the next 10 years.³ The in-depth Report of the President's Committee on Urban Housing, A Decent Home (1969) (the "Kaiser Committee" Report) said that attaining such a goal was necessary to realize the Housing Act of

¹ Freddie Mac's statutory purposes are set forth in Sec. 301(b) of the Federal Home Loan Mortgage Corporation Act (hereafter the Freddie Mac Act).

² Since its founding in 1938 as a subsidiary of the Reconstruction Finance Corporation and until the 1970 amendments, Fannie Mae served exclusively the FHA (and, after 1944, the VA) mortgage market segments.

³ See Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476.

1949's promise of "a decent home and a suitable living environment for every American family."⁴

Perhaps nothing is as telling about the bipartisan emphasis and focus on middle class access to finance as the title of one of the companion bills in the Senate, S. 3503, to what became the Freddie Mac Act. The bill, the "Middle Income Mortgage Credit Act," intended "to channel low cost mortgage credit to middle income families during periods of tight money. Middle-income homeowners have borne the brunt of anti-inflationary policy."⁵ The Senate Banking Committee Report on S. 3685, the bill that actually became the Freddie Mac Act, expressly stated that existing and new federal subsidy, insurance and guarantee programs functioned well, at that time, to support low- and moderate-income housing. Congress found, however, that middle-income Americans were being shut out.

One of the unique results of the shortage and high cost of mortgage credit is the nearly 'death blow' given to housing for middle-income families. Shortage of mortgage credit has resulted in such high interest costs that a middle-income family is squeezed out of the opportunity of acquiring new housing. In many places, the only housing being built is high price housing – above \$30,000 – which only upper income families can afford,⁶ and low-cost subsidized housing for low-income families.⁷

The focus on the unmet housing finance needs of middle-income and working families was neither limited to the Senate nor partisan in any respect. House Banking Committee Chairman Wright Patman, opening the hearings on the 1970 housing legislation, flatly said "half the population – virtually all moderate income families – have been priced out of the housing market. To assert that the country is experiencing a housing crisis is to understate the situation."⁸

1978: Congress Ensures Freddie Mac Serves the Entire Conventional Conforming Market

Congress amended the Freddie Mac Act various times between the 1970 legislation and the privatization and re-chartering of Freddie Mac in 1989, but no amendment from that 20-year period reveals more about Congress' view of Freddie Mac's mission than the 1978 amendments that granted mortgage banking firms the ability to sell mortgages directly to Freddie Mac.

⁴ Housing Act of 1949, July 15, 1949, Ch. 338, § 2, 63 Stat. 413 (codified at 42 U.S.C. § 1441).

⁵ "Secondary Mortgage Market and Mortgage Credit," Hearings before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency, U.S. Senate, 91st Cong., 2nd Sess. at 14 "Explanation of S. 3503, Middle Income Mortgage Credit Act."

⁶ \$30,000 in 1970 is equivalent to \$146,000 in 2004 dollars, based on the CPI all urban consumers price index.

⁷ S. Rep. No. 761, 91st Cong., 2d Sess., reprinted in 1970 U.S.C.C.A.N. 3488, 3490.

⁸ "Emergency Home Financing," Hearings before the House Committee on Banking and Currency, 91st Cong., 2d Sess. at 1 (1970).

In 1970, Congress authorized Freddie Mac to purchase mortgages only from members of the Federal Home Loan Bank System (at the time, exclusively savings and loans) or from other federally insured depositories (commercial banks and mutual savings banks). However, mortgage bankers also expressed an interest in selling conventional mortgages to Freddie Mac. Congress shared the mortgage banking industry's desires and had its own vision of the two GSEs providing universal service and universal liquidity to all segments of, and all borrowers in, the conventional mortgage market. As a result, in 1978, Congress added to the list of then-approved potential sellers of mortgages to Freddie Mac "any mortgagee approved by the Secretary of Housing and Urban Development for participation in any insurance program under the National Housing Act."⁹

Underlying this whole issue was a basic question of whether the Congress created [Freddie Mac] solely to assist only one segment of the mortgage lending industry, to provide a secondary market facility, to the exclusion of all other segments. It is the position of the committee that this facility created by the Congress was to assist the housing markets generally and not one favored segment. It has been stated that mortgage bankers have [Fannie Mae] and savings and loans have [Freddie Mac]. The committee rejects that justification. These are entities created by Congress generally to assist the mortgage credit markets and not benefit just parts of it.¹⁰

Congress' continuing mandate that Freddie Mac and Fannie Mae serve all segments of the conventional conforming residential mortgage market, and all borrowers in that market, underlies both the subsequent enactment of the affordable housing goals as well as the scope and limits of those goals.

1989-1992: Congress Broadens Freddie Mac's Mission and Establishes the Affordable Housing Goals

As part of the privatization of Freddie Mac's ownership in 1989, Congress comprehensively re-chartered Freddie Mac, restated its mission, and gave the Department, for the first time, both safety and soundness and mission regulatory authority over the newly privatized GSE.¹¹ The 1992 legislation marks the last time Congress comprehensively revisited the charters of Freddie Mac and Fannie Mae, broadening the mission of both firms, adding quantitative and enforceable affordable housing goals, and comprehensively restructuring the two GSEs' regulatory oversight, placing mission regulation with the Department and safety and soundness regulation with the Office of Federal Housing Enterprise Oversight (OFHEO).

⁹ Pub. L. No. 95-557, § 321(a), 92 Stat. 2080, 2101. The 1978 law amended § 305(a) of the Freddie Mac Act, 12 U.S.C. § 1454(a).

¹⁰ H.R. Rep. No. 1161, 95th Cong., 2d Sess. at 39 (1978) (emphasis added). *See generally id.* at 38-42; S. Rep. 95-871, 95th Cong., 2d Sess., reprinted in 1978 U.S.C.C.A.N. 4773, 4825-29.

¹¹ Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183.

By 1989, Freddie Mac and Fannie Mae had succeeded in establishing a vibrant secondary mortgage market and giving it solid foundations. But Congress was well aware that the secondary market and the two GSEs' focus needed to grow and evolve consistent with the dynamic growth and continuous evolution of the primary market.

Congress' 1989 emphasis shifted to "ongoing assistance" to the secondary market, emphasizing market stability and continuous adoptive response to private capital markets. Congress took great pains in the 1989 FIRREA legislation to spell out Freddie Mac's statutory purpose for the first time, explicitly and in detail.¹² In 1992, Congress amended the three existing aspects of the purpose and added a fourth. Today, Freddie Mac's mission is clearly spelled out in a comprehensive, statutory statement of purposes – or rather, as Congress has framed it, a unitary purpose with four specific aspects. All four purposes relate to the stability, liquidity, efficiency, dynamism and accessibility of the conventional, conforming¹³ market for residential mortgages. The evolution and broadening of Freddie Mac's statutory purposes thus provides a vital framework within which to evaluate the affordable housing goals and their relationship to the two companies' overall mission.

In 1989 Congress provided that

It is the purpose of the Federal Home Loan Mortgage Corporation—

- (1) to provide stability in the secondary market for residential mortgages;
- (2) to respond appropriately to the private capital market and
- (3) to provide ongoing assistance to the secondary market for residential mortgages (including mortgages securing housing for low- and moderate-income families involving a reasonable economic return to the Corporation) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing.¹⁴

For the first time, Freddie Mac's ongoing assistance to the market included a specific reference to mortgages securing housing for low- and moderate-income families involving a reasonable economic return.

The Committee Reports accompanying the 1989 restatement of purpose explain each of the restated purposes.

¹² FIRREA, section 731(a), Pub. L. No. 101-73, 103 Stat. 183, 429, (Aug. 9, 1989), formerly codified at 12 U.S.C. § 1451(b) (Note) (1988 and Supp. I 1989). Congress simultaneously made conforming changes to the Fannie Mae Charter Act, so that the two firms had, for the first time, identical, explicit statutory purposes.

¹³ "Conforming" mortgages are those within the annually-adjusted (for house price inflation) mortgage purchase amount limitations Congress imposed on Freddie Mac and Fannie Mae to ensure that they do not serve the "luxury" portion of the residential housing market.

¹⁴ FIRREA, section 731(a).

A primary purpose is to provide stability in the secondary market for home mortgages including mortgages securing housing for low and moderate income families. This can be accomplished through both portfolio purchasing and selling activities, as well as through the securitization of home mortgages. The continuous presence of the FHLMC and FNMA in the secondary market in bad as well as good economic times provides assurances of a dependable and substantial funding source for home mortgages. FHLMC and FNMA are also required to respond appropriately to the private capital market. They must take a leading role in developing and marketing new and innovative finance and mortgage products and assure that their products are responsive to the changing demands of the capital market. Lastly, FHLMC and FMNA are responsible for providing ongoing support to the secondary mortgage market. They should increase the liquidity of mortgage investments by refining and improving their securitization and credit enhancement products, as well as developing new products that add to the liquidity of mortgage investments. They should improve the distribution of investment capital available for home mortgage financing by seeking to attract new, in addition to traditional, sources of mortgage investment.¹⁵

Freddie Mac's statutory mission acquired its present form in 1992 when Congress added a fourth aspect to Freddie Mac's charter purposes. Congress specified the same two means of achieving this new aspect as it had for achieving the "ongoing assistance to the secondary mortgage market (including mortgages securing housing for low-and moderate income families)" purpose. Specifically, Congress expressly directed Freddie Mac, by increasing the liquidity of mortgage investments and improving the distribution of investment capital for residential mortgage finance, "to promote access to mortgage credit throughout the Nation (including central cities, rural areas and underserved areas) . . ."¹⁶ In other words, increasing mortgage liquidity and improving the distribution of investment capital available for residential mortgage finance are the two means Congress specified to achieve the goal of enhancing access to mortgage credit nationwide, including designated underserved areas.

Congress made another change in the statutory mission in 1992 that was less noticeable but important nonetheless. Congress broadened the language regarding low- and moderate-income housing mortgages. Rather than providing assistance to the residential secondary mortgage market "including mortgages securing housing for low- and moderate-income families," the third statutory purpose now refers to providing assistance to the secondary market including "activities relating to mortgages on housing for low- and moderate income families."¹⁷

¹⁵ H.R. Rep. No. 54, 101st Cong, 1st Sess., pt. 3 at 2 (1989).

¹⁶ Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), Pub. L. No. 102-550, section 1382(a)(4), 106 Stat. 3672, 3994, 4002 (October 28, 1992), codified at Freddie Mac Act section 301(b)(4), 12 U.S.C. § 1451(b)(4)(Note).

¹⁷ Pub. L. No. 102-550, 106 Stat. 3672, 3994, 4002 (October 28, 1992) (emphasis added).

These two changes, along with the addition of the fourth purpose, are designed to extend the focus of the GSEs' efforts to income groups and geographic areas, respectively, that Congress perceived to be underserved by the housing finance system. This amended language makes plain Congress' understanding that Freddie Mac assists low- and moderate-income housing not simply through direct mortgage purchasing activities, but also through a broader array of activities that relate to such mortgages. At least since 1992, it has expressly been among Freddie Mac's statutory purposes, as part of its larger purpose to assist the residential secondary mortgage market, to engage in "activities relating to mortgages" securing low- and moderate-income housing. This is plainly a broader formulation of this aspect of the statutory purpose than the preceding one, expressly contemplating a range of activities, other than simply purchasing mortgages, that would support the stability and further development, of the secondary mortgage market.

2004 and Beyond: Freddie Mac's Mission Remains Broad – Serve the Entire Conventional, Conforming Market in All Regions and in All Times

Congress established Freddie Mac because it concluded that only government-sponsored enterprises could create and maintain a stable, highly liquid, consumer-friendly and accessible mortgage finance system. A 1992 Senate Banking Committee Report concisely summarized this view: "Congress established the enterprises under private ownership and management to bring the entrepreneurial skills and judgments of the private sector to bear on the accomplishment of public purposes relating to housing."¹⁸

These public purposes are the GSEs' mission.¹⁹ Their focus is on improving the efficiency, enhancing the liquidity, or "perfecting" the functioning of the market. In so doing, in eliminating unnecessary transaction costs and increasing the liquidity of mortgage investments, the GSEs create new wealth for homeowners.

Congress clearly – and rightly – believed that fulfillment of the GSEs' mission to improve the stability, liquidity and accessibility of the residential mortgage market through government-sponsored, market-oriented secondary market enterprises would improve the economy's ability to provide housing and to support economic growth.²⁰

Congress also correctly believed that a vitally important part of the GSEs' mission is serving underserved areas and lower-income families. Freddie Mac embraces that part of our mission – it's a challenge, an opportunity and a public trust. However, it is not the entirety of the GSEs' mission, and neither the GSEs nor the Department, through regulation, are empowered to pursue that aspect of their mission at the expense or to the exclusion to the rest of their mission.

¹⁸ S. Rep. No. 282, 102nd Cong, 2d Sess. at 25 (1992).

¹⁹ 12 U.S.C. §1451(b)(Note) (Freddie Mac Act); 12 U.S.C. §1716 (Fannie Mae Charter Act).

²⁰ *See* 12 U.S.C. § 4501(2) (finding by Congress in the FHEFSSA that the two firms' ability to "accomplish their public missions is important to providing housing in the United States and the health of the Nation's economy").