involve high additional costs for the GSEs. The National Association of Mortgage Brokers (NAMB), the California Association of Realtors, the Western League of Savings Institutions, the ABA, the NAR, and a major mortgage company all joined in protesting what they considered the prospect of excessive information collection, employing GSE resources. NAR raised concerns about "privileged data on lenders" and indicated that the organization's concern was "magnified when the proposed requirement to provide information is coupled with a request that the GSEs conduct an analysis of the data." It urged that HUD's requests for data and analysis be limited to situations involving allegations of discrimination.

To address these concerns. §81.44(b)(1) of this final rule has been modified to clarify that other Federal agencies responsible for ECOA enforcement which wish to request information from the GSEs pursuant to FHEFSSA must do so by submitting that request through the Secretary. The words "without limitation" referencing, in the proposed rule, the types of information that may be requested, have been removed in this final rule at §81.44(b)(1) and (2). Section 81.44(a) also has been modified to make it clear that the GSEs are only required to submit such information under FHEFSSA after it has been requested by the Secretary.

Additionally, in accordance with the President's initiative on regulatory reform, the examples provided in §81.44(b)(1) and (2) of information which may be requested have been removed from this final rule. By removing those examples, HUD does not intend to limit, in any way, the information it may request pursuant to section 1325 of FHEFSSA and §81.44 regarding violations by lenders of the Fair Housing Act and ECOA. Requested information may include information on mortgages sold to the GSE by the lender or lenders under investigation, the mortgage sales of lenders operating in the same or similar areas, and information on representations and certifications to the GSEs by the lender or lenders under investigation. Information requested from the GSEs' established data systems may include comparing the loans purchased by the GSE from a particular lender to data on the racial composition of census tracts or providing data on loans sold to the GSE by lenders operating in the same geographical area. In the interests of regulatory reform, the reference to comparative and other data that would be collected under §81.44(b)(1) and (2)

has been removed, but HUD will seek such data when appropriate.

Where comparative data about the performance of other lenders is considered relevant to an ongoing investigation, HUD has the authority under the Fair Housing Act to require anyone, including the GSEs, to provide material or testimony. 24 CFR 103.200, 103.215, 103.220. It is consistent for the GSEs to provide such information pursuant to this section.

Although no other commenters repeated Freddie Mac's distinction between "data" and "information," several joined Fannie Mae in arguing that only information about an identified object of investigation, and not available from other sources, should be sought through the GSEs. Freddie Mac also asserted that HUD has grossly underestimated the resource drain on Freddie Mac that §81.44 would entail. Again referencing the Regulatory Impact Analysis for the proposed rule, Freddie Mac objected that HUD had misstated and oversimplified the work burden associated with the GSE's provision of required data. Several industry commenters echoed Freddie Mac's position on this issue.

Section 1325(3) of FHEFSSA uses the terms "data" and "information" interchangeably. The legislative history shows that the Congress intended that the GSEs would actively assist HUD by providing data for "investigative purposes." 55 Nor does the statute, or its goals, support Fannie Mae's suggestion that the rule be revised to state that the GSEs are required to provide only information owned by them and not readily available from another source. Congress intended that the GSEs submit information that they are "privy to and collect," and there is no requirement that the GSEs own such information.56 That language indicates Congress' intent that the Secretary have access, upon request, to information other than that owned by the GSEs.

HUD is sensitive to the need to limit reporting burdens upon both lenders and the GSEs to the minimum level consistent with effectively implementing statutory requirements. As a practical matter, HUD does not anticipate that requests for information from the GSEs pursuant to an investigation will generally require the GSEs to seek additional information from lenders, nor does it expect that it generally will seek information from the GSEs when that information is readily available from other sources. Rather, as mandated by the statute, the GSEs will assist HUD in investigations by providing existing and available data and information upon request by HUD. HUD does not expect that § 81.44 will result in new reporting burdens on lenders, and does not expect that it will impose onerous burdens on the GSEs. Nor does HUD intend for the GSEs to conduct fair lending investigations or otherwise act as an enforcement arm of the Federal government.

For matters involving the Fair Housing Act, the Secretary will only issue requests for information about lender-based data in circumstances involving investigations, as defined by the Fair Housing Act regulations found at 24 CFR part 100, subpart D. For matters involving only ECOA, § 81.44(b)(1) provides that the Secretary will only issue requests for information from the GSEs upon a request from the responsible Federal financial regulatory agency.

In response to comments, the revised § 81.44 omits the provisions in the proposed rule which would have required the GSEs to volunteer information regarding potential violations of the Fair Housing Act or ECOA and which would have required the GSEs to submit other information to HUD or the other lending regulators.⁵⁷

Finally, Freddie Mac objected that HUD ought to revise § 81.44 to assure that any data-providing burdens fall equally on the two competing GSEs.

HUD anticipates that regular reporting and data-provision requirements imposed upon the GSEs will not differ. However, the subject matter of §81.44 is the provision of information to assist in investigations. The nature of each particular investigation will determine what information is necessary. Because information will only be sought as needed, it would be unnecessarily burdensome, both for the GSEs and HUD, for the Secretary routinely to make duplicate requests for information to both GSEs when it is not otherwise necessary.

Evidentiary Value of Data

Freddie Mac argued strongly that it could not make determinations, in any event, concerning whether its practices produced disparate results among its lenders, since Freddie Mac has no means of collecting data for loans that were declined as a proximate result of Freddie Mac requirements. There was

⁵⁵ See S. Rep. at 43-44.

⁵⁶ See S. Rep. at 43-44.

⁵⁷ While the requirement to volunteer information about violations has been removed from the rule, this change does not shield the GSEs from potential legal liability if they participate in discrimination. *See* section 1325(1) of FHEFSSA; sections 804 and 805 of the Fair Housing Act, 42 U.S.C. 3604–3605; and 24 CFR 100.125.