participation and comment before any information is deemed "proprietary."

Under FHEFSSA, there is no requirement that any party other than the GSEs be afforded a right to comment before determining that GSE information is proprietary. To the extent that the Secretary employs the rulemaking process in making determinations of the proprietary nature of mortgage data submitted by the GSEs, the Secretary will follow applicable Administrative Procedure Act procedures.

Issues Regarding Specific Data Elements

Freddie Mac commented that information on pricing, fees and other key aspects of business strategy were to be considered proprietary and protected from disclosure to the public. Information on pricing, fees, and other key aspects of business strategy will be withheld to the extent they are proprietary under this rule or otherwise protected from public disclosure under other authorities and HUD regulations.

NAHB suggested that some of the "data fields" sought to be protected by the GSEs as proprietary have been provided in HMDA data "with apparently little harm to either the borrowers or the lending institutions." These fields, NAHB added, would be very helpful, in utilizing HUD and HMDA databases together. These fields include: Purpose of Loan; Occupancy Code; Loan Balance at Acquisition.

Additionally, NAHB asserted, certain fields claimed as possibly proprietary were needed for use in research by academicians and governmental entities. NAHB requested, "at a minimum," that the following data fields be included:

For single-family housing:

- Loan to Value Ratio at Origination
- Purpose of Loan, Product Type, and Loan Term
- Occupancy Code, Number of Units. And for multifamily housing:
- Purpose of Loan, Loan Type, and Loan Term
 - Mortgagor Type
- Average Reported Rent OR Rent Plus Utilities OR Rent Affordability Level
- Public Subsidy Program.
 With respect to single-family loan-level data, HUD must consider the GSEs' proprietary concerns in determining whether a data element can be released at the census tract level or whether some form of aggregation would be sufficient to protect the proprietary nature of the data in a public release. HUD developed a national-level database file structure that has no geographic identifiers.

Certain data elements are recoded into categories to prevent exact identification of specific elements. The national data files are used to supplement censustract-based public use data files.

For single-family purchases by the GSEs, the national data files contain purpose of the loan, occupancy code, number of units, and the loan-to-value ratio at origination which are recoded into five categories (0–60, 60–80, 80–90, 90–95, and over 95). The census tract and national files do not contain Product Type or Loan Term data since, taken together, these two elements have been deemed proprietary by the Secretary.

For multifamily purchases by the GSEs, a number of elements were deemed proprietary because of the nature of the multifamily market—the size of the market and the way multifamily properties are financed. The fact that these data elements were proprietary led the Secretary to deem Loan Type, Loan Term, Mortgagor Type, and Public Subsidy Program fields as proprietary to protect these data elements. HUD does release the Purpose of the Loan and the affordability of the units, by category, on the national multifamily public use data file.

CANICCOR, an Interfaith Council on Corporate Accountability, urged that, at a minimum, the public be provided all the information that is provided for each loan by primary market lenders under HMDA. This data, CANICCOR said, includes:

- Geocoding to the census tract level;
- Income of borrower;
- Borrower's/Co-borrower's race or national origin;
- Borrower's/Co-borrower's gender or sex:
- Whether owner or non-owner occupancy;
 - Purchaser (i.e., which GSE);
 - Type of loan (e.g., conventional);
- Purpose (i.e., home purchase, refinance, home improvement);
 - Dollar amount of loan; and
 - Seller identification.

HUD, in its development of the public-use database, considered the availability of the data to the public through sources outside of the GSE data, including HMDA. The public-use database, either through the census tract file or the national data file, contains all of the above elements.

Subpart G—Procedures for Actions and Review of Action

This subpart establishes procedures for hearings, disclosures of orders and agreements between the Secretary and the GSEs in enforcement actions, and judicial review. Generally, these procedures concern actions by the Secretary to enforce housing goal-related matters under subpart B of the rule and reporting requirements under subpart E. In addition, this portion of the preamble addresses certain procedural issues involving the approval of new programs.

As stated in the proposed rule's preamble, the housing goal requirements of this rule are enforced through the imposition of cease-anddesist orders and civil money penalties. FHEFSSA is prescriptive because of the seriousness of these actions; therefore this final rule often references or restates the statutory requirements. However, in a few instances, which are discussed in more detail throughout this portion of the preamble, the final rule augments the statutory procedures to promote the purposes of the legislation and to better recognize the legitimate interests of the GSEs in these proceedings.

Both GSEs submitted detailed comments on the provisions of subpart G. The arguments and suggestions for change submitted by the two GSEs were markedly similar. On this subject matter, Freddie Mac presented the more detailed objections, so the Freddie Mac comments will be the principal focus of the discussion of the subpart.

Closely Following the Statutory Text

Freddie Mac asserted that this subpart of the regulation should mirror the procedural requirements set forth in FHEFSSA. However, Freddie Mac commented that the proposed rule's provisions "variously depart from [FHEFSSA], or from the Administrative Procedure Act." Additionally, to avoid the "inefficiencies of litigation," Freddie Mac recommended an explicit provision in HUD's enforcement procedures for a HUD/GSE exchange of views before any enforcement action is initiated.

Freddie Mac objected to provisions in \$\\$ 81.82 and 81.83 on the grounds that cease-and-desist orders and imposition of civil penalties were limited to violations of the statute, whereas provisions of the rule could be read as authorizing sanctions for violations of the procedural rule itself. Freddie Mac commented that FHEFSSA permits the Secretary to seek an order only for violations of the statute—not its implementing regulations. Similarly, Freddie Mac urged, the Administrative Procedure Act (APA) requires that no sanction or order may be imposed