situations involving cease-and-desist orders may require immediate action, while the collection of a civil money penalty might more readily be deferred. The rule has been revised to reflect the statutory language.

Freddie Mac also questioned the inclusion of a provision in §81.86(c) providing that the Secretary "may obtain such other relief as may be available, including attorney fees and other expenses \* \* \* \*." FHEFSSA, Freddie Mac asserted, made explicit reference to attorney fees only in instances where a GSE has refused, after adjudication, to pay a civil money penalty. The final rule eliminates, from § 81.86, the reference to attorney fees. The provision more specifically addressing failures to comply with an order imposing a civil money penalty (§ 81.83(e)) cross-references the statutory provision.

## New Program Procedures

The proposed rule provided, under the procedures for review of the Secretary's disapproval of a program request on grounds that the program is not authorized, that the GSE may request an opportunity to review and supplement the record, or may request a meeting with the Secretary. The final rule allows the GSE to supplement the record timely in writing and/or through a meeting. Freddie Mac expressed concern in its comments about the procedures outlined in §81.54. The proposed rule provided that such a meeting "shall not be on the record \* \* \*." Freddie Mac's concern was that materials furnished in response to the invitation to supplement the record—or statements made at the meeting with the Secretary or his designee—might belong on the record, because they might help a court to decided that the Secretary's decision was not arbitrary and capricious, or would otherwise assist in pinpointing the issues in dispute. Additionally, Freddie Mac said, a record would help to avoid arguments about what happened at such a meeting.

Because there is no statutory requirement that any opportunity be provided for a meeting with an affected GSE to review a program disapproval on these grounds, the question of how such a meeting should be conducted is one solely within the Secretary's discretion. 104 The intention of the proposed "off the record" provision was to afford GSE representatives some assurance that statements made by them

at such a meeting would not be used in a manner adverse to the interests of the GSE.

While the Secretary does not want to reverse the position taken in the proposed rule and provide that all such post-decision meetings will be held on the record, the final rule removes the above-quoted negative declaration from § 81.54(a). Instead, the Secretary will establish procedures for any such meeting on a case-by-case basis. <sup>105</sup>

## Subpart H—Book Entry Procedures

Both the GSEs and the Book-Entry Treasury Regulations Task Force of the Investment Securities Subcommittee of the UCC Committee of the Business Law Section of the American Bar Association ("ABA Task Force") stated that revising book-entry procedures would be premature in light of continuing work on a comprehensive revision of the Treasury Department book-entry regulations. <sup>106</sup> The Federal Reserve Bank of New York—which operates the book-entry system—also urged HUD to delay implementation of new book-entry provisions.

Fannie Mae discussed the book-entry provisions briefly, indicating that the proposed rule's revisions to the bookentry provisions were so minor that any revision was unnecessary. Pending the overhaul of the book-entry system by Treasury, Fannie Mae recommended preserving the current book-entry regulations to "avoid confusion and certain regulatory inefficiency. However, Fannie Mae recommended deleting § 81.45(b) of the current bookentry regulations, consistent with the proposed rule, because without this deletion, Fannie Mae must request a waiver whenever it issues securities in definitive form.

Freddie Mac commented that it "strongly opposes" adoption of proposed Subpart H, calling it "at best premature and at worst potentially destructive." Freddie Mac requested that, if HUD determines it is necessary to promulgate subpart H at this time, \$§ 81.94(d) and 81.95 be "recast" to allow Freddie Mac to maintain its ability to decide whether to allow conversion of its securities to definitive form. Current Freddie Mac regulations allow a depositor to withdraw securities

from the book-entry system and convert to definitive form *only* if the securities provide for such conversion pursuant to the offering materials. Since 1985, Freddie Mac's offering materials have not provided such a right of conversion—a practice it comments is in keeping with current market practice. Freddie Mac said that while the proposed HUD rules appear to mirror part O of Treasury's regulations, the Treasury Department has informed Freddie Mac "that in practice it has not issued its own offerings in definitive form since 1986, notwithstanding the language of Part O, unless the offering circular specifically allows." Freddie Mac therefore concluded that the HUD proposal could put the GSEs at a competitive disadvantage respecting other competing issuers, including Treasury.

The ĞSEs' current book-entry regulations date back to the late 1970s and are codified in separate parts of the CFR.<sup>107</sup> These regulations are essential to permit the GSEs to avail themselves of Federal Reserve book-entry systems. Under HUD's general regulatory power respecting the GSEs, the proposed rule sought to establish a uniform, modern set of book-entry regulations applicable to both Fannie Mae and Freddie Mac modelled on the current book-entry procedures established by the Treasury. 108 Recently, by regulation and at the request of Fannie Mae, the Secretary specifically extended the Fannie Mae book-entry regulations to allow Fannie Mae to continue to use the book-entry system pending the issuance of this comprehensive rule. 109

Based on the comments, the Secretary has decided to postpone adopting uniform book-entry regulations for the GSEs pending completion of the revised Treasury Department book-entry regulations. For HUD to act now to finalize a complete set of regulations for both GSEs, and then shortly to revise them, would only lead to confusion. HUD will work with the Treasury Department to adopt revised regulations simultaneously. These regulations will be substantively identical for both GSEs and will provide a level playing field. In the interim, Fannie Mae and Freddie Mac book-entry regulations shall remain effective, essentially in their current form. The final rule makes only three changes.

The Fannie Mae book-entry regulations are modified to delete § 81.45(b), as requested by Fannie Mae.

<sup>&</sup>lt;sup>104</sup> However, written materials submitted at such a meeting, or in lieu of requesting a meeting, are considered as having been submitted with the intention of supplementing the record, as permitted under § 81.54(a)(1).

<sup>&</sup>lt;sup>105</sup> As a note of further clarification, the final rule continues to permit a GSE freely to supplement the record in writing, either at the meeting with the Secretary or designee, or in a separate submission.

<sup>&</sup>lt;sup>106</sup> The Treasury Department is revising its book entry regulations to reflect a major revision to Article 8 of the Uniform Commercial Code (UCC). Treasury withdrew proposed changes to its own regulations pending the completion of additional UCC work. *See* 57 FR 12244 (Apr. 9, 1992), and 58 FR 59972 (Nov. 12, 1993).

 $<sup>^{107}</sup>$  24 CFR part 81, subpart E (Fannie Mae) and 1 CFR part 462 (Freddie Mac).

<sup>108</sup> See 31 CFR 306.115 et seq.

<sup>109 59</sup> FR 54366 (Oct. 28, 1994).