

GSEs, including, *inter alia*, census tract, location, race and gender of mortgagors. This data may include other characteristics such as the loan-to-value (LTV) ratio of the mortgage, whether the loan was seasoned or whether the units were owner-occupied. In accordance with the Act, these regulations provide that the Secretary may not, by regulation or order, make available to the public data that the Secretary determines are proprietary under section 1326 of the Act *except* that the Secretary may not restrict access to the income, census tract location, race, and gender data of single family properties.¹⁷⁴

The Secretary shall, from time to time, issue orders providing that certain GSE information is proprietary and shall not be included in the public use data base. The most current Secretarial orders will be periodically published and included as Appendix F of this regulation. On June 7, 1994, the Secretary published a Temporary Order protecting GSE information deemed to be proprietary, pending public comment and further review.¹⁷⁵ As part of the process for establishing the public use data base, the Secretary intends to finalize a revised order early in 1995.

In addition to not including proprietary information of the GSEs, the public use data base will not include information the release of which would invade personal privacy. Additionally, the data base will not include information required to be withheld, including requirements of the Trade Secrets Act, 18 U.S.C. 1905.

The Secretary will routinely disclose to the public information contained in the GSEs' Annual Housing Activities Reports which are submitted to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and comprise a detailed picture of the GSEs' activities each year in relation to the housing goals and the Fair Housing provisions of the Act. Proprietary information from this report may be withheld if the GSEs request its designation as proprietary and the Secretary determines that it is proprietary.¹⁷⁶ Under the Act, none of the information under section 1323 or reports under section 1326 may be disclosed where the Secretary issues a final decision, by regulation or order, determining information is proprietary.¹⁷⁷

Requests for Proprietary Treatment

The regulations establish procedures for the GSEs to request proprietary treatment of information submitted to the Secretary in reports or otherwise. When a GSE submits information to the Secretary, the GSE shall designate which of the information the GSE deems to be proprietary; the GSE's submission must include the bases for the GSE's assertion and a statement or certification from an officer or authorized representative providing that the information is proprietary and has not been disclosed to the public.

Determinations on Requests

The Secretary will review the information and the GSE's views. If the Secretary determines the information is proprietary, the Department will not disclose the data. The regulations then establish procedures for the Secretary to issue a temporary order, an order or a regulation to withhold proprietary information and to inform the public of the withholding. If the Secretary does not determine that information that is the subject of a GSE request is proprietary, the Secretary shall provide the GSE with an opportunity for a meeting on the matter where the GSE may provide comments and additional information on release. After the meeting date, the Secretary shall determine, in writing, which information is proprietary and shall provide the GSE with 10 days' notice before the information is made available to the public.

FOIA Requests

Information on the GSEs may be requested by the public pursuant to the Freedom of Information Act (FOIA)¹⁷⁸ and these regulations provide guidance on FOIA's applicability to GSE information. For purposes of FOIA, HUD is considered an agency responsible for the regulation and supervision of financial institutions.¹⁷⁹ Accordingly, where appropriate, the Secretary may invoke FOIA Exemption (b)(8)¹⁸⁰ to withhold GSE information "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of" the Secretary.

FOIA Exemption 4¹⁸¹ allows confidential business information to be protected from disclosure, and the Trade Secrets Act¹⁸² forbids Government officers and employees

from releasing trade secret and other confidential business information. Executive Order No. 12,600¹⁸³ requires that agencies notify submitters of FOIA requests for confidential business information and afford submitters an opportunity to comment before releasing information. If an agency determines to release notwithstanding a submitter's objections, the Executive Order requires that the agency notify the submitter a reasonable time prior to release. The President of the United States, by memorandum, dated October 4, 1993, to Heads of Departments and Agencies, emphasized the importance of public disclosures under FOIA and the implementing memorandum from the Attorney General, attached to the President's memorandum, instructs agencies to disclose information unless disclosure would harm an interest protected by a FOIA exemption. The President's and the Attorney General's memoranda do not, however, alter Executive Order 12600.

Congressional Requests

If the Department receives a request on behalf of a Congressional Committee or Subcommittee, the Comptroller General, a subpoena from a court of competent jurisdiction, or is otherwise compelled by law to release information determined to be proprietary, personal, or otherwise withheld from the public, the Department will provide the information in accordance with the request. In releasing proprietary information under this provision, the Department will advise the requester that the Secretary has determined that the information is proprietary and that public disclosure of the information may cause competitive harm to the GSEs. To the extent practical, the Department will provide notice to the GSEs after a request under this paragraph is received and before the Department provides information in response to the request.

Subpart G—Procedures for Actions and Review

This subpart establishes procedures for hearings, disclosure of orders and agreements between the Secretary and the GSEs, enforcement of actions by the Secretary, and judicial review. These procedures concern actions by the Secretary to enforce housing goal related matters under subpart B and reporting violations under subpart E, and actions by GSEs seeking review of new program denials under subpart D.

The Act empowers the Secretary to enforce requirements under the housing

¹⁷⁴ 5 U.S.C. 552.

¹⁷⁹ Section 1319F.

¹⁸⁰ 5 U.S.C. 552(b)(8).

¹⁸¹ 5 U.S.C. 552(b)(4).

¹⁸² 18 U.S.C. 1905.

¹⁸³ 3 CFR 235 (1988).

¹⁷⁴ Section 1323(b)(2).

¹⁷⁵ 59 FR 29514 (1994).

¹⁷⁶ Section 1326.

¹⁷⁷ Section 1326(c).