

effect on the GSE's competitive position. Conclusory statements that particular information would be useful to competitors or would impair business dealings, or similar statements, ordinarily will not be considered sufficient to justify a determination that the information is proprietary;

(ii) The existence and applicability of any prior determinations by the Department, other Federal agencies, or a court, concerning similar information;

(iii) The measures taken by the GSE to protect the confidentiality of the information in question and of similar information prior to and after its submission to the Secretary;

(iv) The extent to which the information is publicly available from other entities, such as information available to the public through local government offices or records, including deeds, recorded mortgages, and similar documents;

(v) The difficulty of a competitor, including a seller/servicer, obtaining or compiling the information; and

(vi) Such additional facts and such legal and other authorities as the GSE may consider appropriate.

**§ 81.74 Secretarial determination on GSE request.**

(a) *General.* The Secretary shall review Requests for Proprietary Treatment from the GSEs and other information, if any, that the Secretary may elicit from other sources. The Secretary shall determine whether the information designated as proprietary by the GSE is proprietary information, or whether the information is not proprietary and should be released notwithstanding the GSE's request. During the time a request is pending determination by the Secretary, information submitted by the GSE that is the subject of such request shall not be disclosed to, or subject to the examination of data by, the public or any person or representative of any person or agency outside of HUD.

(b) *Determination to withhold.* (1) Where the Secretary determines that information is proprietary, the Secretary shall notify the GSE that the request has been granted and may, in the discretion of the Secretary, issue a temporary order, a final order or a regulation providing that the information is not subject to public disclosure. Where the Secretary determines that information is proprietary, the Secretary shall not make such information publicly available.

(2) Such a temporary order, final order, or regulation shall:

(i) Document the reasons for the determination; and

(ii) Be provided to the GSE, made available to members of the public, and published in the **Federal Register**, except that any portions of an order that would reveal the proprietary information shall be withheld from public disclosure.

(3) Publications of temporary orders shall invite public comments where feasible.

(c) *Determination not to withhold or to seek further information.* Where the Secretary determines, in response to a Request for Proprietary Treatment, that information submitted by the GSE may not be proprietary information, that the request may only be granted in part, or that questions exist concerning the request, the following procedure shall apply:

(1) The Secretary shall provide the GSE with an opportunity for a meeting with departmental officers or employees to discuss the matter, for the purpose of gaining additional information concerning the request. Such meetings shall be informal and not on the record;

(2) Following the meeting, based on the Secretary's review of the information and the GSE's views as to whether the information is proprietary, the Secretary shall make a determination;

(3) If the Secretary determines to withhold the information as proprietary, the procedures in paragraph (b) of this section shall apply; and

(4) If the Secretary determines that any information covered by the request is not proprietary, the Secretary shall provide notice in writing to the GSE of the reasons for this conclusion, and such notice shall provide that the Secretary shall not release the information to the public for 7 days.

**§ 81.75 Mortgage data withheld by order and regulation.**

(a) *List of withheld data.* Appendix E of this part shall include a list and appropriately identify those categories of mortgage data ("data elements") that the GSEs submit under sections 309(m) of the Fannie Mae Charter Act and 307(e) of the Freddie Mac Act, and that are determined to be proprietary information. Appendix E shall identify the reasons data elements have been withheld.

(b) *Updating of list.* Following issuance of regulations or orders to withhold mortgage data, the Secretary shall expeditiously update Appendix E where needed to inform the public of any modifications to the list of proprietary information.

**§ 81.76 Requests for GSE Information.**

(a) *General.* Information submitted to the Secretary by the GSEs is subject to

request under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The Department shall process such FOIA requests in accordance with the Department's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16, and other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12,600.

(b) *Protection from disclosure.* In responding to requests for information submitted by or relating to the GSEs, the Secretary may invoke provisions of the Freedom of Information Act and FHEFSSA to protect information from disclosure.

(1) *Exemption (b)(8).* Under section 1319F of the Act, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD.

(2) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption 4 (5 U.S.C. 552(b)(4)), to withhold from public disclosure confidential GSE business information, and exemption 6 (5 U.S.C. 552(b)(6)), to protect information that would constitute a clearly unwarranted invasion of personal privacy.

(c) *Requests for business information under Executive Order 12600.* The Department will process FOIA requests for confidential business information of the GSEs to which FOIA exemption 4 may apply in accordance with 24 CFR part 15 and the predisclosure notification procedures of Executive Order 12600. Under these procedures, the Secretary will not release records marked by the GSE as proprietary or records that are reasonably expected to contain proprietary materials, if at all, until the following occurs:

(1) The Secretary notifies the GSE that a request for such records has been received;

(2) The GSE is provided a reasonable opportunity to provide detailed comments on and objections to the release of the records; and

(3) Following receipt of any objection by a GSE, if the Secretary determines not to sustain wholly the objection, the GSE must be notified in writing of the Secretary's determination and given a brief explanation of such decision. The Secretary shall provide such notification enough in advance of a specified disclosure date so that the GSE will have an opportunity to obtain judicial review.

(d) *Release in response to requests on behalf of Congress, the Comptroller*