

**§ 81.75 Proprietary information withheld by order or regulation.**

(a) *Secretarial determination of proprietary classification.* Following a determination by the Secretary that mortgage data or AHAR information are proprietary information under FHEFSSA, the Secretary shall expeditiously issue a temporary order, final order, or regulation withholding the mortgage data or AHAR information from the public-use database and from public disclosure by HUD in accordance with 12 U.S.C. 4546. The Secretary may, from time to time, by regulation or order, issue a list providing that certain mortgage data or AHAR information shall be treated as proprietary information.

(b) *Modification of proprietary classification—(1) General.* The Secretary may, based upon a consideration of the factors in § 81.74(b), modify a previous determination that mortgage data or AHAR information are proprietary information (and may also make conforming changes to the list designating certain mortgage data or AHAR information as proprietary information) by regulation, or by order using the procedures described in paragraph (d) of this section, as applicable.

(2) *Release of data following a modification of proprietary classification.* Following the Secretary's determination under paragraph (b)(1) of this section to modify a previous proprietary determination by reclassifying certain mortgage data as non-proprietary, the Secretary shall release the reclassified, non-proprietary mortgage data to the public both prospectively and for all prior years' public use databases, unless otherwise provided by the Secretary.

(3) *Release of aged data.* The Secretary may determine, through case-by-case consideration of individual data elements under paragraph (b)(1) of this section, that certain mortgage data previously determined to be proprietary may lose their proprietary status if they are at least five years old (as measured from the end of the calendar year to which the mortgage data pertain). The Secretary will evaluate the age of the data as one of the relevant factors that may be considered under 24 CFR 81.74(b)(6). If the Secretary de-

termines that such aged mortgage data have lost their proprietary status, these data shall be released publicly.

(c) *Release of aggregated data derived from proprietary loan-level data.* The Secretary may, based upon a consideration of the factors in § 81.74(b) and using the procedures in paragraph (d) of this section, determine that certain aggregated data derived from proprietary loan-level mortgage data are not proprietary. If the Secretary makes such a determination, then the aggregated data shall be released to the public both prospectively and for all prior years, unless otherwise provided by the Secretary.

(d) *Procedures.* The following procedures apply to the Secretary's issuance of an order in connection with a determination under paragraph (b)(1) or (c) of this section:

(1) The Secretary shall provide each GSE with written notice of the mortgage data, AHAR information or aggregated data proposed to be released, and an opportunity to submit written comments. The Secretary may also provide each GSE with an opportunity for a meeting with HUD to discuss the proposed release of mortgage data, AHAR information, or aggregated data;

(2) The Secretary shall make a determination regarding the proposed release of the GSE mortgage data, AHAR information, or aggregated data based upon a consideration of the data or information under the standards set forth in 24 CFR 81.74(b) and the GSEs' written and oral objections, if any, to the proposed release of such mortgage data, AHAR information, or aggregated data;

(3) The Secretary shall provide notice in writing to each GSE of the Secretary's determination and the reasons under § 81.74(b) for his or her determination. If the Secretary determines that the mortgage data, AHAR information, or aggregated data may be released, the notice will also provide that the Secretary shall not release the mortgage data, AHAR information, or aggregated data to the public for 10 working days;

(4) The Secretary shall, no earlier than the end of the ten-working-day period referred to in paragraph (d)(3) of this section, publish an order in the

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FEDERAL REGISTER notifying the public of the Secretary's determination to release the mortgage data or AHAR information that has been reclassified as non-proprietary and/or to release certain non-proprietary aggregations of data derived from proprietary loan-level mortgage data. The order will also modify the list described in paragraph (a) of this section to reflect the Secretary's reclassification of the mortgage data or AHAR information. The Secretary shall omit from the published order any information that would reveal proprietary information.

[70 FR 69031, Nov. 10, 2005]

### § 81.76 FOIA requests and protection of GSE information.

(a) *General.* HUD shall process FOIA requests for information submitted to the Secretary by the GSEs in accordance with:

(1) HUD's FOIA and Privacy Act regulations, 24 CFR parts 15 and 16;

(2) 12 U.S.C. 4525, 4543, and 4546 and this subpart; and

(3) Other applicable statutes, regulations, and guidelines, including the Trade Secrets Act, 18 U.S.C. 1905, and Executive Order 12600. In responding to requests for data or information submitted by or relating to the GSEs, the Secretary may invoke provisions of these authorities to protect data or information from disclosure.

(b) *Protection of confidential business information other than mortgage data and AHAR information.* When a GSE seeks to protect from disclosure confidential business information, the GSE may seek protection of such confidential business information pursuant to the provisions of HUD's FOIA regulations at 24 CFR part 15, without regard to whether or not it is mortgage data or AHAR information.

(c) *Processing of FOIA requests—(1) FOIA Exemption (b)(4).* HUD 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 12,600.

(2) *FOIA Exemption (b)(8).* Under section 1319F of FHEFSSA, the Secretary may invoke FOIA exemption (b)(8) to withhold from the public any GSE data

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or information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of HUD. HUD may make data or information available for the confidential use of other government agencies in their official duties or functions, but all data or information remains the property of HUD and any unauthorized use or disclosure of such data or information may be subject to the penalties of 18 U.S.C. 641.

(3) *Other FOIA exemptions.* Under 24 CFR part 15, the Secretary may invoke other exemptions including, without limitation, exemption (b)(6) (5 U.S.C. 552(b)(6)), to protect data and information that would constitute a clearly unwarranted invasion of personal privacy.

(d) *Protection of information by HUD officers and employees.* The Secretary will institute all reasonable safeguards to protect data or information submitted by or relating to either GSE, including, but not limited to, advising all HUD officers and employees having access to data or information submitted by or relating to either GSE of the legal restrictions against unauthorized disclosure of such data or information under the executive branch-wide standards of ethical conduct, 5 CFR part 2635, and the Trade Secrets Act, 18 U.S.C. 1905. Officers and employees shall be advised of the penalties for unauthorized disclosure, ranging from disciplinary action under 5 CFR part 2635 to criminal prosecution.

(e) *Protection of information by contractors.* (1) In contracts and agreements entered into by HUD where contractors have access to data or information submitted by or relating to either GSE, HUD shall include detailed provisions specifying that:

(i) Neither the contractor nor any of its officers, employees, agents, or subcontractors may release data submitted by or relating to either GSE without HUD's authorization; and

(ii) Unauthorized disclosure may be a basis for:

(A) Terminating the contract for default;

(B) Suspending or debaring the contractor; and

(C) Criminal prosecution of the contractor, its officers, employees, agents,