

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR PART 906

FEDERAL HOUSING FINANCE AGENCY

12 CFR PART 1207

RIN 2590-AA28

Minority and Women Inclusion

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Agency (FHFA or agency) is issuing notice and opportunity for the public to comment on this proposed regulation on minority and women inclusion. Section 1116 of the Housing and Economic Recovery Act of 2008 amended section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, requiring FHFA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks to promote diversity and the inclusion of women and minorities in all activities. The proposed rule will implement this provision.

DATES: Written comments on the proposed regulation must be received on or before March 12, 2010.

ADDRESSES: Submit comments to FHFA by any of the following methods:

- *E-mail:* RegComments@fhfa.gov. Please include in the subject line of your submission: "Federal Housing Finance Agency—Proposed Rule: RIN 2590-AA28".

- *Mail/Hand Delivery:* Alfred M. Pollard, General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552, *Attention:* Public Comments/RIN 2590-AA28. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely receipt by the agency include the following information in the subject line of your submission: "Federal Housing Finance Agency—Proposed Rule: RIN 2590-AA28". If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Equal Employment Opportunity and Diversity Director, Eric.Howard@fhfa.gov, (202) 408-2502, 1625 Eye Street, NW., Washington, DC 20006; or Mark Laponsky, Deputy General Counsel, Mark.Laponsky@fhfa.gov, (202) 414-3832 (not toll-free numbers), Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339. For additional information, see **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed regulation and will take all comments into consideration before issuing the final regulation. We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

II. Background

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) (Safety and Soundness Act) to establish FHFA as an independent

agency of the Federal Government.¹ HERA transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and of the Federal Housing Finance Board (FHFB) over the Federal Home Loan Banks (FHLBanks or Banks) (collectively, regulated entities) and the FHLBank System's Office of Finance to FHFA. In addition, this law combined the staffs of OFHEO, FHFB, and the Government-Sponsored Enterprise mission office of the Department of Housing and Urban Development (HUD).

The Safety and Soundness Act provides that FHFA is headed by a Director with general supervisory and regulatory authority over the regulated entities. FHFA is charged, among other things, with overseeing the prudential operations of the regulated entities and to ensure that they: Operate in a safe and sound manner including maintenance of adequate capital and internal controls; foster liquid, efficient, competitive, and resilient national housing finance markets; comply with the Safety and Soundness Act and rules, regulations, guidelines and orders issued under the Safety and Soundness Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Safety and Soundness Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest. The Enterprises and the FHLBanks continue to operate under regulations promulgated by OFHEO, FHFB, and as relevant, HUD, until FHFA issues its own regulations.²

A. The FHLBank System

The FHLBank System (System) was created by the Federal Home Loan Bank Act of 1932 (FHLBank Act) as a government-sponsored enterprise (GSE) to support mortgage lending and related community investment. It is composed of 12 FHLBanks, more than 8,000

¹ See Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, section 1101 of HERA.

² Sections 1302, 1303, 1312, and 1313 of HERA, 122 Stat. 2795, 2796, and 2798.

member financial institutions, and the System's fiscal agent, the Office of Finance. The FHLBanks fulfill their statutory mission primarily through providing to its members long- and short-term loans (called advances). The FHLBank Act provides the FHLBanks explicit authority to make secured advances.³ Advances provide members with a source of funding for mortgages and asset-liability management; liquidity for a member's short-term needs; and additional funds for housing finance and community development. Advances are collateralized primarily by residential mortgage loans, and government and agency securities. Community financial institutions (*i.e.*, members with assets less than \$1 billion) may pledge small business, small farm, and small agri-business loans as collateral for advances. Additionally, some of the FHLBanks have Acquired Member Asset (AMA) programs whereby they acquire fixed-rate, single-family mortgage loans from participating member institutions. Given their status as GSEs, the FHLBanks are able to borrow funds in the capital markets on terms more favorable than could be obtained by most other entities. Consolidated obligations, consisting of bonds and discount notes, are the principal source for the FHLBanks to fund advances, AMA programs, and investments. The Office of Finance, as the System's fiscal agent, issues all consolidated obligations on behalf of the 12 FHLBanks. Although each FHLBank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that FHLBank, each FHLBank is also jointly and severally liable with the other 11 FHLBanks for the payment of principal of, and interest on, all consolidated obligations.⁴

B. The Enterprises

Fannie Mae and Freddie Mac are GSEs chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages.⁵ Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential

mortgages, and promote access to mortgage credit throughout the nation.⁶

The Enterprises fulfill their statutory mission by purchasing residential mortgages from lenders and either holding these mortgages in their portfolios or packaging the loans into mortgage-backed securities (MBS) that are sold to the public. By packaging mortgages into MBS and guaranteeing the timely payment of principal and interest on the underlying mortgages, Fannie Mae and Freddie Mac attract to the secondary mortgage market investors who might not otherwise invest in mortgages, thereby expanding the pool of funds available for housing. The Enterprises finance purchases of their mortgage-related securities and mortgage loans, and manage their market risks, primarily by issuing debt instruments and entering into derivative contracts in the capital markets. Fannie Mae and Freddie Mac are shareholder-owned companies and their common stock is listed on the New York Stock Exchange. Each Enterprise is a separate corporate entity with its own management and board of directors elected annually by the common stockholders.

III. Summary of the Proposed Regulation

Section 1116 of HERA amended section 1319A of the Safety and Soundness Act (12 U.S.C. 4520) to require FHFA to engage in certain activities to promote a diverse workforce. It also requires each Regulated Entity to establish an Office of Minority and Women Inclusion, or designate an office, responsible for carrying out the requirements of the section and such requirements and standards established by the Director. Section 1319A of the Safety and Soundness Act requires the regulated entities to promote diversity in all activities and at every level of the organization, including management, employment and contracting. Furthermore, 12 U.S.C. 1833e, as amended, and Executive Order 11478 require FHFA and the regulated entities to promote equal opportunity in employment and contracting. FHFA will prescribe regulations establishing a minority outreach program to promote diversity in FHFA contracting. The proposed rule supersedes 12 CFR part 906, subpart C, the FHFB regulation on minority and women outreach; therefore, 12 CFR part 906, subpart C will be withdrawn, removed, and deleted upon the effective date of a final rule.

The proposed rule would implement the requirements of 12 U.S.C. 1833e, 4520, and Executive Order 11478 in a single regulation. Section 1313(f) of the Safety and Soundness Act, as amended by section 1201 of HERA, requires the Director, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. The Director may also consider any other differences that are deemed appropriate. In preparing the proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors. The Director requests comments from the public about whether differences related to these factors should result in a revision of the proposed rule as it relates to the Banks.

Additionally, although the Office of Finance is not directly covered by section 1116 of HERA, it is subject to the Director's "general regulatory authority" under section 1311(b)(2) of the Safety and Soundness Act (12 U.S.C. 4511(b)(2)), as amended by HERA. The Director has determined that the national policy and purposes of section 1116 of HERA are sufficiently important to treat the Office of Finance in the same manner as the regulated entities for the purposes of this proposed rule.

Subpart A of the proposed rule contains items of general applicability to FHFA, the regulated entities, and the Office of Finance. It defines terms used in this part, addresses FHFA's general policy and purpose of issuance, and explains how this part applies to FHFA's, the regulated entities', and the Office of Finance's equal opportunity programs. The requirements of section 1116 of HERA are limited to minorities and women. The proposed rule expands those requirements to cover disabled populations. HERA authorizes FHFA's Director to establish "standards and requirements" relating to diversity in the "management, employment and business activities" of the regulated entities.⁷ The Director considers ensuring that disabled populations are included in the management, employment, and business activities of the regulated entities and the Office of Finance an important aspect of diversity to which the requirements of this proposed rule should apply.

Subpart B of the proposed rule confirms FHFA's commitment to equal

³ 12 U.S.C. 1430(10).

⁴ See 12 CFR 966.9.

⁵ See Fannie Mae Charter Act, 12 U.S.C. 1716 *et seq.*; Freddie Mac Corporation Act, 12 U.S.C. 1451 *et seq.*

⁶ *Id.*

⁷ See 12 U.S.C. 4520(a).

opportunity and describes activities to promote workforce diversity and equal employment opportunity within FHFA. Proposed subpart B also identifies and describes FHFA's contractor outreach activities and programs to ensure equal opportunity in contracting by FHFA, as required by 12 U.S.C. 1833e.

Subpart C of the proposed rule contains requirements for the regulated entities and the Office of Finance. It instructs each regulated entity and the Office of Finance to establish an Office of Minority and Women Inclusion, or designate an office, responsible for carrying out the requirements of the section and such requirements and standards established by the Director. The subpart requires each regulated entity and the Office of Finance to establish an equal opportunity program applying to all areas of the business, including management, employment and contracting, at every level of the organization. It requires each regulated entity and the Office of Finance to establish an outreach program to ensure the inclusion of minorities, women, and individuals with disabilities, and businesses owned by them in contracts entered into by the Regulated Entities or the Office of Finance. Further, proposed subpart C sets forth reporting requirements, including minimum contents of reports to FHFA by the regulated entities and the Office of Finance. The proposed rule observes that FHFA's activity under this subpart C and related guidance, standards, directives or orders is regulatory and supervisory in nature and may lead to regulatory or supervisory actions, including enforcement actions.

FHFA has considered that any data or information reporting requirements present operational and administrative burdens. FHFA does not consider the burden of reporting under the proposed rule to be unreasonable. Congress recognized the importance of promoting diversity in the management, employment and business activities of the Regulated Entities. Consequently, FHFA believes that ensuring compliance with the proposed diversity requirements is a one of its supervisory and regulatory duties. For several decades companies in most industries, including much of the financial services industry, have been subject to reporting requirements and enforcement with respect to diversity. Agencies requiring such reports and enforcing standards include the U.S. Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs in the U.S. Department of Labor. The proposed subpart C does not seek to duplicate reporting burdens

imposed by either agency. Instead, FHFA has selected specific types of information that are particularly useful in analyzing the demographic composition of workforces at every level. It also identifies for reporting similar types of data that allow FHFA to analyze diversity among the contractors used by regulated entities and the Office of Finance.

IV. Section-by-Section Analysis

Section 1207.1 Definitions

Proposed § 1207.1 defines terms used in this part.

Section 1207.2 Policy, Purpose, and Scope

Proposed § 1207.2 expresses FHFA's policy that it, the Regulated Entities, and the Office of Finance shall promote non-discrimination, diversity and the inclusion of women, minorities, and the disabled in all their activities. It explains the purpose to establish minimum standards for FHFA, the regulated entities, and the Office of Finance in carrying out the policy of non-discrimination, diversity and inclusion. Proposed § 1207.2 also makes clear that the regulation applies to FHFA as well as to the regulated entities and the Office of Finance.

Section 1207.3 Limitations

Proposed § 1207.3 provides that except as necessary for enforcement by FHFA, the rule does not create any enforceable right or benefit.

Sections 1207.4 Through 1207.9 [Reserved]

Section 1207.10 FHFA Workforce Diversity; Equal Employment Opportunity Program

Proposed § 1207.10 describes FHFA's program for promoting diversity and equal employment opportunity in its workforce and how FHFA will comply with the specific requirements of section 1116 of HERA and Executive Order 11478.

Section 1207.11 Equal Opportunity and Outreach in FHFA Contracting

Proposed § 1207.11 implements 12 U.S.C. 1833e by establishing FHFA's program for ensuring equal opportunity, diversity and inclusion in the use of contractors, and describing the agency's contractor outreach program, record-keeping and complaint resolution process.

Sections 1207.12–1207.19 [Reserved]

Section 1207.20 Office of Minority and Women Inclusion

Proposed § 1207.20 implements the requirement that each regulated entity and the Office of Finance create an Office of Minority and Women Inclusion or designate an office to fulfill the requirements of this part, section 1116 of HERA, and 12 U.S.C. 1833e(b), and provide the office with adequate resources to perform its responsibilities.

Section 1207.21 Equal Opportunity in Employment and Contracting

Proposed § 1207.21 establishes minimum requirements for each regulated entity's and the Office of Finance's equal opportunity, diversity and inclusion programs for equal opportunity in regulated entity and Office of Finance employment, management, contracting, and all other business activities.

Section 1207.22 Regulated Entity and Office of Finance Reports

Proposed § 1207.22 establishes a minimum requirement of an annual report submitted by each regulated entity and the Office of Finance and provides notice that the Director may require additional reports.

Section 1207.23 Annual Reports—Format and Contents

Proposed § 1207.23 establishes the format and minimum content required in each regulated entity's and the Office of Finance's annual report on Minority and Women Inclusion.

Section 1207.24 Enforcement

Proposed § 1207.24 explains that FHFA considers non-compliance with this regulation or with standards issued under this regulation by the regulated entities or the Office of Finance to be the basis for enforcement actions under 12 U.S.C. 4513b and 4515, and that the Director may initiate examinations of a regulated entity's or the Office of Finance's compliance under 12 U.S.C. 4517.

V. Regulatory Impacts

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant

economic impact on a substantial number of small entities, small businesses, or small organizations shall include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. FHFA certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to FHFA, the regulated entities, and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 906

Government contracts, Minority businesses.

12 CFR Part 1207

Disability, Discrimination, Equal employment opportunity, Government contracts, Minority businesses, Office of Finance, Outreach, Regulated entities.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency proposes to amend chapters IX and XII of Title 12, Code of Federal Regulations, as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 906—OPERATIONS

Subpart C—[Removed and Reserved]

1. Remove and reserve subpart C, consisting of §§ 906.10 through 906.13.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter A—Organization and Operations

2. Add part 1207 to subchapter A to read as follows:

PART 1207—MINORITY AND WOMEN INCLUSION

Subpart A—General

Sec.

- 1207.1 Definitions.
- 1207.2 Policy, purpose, and scope.
- 1207.3 Limitations.
- 1207.4–1207.9 [Reserved].

Subpart B—Minority and Women Inclusion and Diversity at the Federal Housing Finance Agency

- 1207.10 FHFA workforce diversity; equal employment opportunity program.
- 1207.11 Equal opportunity and outreach in FHFA contracting.
- 1207.12–1207.19 [Reserved].

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

- 1207.20 Office of Minority and Women Inclusion.
- 1207.21 Equal opportunity in employment and contracting.
- 1207.22 Regulated entity and Office of Finance Reports.
- 1207.23 Annual reports—format and contents.
- 1207.24 Enforcement.

Authority: 12 U.S.C. 4520 and 4526; 12 U.S.C. 1833e; E.O. 11478.

PART 1207—MINORITY AND WOMEN INCLUSION

Subpart A—General

§ 1207.1 Definitions.

The following definitions apply to the terms used in this part:

Business and activities means operational, commercial, and economic endeavors of any kind, whether for profit or not for profit and whether regularly or irregularly engaged in by a regulated entity or the Office of Finance, and includes, but is not limited to, management of the regulated entity or the Office of Finance, employment, procurement, insurance, and all types of contracts, including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of mortgage and securities portfolios, the making of equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of affordable housing or community investment programs and initiatives.

Director means the Director of FHFA or his or her designee.

Disability has the same meaning as defined in 29 CFR 1630.2(g) and 1630.3 and Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act.

Disabled means a person with a disability.

Disabled-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services—

(1) Qualified as a Service-Disabled Veteran-Owned Small Business Concern as defined in 13 CFR 125.8 through 125.13; or

(2) More than fifty percent (50%) of the ownership or control of which is held by one or more persons with a disability; and

(3) More than fifty percent (50%) of the net profit or loss of which accrues to one or more persons with a disability.

FHFA means the Federal Housing Finance Agency.

Minority means Black or African American, American Indian or Alaska Native, Hispanic or Latino American, Asian American, and Native Hawaiian or Other Pacific Islander.

Minority-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers and providers of legal services:

(1) More than fifty percent (50%) of the ownership or control of which is held by one or more minority individuals; and

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more minority individuals.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Reasonable accommodation has the same meaning as defined in 29 CFR 1630.2(o) and Appendix to Part 1630—Interpretive Guidance on Title I of the Americans With Disabilities Act.

Regulated entity means the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, any Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA. The term “*regulated entities*” means (collectively) the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and/or any affiliate Federal Home Loan Bank and/or any affiliate thereof that is subject to the regulatory authority of FHFA.

Women-owned business means a business, and includes financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers and providers of legal services:

(1) More than fifty percent (50%) of the ownership or control of which is held by one or more women;

(2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more women; and

(3) A significant percentage of senior management positions of which are held by women.

§ 1207.2 Policy, purpose, and scope.

(a) *General policy.* FHFA's policy is to promote non-discrimination, diversity and inclusion of women and minorities in its own activities and in the business and activities of the regulated entities and the Office of Finance.

(b) *Purpose.* This part establishes minimum standards and requirements for FHFA, the regulated entities and the Office of Finance to promote diversity and ensure, to the maximum extent possible, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(c) *Scope.* This part applies to FHFA's contract and outreach programs, to each regulated entity's and the Office of Finance's implementation of and adherence to diversity, inclusion and non-discrimination policies, practices and principles.

§ 1207.3 Limitations.

Except as expressly provided herein for enforcement by FHFA, the regulations in this part do not, are not intended to, and should not be construed to create any right or benefit, substantive or procedural, enforceable at law, in equity, or through administrative proceeding, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, a regulated entity or the Office of Finance, their officers, employees or agents, or any other person.

§§ 1207.4 through 1207.9 [Reserved].

Subpart B—Minority and Women Inclusion and Diversity at the Federal Housing Finance Agency

§ 1207.10 FHFA Workforce Diversity; Equal Employment Opportunity program.

(a) *General.* FHFA will take affirmative steps to seek diversity in its workforce at all levels of the agency, consistent with the demographic diversity of the United States, and maintain an Equal Employment Opportunity (EEO) program consistent

with the Equal Employment Opportunity Commission requirements for Federal agencies and Executive Order 11478.

(b) *Workforce diversity.* FHFA is committed to a diverse workforce at all levels in the agency and in every area of its activity. FHFA will not discriminate in employment or in contracting against any person, contractor or potential contractor because of race, color, religion, national origin, sex, age, genetic information, disability, sexual orientation, or status as a parent.

(c) *Affirmative steps for workforce diversity.* FHFA will engage in at least the following activities to promote diversity in the agency's workforce:

(1) Heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve the individuals with disabilities and majority minority populations;

(2) Sponsoring and recruiting at job fairs in urban communities and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) Partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment and full-time positions; and

(4) Where feasible, partnering with inner-city high schools, girl's schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

(d) *EEO program elements.* In addition to workforce diversity activities, FHFA's EEO program will consist of at least the following activities and elements:

(1) An EEO policy and complaint procedure for employees and applicants for employment;

(2) A reasonable accommodation request procedure for employees and applicants for employment;

(3) A program for maintaining contact and liaison with internal and external stakeholders, including other government agencies, on matters of diversity and equal opportunity;

(4) Periodic workplace surveys to refresh workforce demographic data;

(5) An alternative dispute resolution process for resolving complaints of employment discrimination;

(6) An annual notice to employees and the public of FHFA's commitment to EEO and non-discrimination that is distributed to all employees and

published in a manner accessible to the public;

(7) Ensuring the delivery of training for employees and supervisors with respect to non-discrimination obligations and rights;

(8) Reporting as required on FHFA No FEAR Act training, non-discrimination and diversity training, and No FEAR Act compliance;

(9) Collecting and reporting data on EEO complaints at FHFA;

(10) Collecting, analyzing and reporting FHFA workforce demographic data with respect to all aspects of employment;

(11) Recommending to the Director actions and plans for EEO and diversity enhancement in FHFA's operations, programs and policies, programs, and implementing approved actions and plans;

(12) Evaluating the effectiveness and impact of FHFA policies, programs and practices on diversity in FHFA; and

(13) Maintaining equal opportunity and diversity in contracting policies, training contracting staff in these requirements, analyzing the effectiveness and reporting on agency efforts and outreach to promote diversity in contracting.

§ 1207.11 Equal opportunity and outreach in FHFA contracting.

(a) *Equal opportunity in contracting.* FHFA is committed to ensuring that minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses have the maximum practicable opportunity to participate fully in all contracts awarded by FHFA. FHFA does not discriminate on the basis of race, color, religion, national origin, sex, age, genetic information, disability, sexual orientation or status as a parent in the solicitation, award, or administration of contracts.

(b) *Outreach.* FHFA's outreach is intended to ensure that minorities, women and individuals with disabilities, and minority-, women-, and disabled-owned businesses are made aware of and given the opportunity to compete for contracts with FHFA. FHFA will conduct outreach activities that may include, but are not limited to:

(1) Identifying contractors that are minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses by obtaining lists and directories maintained by government agencies, trade groups, and other organizations;

(2) Offering technical assistance for minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses to

participate in FHFA's contracting process;

(3) Advertising contract opportunities through media targeted to reach potential contractors that are minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses;

(4) Participating in events such as conventions, trade shows, seminars, professional meetings and other gatherings intended to promote business opportunities for minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses; and

(5) Ensuring that FHFA contracting staff understands and promotes the outreach program.

(c) *Complaints of discrimination in FHFA contracting.* Any contractor or potential contractor that believes FHFA intentionally discriminated on the basis of race, color, religion, national origin, sex, age, genetic information, or disability, sexual orientation or status as a parent in the solicitation, award or administration of a contract may make such a complaint to the responsible FHFA contracting officer, consistent with FHFA's contract dispute resolution procedure.

(d) *Record-keeping.* FHFA's contracting officer will maintain data of complaints of discrimination, resolution of those complaints, FHFA's outreach efforts, and the sources from which successful contractor bidders who are minorities, women, individuals with disabilities, or minority-, women-, and disabled-owned businesses learned of the contracting opportunity.

§§ 1207.12 through 1207.19 [Reserved].

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities and the Office of Finance

§ 1207.20 Office of Minority and Women Inclusion.

(a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain an Office of Minority and Women Inclusion, or designate and maintain an office to perform the responsibilities of this part, under the direction of an officer of the regulated entity or the Office of Finance who reports directly to either the Chief Executive Officer or the Chief Operating Officer, or the equivalent. Each regulated entity and the Office of Finance shall notify the Director within thirty (30) days after any change in the designation of the office performing the responsibilities of this part.

(b) *Adequate resources.* Each regulated entity and the Office of Finance will ensure that its Office of

Minority and Women Inclusion, or the office designated to perform the responsibilities of this part, is provided human, technological, and financial resources sufficient to fulfill the requirements of this part.

(c) *Responsibilities.* Each Office of Minority and Women Inclusion, or the office designated to perform the responsibilities of this part, is responsible for fulfilling the requirements of this part, 12 U.S.C. 1833e(b) and 4520, and such standards and guidance as the Director may issue hereunder.

§ 1207.21 Equal opportunity in employment and contracting.

(a) *Equal opportunity notice.* Each regulated entity and the Office of Finance shall publish a statement, endorsed by its Chief Executive Officer and approved by its Board of Directors, confirming its commitment to the principles of equal opportunity in employment and in contracting, regardless of race, color, national origin, sex, religion, age, disability status, or genetic information. Publication shall include, at a minimum, conspicuous posting in each regulated entity's and Office of Finance's physical facility (including through alternative media—e.g., Braille, audio—as necessary) and accessible posting on the regulated entity's and the Office of Finance's web site. The notice shall be updated and re-published, re-endorsed by the Chief Executive Officer and re-approved by the Board of Directors annually.

(b) *Policies and procedures.* Each regulated entity and the Office of Finance shall develop, implement, and maintain standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity and the Office of Finance, including in management, employment, procurement, insurance, and all types of contracts. The policies and procedures of each regulated entity and the Office of Finance at a minimum shall:

(1) Confirm its adherence to the principles of equal opportunity and non-discrimination in employment and in contracting;

(2) Describe its policy against discrimination in employment and contracting;

(3) Establish internal procedures to receive and attempt to resolve complaints of discrimination in employment and in contracting, which shall include an opportunity to use

alternative dispute resolution techniques, when appropriate;

(4) Establish an effective procedure for accepting, reviewing and granting or denying requests for reasonable accommodations of disabilities from employees or applicants for employment. Publication will include at a minimum making the procedure conspicuously accessible to employees and applicants through print, electronic, or alternative (e.g., Braille, audio) media and through the regulated entity's or the Office of Finance's web site;

(5) Encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors;

(6) Require that each contract it enters contains a material clause committing the contractor to practice the principles of equal employment opportunity and non-discrimination in all its business activities and requiring each such contractor to include the clause in each subcontract it enters for services or goods provided to the regulated entity or the Office of Finance;

(7) Be published and accessible to employees, applicants for employment, contractors, potential contractors, and members of the public through print, electronic, or alternative (e.g., Braille, audio) media and through the regulated entity's or the Office of Finance's web site; and

(8) Be reviewed at the direction of the officer immediately responsible for directing the Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, at least annually to assess their effectiveness and to incorporate appropriate changes.

(c) *Outreach for contracting.* Each regulated entity and the Office of Finance shall establish a program for outreach designed to ensure to the maximum extent possible the inclusion in contracting opportunities of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses. The program at a minimum shall:

(1) Apply to all contracts entered by the regulated entity or the Office of Finance, including contracts with financial institutions, investment banking firms, investment consultants or advisors, financial services entities, mortgage banking firms, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services;

(2) Establish standards and procedures requiring publication of contracting opportunities designed to encourage contractors that are minorities, women, individuals with

disabilities, and minority-, women-, and disabled-owned businesses to submit offers or bid for the award of such contracts; and

(3) Ensure the consideration of the diversity of a contractor when the regulated entity or the Office of Finance reviews and evaluates offers from contractors.

§ 1207.22 Regulated entity and Office of Finance reports.

(a) *General.* Each regulated entity and the Office of Finance, through its Office of Minority and Women Inclusion, or other office designated to perform the responsibilities of this part, shall report in writing, in such format as the Director may require, to the Director describing its efforts to promote diversity and ensure the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses at all levels, in management and employment, in all business and activities, and in all contracts for services and the results of such efforts.

(1) Within (90) days after the effective date of this regulation each regulated entity and the Office of Finance shall submit to the Director or his or her designee a preliminary status report describing actions taken, plans for and progress toward implementing the provisions of 12 U.S.C. 4520 and this part; and including to the extent available the data and information required by this part to be included in an annual report.

(2) FHFA intends to use the preliminary status report solely as material relating to examining the submitting regulated entity or the Office of Finance and reporting to the institution on its operations and the condition of its program.

(b) *FHFA use of reports.* The data and information reported to FHFA under this part are intended to be used for any permissible supervisory and regulatory purpose, including examinations, enforcement actions, identification of matters requiring attention, and production of FHFA examination, operating and condition reports related to one or more of the regulated entities and the Office of Finance. FHFA may use the information and data submitted to issue aggregate reports and data summaries that each regulated entity and the Office of Finance may use to assess its own progress and accomplishments, or to the public as it deems necessary. FHFA is not requiring, and does not desire, that reports under this part contain personally identifiable information.

(c) *Frequency of reports.* Each regulated entity and the Office of Finance shall submit an annual report on or before February 1 of each year, beginning in 2011, reporting on the period of January 1 through December 31 of the preceding year, and such other reports as the Director may require. If the date for submission falls on a Saturday, Sunday, or Federal holiday, the report is due no later than the next day that is not a Saturday, Sunday, or Federal holiday.

(d) *Annual summary.* Each regulated entity and the Office of Finance shall include in its annual report to the Director (pursuant to 12 U.S.C. 1723a(k), 1456(c), or 1440, with respect to the regulated entities) a summary of its activities under this part during the previous year, including at a minimum, detailed information describing the actions taken by the regulated entity or the Office of Finance pursuant to 12 U.S.C. 4520 and a statement of the total amounts paid by the regulated entity or the Office of Finance to third-party contractors during the previous year and the percentage of such amounts paid to contractors that are minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses, respectively.

§ 1207.23 Annual reports—format and contents.

(a) *Format.* Each annual report shall consist of a detailed summary of the regulated entity's or the Office of Finance's activities during the reporting year to carry out the requirements of this part, which report may also be made a part of the regulated entity's or the Office of Finance's annual report to the Director. The report shall contain a table of contents and conclude with a certification by the regulated entity's or the Office of Finance's officer responsible for the annual report that the data and information presented in the report, are accurate, and are approved for submission.

(b) *Contents.* The annual report shall contain the information provided in the regulated entity's or the Office of Finance's annual summary pursuant to § 1207.22(d) and, in addition to any other information or data the Director may require, shall include:

(1) The EEO-1 Employer Information Report (Form EEO-1 used by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs to collect certain demographic information) or similar reports filed by the regulated entity or the Office of Finance during the

reporting year. If the regulated entity or the Office of Finance does not file Form EEO-1 or similar reports, the regulated entity or the Office of Finance shall submit to FHFA a completed Form EEO-1;

(2) All other reports or plans the regulated entity or the Office of Finance submitted to the Equal Employment Opportunity Commission, the Department of Labor, Office of Federal Contract Compliance Programs or Congress ("reports or plans" is not intended to not include separate complaints or charges of discrimination or responses thereto charges of discrimination) during the reporting year;

(3) Data showing by minority, gender, and disability classification the number of individuals applying for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(4) Data showing by minority, gender, and disability classification the number of individuals hired for employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(5) Data showing by minority, gender and disability classification, and categorized as voluntary or involuntary, the number of separations from employment with the regulated entity or the Office of Finance in each occupational or job category identified on the Form EEO-1 during the reporting year;

(6) Data showing the number of requests for reasonable accommodation received from employees and applicants for employment, the number of requests granted, and the disabilities accommodated and the types of accommodation granted during the reporting year;

(7) Data showing for the reporting year by minority, gender, and disability classification the number of individuals applying for promotion at the regulated entity or the Office of Finance—

(i) Within each occupational or job category identified on the Form EEO-1; and

(ii) From one such occupational or job category to another.

(8) Data showing by minority, gender, and disability classification the number of individuals—

(i) Promoted at the regulated entity or the Office of Finance within each occupational or job category identified on the Form EEO-1, after applying for such a promotion;

(ii) Promoted at the regulated entity or the Office of Finance within each

occupational or job category identified on the Form EEO-1, without applying for such a promotion;

(iii) Promoted at the regulated entity or the Office of Finance from one occupational or job category identified on the Form EEO-1 to another such category, after applying for such a promotion.

(9) A comparison of the data reported under paragraphs (b)(1) through (b)(8) of this section to such data as reported in the previous year together with a narrative analysis;

(10) Descriptions of all regulated entity or Office of Finance outreach activity during the reporting year to low-income, inner city, minority, women, and disabled populations, including activities to provide financial literacy education, to recruit employees, to solicit or advertise for contractors to provide service to the regulated entity or Office of Finance, or to inform such contractors of the regulated entity's or Office of Finance's contracting process or provide technical assistance for participation in the contracting process, including the identification of any partners, organizations, or government offices with which the regulated entity or the Office of Finance participated in such outreach activity;

(11) Cumulative data separately showing the number of contracts entered with minority or minority-owned businesses, women or women-owned businesses, and disabled or disabled-owned businesses during the reporting year;

(12) Cumulative data separately showing for the reporting year the total amount the regulated entity or the Office of Finance paid to contractors that are—

(i) Minority or minority-owned businesses;

(ii) Women or women-owned businesses; and

(iii) Disabled or disabled-owned businesses.

(13) The annual total of amounts paid to contractors and the percentage of which was paid separately to minority or minority-owned businesses, women or women-owned businesses, and disabled or disabled-owned businesses during the reporting year;

(14) Certification of compliance with §§ 1207.20 and 1207.21, together with sufficient documentation to verify compliance;

(15) Data for the reporting year showing, separately, the number of equal opportunity complaints (including administrative agency charges or complaints, arbitral or judicial claims) against the regulated entity or the Office of Finance that—

(i) Claim employment discrimination, by basis or kind of the alleged discrimination (race, sex, disability, etc.) and by result (settlement, favorable, or unfavorable outcome);

(ii) Claim discrimination in any aspect of the contracting process or administration of contracts, by basis of the alleged discrimination and by result; and

(iii) Were resolved through the regulated entity's or the Office of Finance's dispute resolution procedure.

(16) Data showing for the reporting year amounts paid to claimants by the regulated entity or the Office of Finance for settlements or judgments on discrimination complaints—

(i) In employment, by basis of the alleged discrimination; and

(ii) In any aspect of the contracting process or in the administration of contracts, by basis of the alleged discrimination.

(17) A comparison of the data reported under paragraphs (b)(12) and (b)(13) of this section with the same information reported for the previous year;

(18) A narrative identification and analysis of the reporting year's activities the regulated entity or the Office of Finance considers successful and unsuccessful in achieving the purpose and policy of regulations in this part and a description of progress made from the previous year; and

(19) A narrative identification and analysis of business activities, levels, and areas in which the regulated entity's or the Office of Finance's efforts need to improve with respect to achieving the purpose and policy of regulations in this part, together with a description of anticipated efforts and results the regulated entity or the Office of Finance expects in the succeeding year.

§ 1207.24 Enforcement.

The Director may enforce this regulation and standards issued under it in any manner and through any means within his or her authority, including through identifying matters requiring attention, corrective action orders, directives, or enforcement actions under 12 U.S.C. 4513b and 4514. The Director may conduct examinations of a regulated entity's or the Office of Finance's activities under and in compliance with this part pursuant to 12 U.S.C. 4517.

Dated: January 4, 2010.

Edward J. DeMarco,
Acting Director, Federal Housing Finance Agency.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: U.S. Small Business Administration.

ACTION: Notice of public meetings; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) announces it is holding additional meetings in a series of public meetings on the topic of the proposed changes to the 8(a) Business Development (BD) Program Regulations and Small Business Size Regulations. Testimony and comments presented at the public comment meetings will become part of the administrative record as comments addressing the proposed changes to the regulations pertaining to the 8(a) BD program and small business size standards. In conjunction with the public meetings SBA is conducting tribal consultations prior to the end of the comment period for the proposed rulemaking.

DATES:

1. January 14, 2010, Miami, FL.
2. January 19, 2010, Los Angeles, CA.

ADDRESSES:

1. Miami, FL—SBA, South Florida District Office, 100 South Biscayne Boulevard, 7th Floor, Miami, FL 33131-2011. (Visitors will be subject to a security screening and might be required to present valid photo identification.)

2. Los Angeles, CA—SBA, Los Angeles District Office, 330 North Brand Blvd., Suite 1200, Glendale, CA 91203. (Visitors will be subject to a security screening and might be required to present valid photo identification.)

Send all written comments to Mr. Joseph Loddio, Associate Administrator for Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: If you have any questions on this proposed rulemaking, call or email LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205-5852, or leann.delaney@sba.gov. If you have any questions about registering or attending the public meeting please contact Ms. Latrice Andrews, SBA's Office of Business Development at (202) 205-5852, or latrice.andrews@SBA.gov, or by facsimile to (202) 481-4042.

SUPPLEMENTARY INFORMATION: