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Certificate Expiration Date: June 7, 2037.

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Dated at Rockville, Maryland, this 19th day of July, 2017.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1223

RIN 2590–AA78

Minority and Women Inclusion Amendments

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Housing and Economic Recovery Act of 2008 (HERA) amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to require the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises), and the Federal Home Loan Banks (Banks or Bank System) and the Bank System's Office of Finance (collectively, the regulated entities) to promote diversity and ensure the inclusion of minorities and women in all business and activities at all levels, including management, employment, and contracting. The Federal Housing Finance Agency (FHFA) is issuing this final rule amending its regulations on minority and women inclusion (MWI) to clarify the scope of the regulated entities' obligation. The final rule requires the regulated entities to: Adopt strategic plans to promote the inclusion of minorities-, women-, and disabled individuals, and the businesses they own (MWDOB); amend their policies on equal employment opportunity (EEO) to include sexual orientation, gender identity, and status as a parent; and enhance the usefulness of information the regulated entities report to FHFA on their efforts to advance diversity and inclusion (D&I).

DATES: This rule is effective August 24, 2017.

FOR FURTHER INFORMATION CONTACT: Sharron P.A. Levine, Director, Office of Minority and Women Inclusion, *Sharron.Levine@fhfa.gov,* (202) 649–3496; or James Jordan, Assistant General Counsel, *James.Jordan@fhfa.gov,* (202) 649–3075 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 1116 of HERA[1] amended section 1319A of the Safety and Soundness Act to require, in part, that each regulated entity establish an Office of Minority and Women Inclusion (OMWI), responsible for carrying out all matters relating to diversity in the management, employment, and business activities of the entity. Section 1116 of HERA mandates that each regulated entity[2] implement standards for promoting diversity in all its business and activities, and submit an annual report to FHFA detailing related actions taken during the preceding year. Additionally, 12 U.S.C. 1833e(b),[3] and Executive Order (E.O.)11478,[4] require the regulated entities to promote EEO.

B. Regulatory History

The following FHFA rulemaking activities implement section 1116 of HERA, 12 U.S.C. 1833e, and E.O. 11478, as amended.

1. 2010 Minority and Women Inclusion Rulemaking (MWI Rule)

FHFA adopted a final rule in December 2010, establishing the minimum requirements for the regulated entities' diversity programs and reporting requirements.[5] The regulations, located at 12 CFR part 1223,[6] require each regulated entity to submit a detailed annual report to FHFA's Director summarizing their D&I activities during the preceding reporting year. Part 1223 also provides that, pursuant to 12 U.S.C. 4517, FHFA's Director may conduct examinations of a regulated entity's compliance.

2. 2015 Board Diversity Amendments to the MWI Rule

In 2015, FHFA amended the MWI Rule to require the Banks and the Office of Finance to report annually on demographic information related to their boards of directors.[7]

3. 2016 Strategic Planning Proposed Amendments to the MWI Rule (2016 Notice of Proposed Rulemaking or ''2016 NPRM'' or ''the Proposed Amendments'')[8]

FHFA published the 2016 NPRM in the **Federal Register** on October 27, 2016, to amend the MWI rule. The Proposed Amendments require the regulated entities to adopt strategies for promoting diversity and ensuring inclusion. The Proposed Amendments specifically would: (i) Encourage the regulated entities to provide subcontracting (tier 2) opportunities for MWDOBs; (ii) require the regulated entities to amend their EEO policies by adding sexual orientation, gender identity, and status as a parent to the list of protected classes; (iii) affirm that the regulated entities may expand the scope of their outreach and inclusion programs beyond the requirements of part 1223 (to include, for example, veterans, and lesbian, gay, bisexual, or transgender (LGBT) outreach); (iv) require the regulated entities to provide additional information on their MWI efforts; and (v) add, revise, or remove several definitions in order to clarify the existing and new reporting requirements.

The public comment period for the Proposed Amendments closed on December 27, 2016. FHFA received 31 comments (including comments from Fannie Mae, Freddie Mac, the Bank System and their Presidents and Chief Executive Officers, the Equal Employment Opportunity Commission (EEOC), trade associations, non-profit organizations, potential vendors, and individual members of the public). Twenty commenters expressed support for the proposed amendments, three expressly opposed them, and the

[1] Public Law 110–289, 122 Stat. 2654, enacted July 30, 2008.

[2] For readability, where the preamble refers to a ''regulated entity'' or the ''regulated entities'' the provisions apply equally to the Office of Finance, unless such application would conflict with a statute or regulation that specifically distinguishes the treatment of the Office of Finance from the regulated entities.

[3] *See* Public Law 101–73, title XII, sec. 1216, Aug. 9, 1989, 103 Stat. 529; Public Law 102–233, title III, sec. 302(a), Dec. 12, 1991; Public Law 110–289, div. A, title II, sec. 1216(g), July 30, 2008, 122 Stat. 2793; Public Law 111–203, title III, sec. 367(9), July 21, 2010, 124 Stat. 1557.

[4] E.O. 11478—Equal Employment Opportunity in the Federal Government, August 8, 1969, as amended.

[5] *See* 75 FR 81395 (December 28, 2010).

[6] These regulations were formerly located at 12 CFR part 1207. On March 24, 2017, FHFA's Minority Outreach Program (MWOP) rulemaking redesignated the MWI regulation as part 1223 of title 12 of the CFR and the new MWOP regulation as part 1207, in order to organize all FHFA regulations related to FHFA's Organization & Operations in subchapter A, and those regulations related to Regulated Entities in subchapter B.

[7] *See* 80 FR 25209 (May 4, 2015).

[8] *See* 80 FR 74731 (October 27, 2015).

remaining eight indicated limited support on specific issues. After considering all comments (*discussed below*), with limited revision, FHFA is adopting the Proposed Amendments in this final rule.

II. Discussion of Comments on Major Issues

A. Comments on FHFA's Authority

A member of the public commented that the 2016 NPRM exceeded FHFA's authority under HERA. FHFA notes that Section 1116 of HERA plainly states that the regulated entities' OMWI ''carry out . . . all matters of the entity relating to diversity . . . *in accordance with such standards and requirements as the Director shall establish.*'' 12 U.S.C. 4520(a) (emphasis added).

The same commenter argued that FHFA should postpone implementation of the final rule in light of *PHH Corp.* v. *Consumer Financial Protection Bureau* (CFPB) [9] which held that an independent agency headed by a single Director is unconstitutional. The commenter noted that FHFA shares the same governance structure as CFPB, and that any action taken by the FHFA Director would be subject to challenge and nullification. FHFA notes that *PHH* did not directly address the constitutionality of the Safety and Soundness Act and FHFA was not a party in *PHH.* FHFA and its Director, therefore, must continue to execute the duties the Safety and Soundness Act assigns them, including with respect to minority and women inclusion. Moreover, on February 16, 2017, the U.S. Court of Appeals for the D.C. Circuit vacated the ruling in *PHH* and ordered a rehearing. The argument that FHFA should delay an action because of the prospect that it will be challenged, therefore, is not persuasive. The same condition applies to all agencies and their actions. To postpone under the commenter's rationale would be an abdication of the FHFA Director's statutory responsibility. FHFA has chosen not to implement the recommendation.

B. Subpart B—FHFA Regulations on Minority and Women Outreach

A member of the public questioned why, pursuant to section 1116(f) of HERA, FHFA had yet to promulgate a self-directed minority outreach program rule. The commenter characterized the absence of a rule governing FHFA's ''obligations under the law'' as ''disingenuous'' because FHFA promulgated rules at 12 CFR part 1223 that governed oversight of the MWI programs of its regulated entities.

FHFA notes that it published its own MWOP final rule in the **Federal Register** on March 24, 2017.[10]

C. Responsibilities of Boards of Directors

The 2016 NPRM states that a regulated entity's OMWI is responsible for leading efforts to promote D&I, but that a regulated entity's board of directors is ultimately responsible for achieving the requirements of part 1223. The regulated entities commented that FHFA should specify that the board's responsibility is to oversee D&I programs, and that the board is not required to manage actively the resources allocated to the OMWI function.

In response, FHFA notes that the Prudential Management and Operations Standards established pursuant to 12 U.S.C. 4513b(a) and found in the Appendix to 12 CFR part 1236 includes the following broad description of board responsibilities:

> The board of directors is responsible for *overseeing* [emphasis added] management of the regulated entity, which includes ensuring that management includes personnel who are appropriately trained and competent to oversee the operation of the regulated entity as it relates to the functions and requirements addressed by each Standard, and that management implements the policies set forth by the board.

FHFA's regulations at 12 CFR part 1239 also address board responsibilities. While FHFA's regulations permit a board to delegate the execution of operational functions to officers and employees of the regulated entity, the ultimate responsibility for the entity's oversight is non-delegable. Therefore, a board's level of responsibility for satisfying the final rule is no different from its other oversight responsibilities. For that reason, FHFA declines to modify the Proposed Amendments.

D. Racially-Based Quotas

Commenters expressed concern that the Proposed Amendments would require the regulated entities to achieve quotas with respect to hiring and promoting employees, as well as awarding contracts to MWDOBs. One commenter asserted that most racially-based regulatory quotas are unconstitutional, unless ''the government'' narrowly tailors a regulation ''to address the inequality of past discrimination''—which the commenter asserted the Proposed Amendments failed to do. Conversely, another commenter specifically requested that FHFA implement targeted percentage goals to benefit minority-owned firms.

The proposed D&I strategic plan requirement, and its inclusion of goals and objectives is consistent with FHFA's other regulatory requirements for engaging in strategic planning. *See* 12 CFR 1239.31. The Proposed Amendments were designed by FHFA to emphasize the importance of measuring performance. Goals and quotas differ in critical respects: Goals are designed to achieve strategic organizational outcomes that contribute to attaining a long-term vision; quotas are non-negotiable, mandatory and specific, and may not be tethered to an organizational vision or mission. Goals are supported by programs, policies, and processes; quotas instead require that the organization's focus be on attaining a hard number. As FHFA explained in the preamble to the 2010 MWI rulemaking, defined goals allow an organization to foster D&I over time by benchmarking and evaluating data.[11] Quotas do not foster an inclusive corporate culture. Neither the existing MWI rule, the 2016 NPR, nor the final rule contemplates quotas.

E. Business Certifications

A member of the public commented that the racial categories FHFA identifies for reporting purposes are ''ripe with fraud and abuse'' because no authoritative resource exists to verify race, and self-reported data is ''unreliable.'' Similarly, the Banks expressed concerns about—(i) their ability to independently verify the accuracy of the demographic and diversity ownership status data they are required to include in their annual reports to FHFA, and (ii) the proposed requirement to provide information on the number and dollar amounts of contracts between their prime contractors (tier 1) and diverse subcontractors (tier 2).

FHFA notes that many state, federal, and municipal agencies, as well as non-profit organizations (*e.g.,* the National Bankers Association), have programs that validate and certify diverse ownership or control of businesses. The Federal Reserve also publishes a quarterly listing of minority-owned banks that participate in the minority bank deposit programs of the U.S. Treasury Department and the Federal Deposit Insurance Corporation (FDIC). The FDIC publishes a similar list. A regulated entity could rely on those lists

[9] *PHH Corp.* v. *Consumer Financial Protection Bureau,* United States Court of Appeals, D.C. Cir., Case No. 15–cv–01177.

[10] *See* 82 FR 14992 (March 24, 2017).

[11] *See* 75 FR 81397 (December 28, 2010).

to confirm the minority ownership status of any federally insured depository institution. The lists are available at: *https://www.federalreserve.gov/Releases/mob/* (Federal Reserve) and *https://www.fdic.gov/regulations/resources/minority/mdi.html* (FDIC).

As stated in the preamble to the 2010 MWI rulemaking, FHFA recognizes that, while FHFA prefers reliance on certifications from qualified, independent third parties, prohibiting self-certifications could impose an undue burden on small and/or new businesses. Therefore, the final rule continues to encourage third-party certifications, but also continues to allow for self-certification.

With respect to the regulated entities' administrative concerns, most regulated entities have systems in place to analyze contract data and information on diverse prime contractor (tier 1) ownership status and some also are able to provide the ownership designation of subcontractors (tier 2). In many instances, these systems may be used to verify and validate that the vendors' third-party certifications are current. Therefore, FHFA chose to retain the subcontractor (tier 2) reporting requirements.

F. Scope of Requirements

Commenters requested that FHFA clarify which categories of business were subject to D&I outreach requirements. The commenters recommended defining ''diversity spend'' to spell out what data should be captured for reporting purposes. FHFA declined that recommendation because any attempt to distill the concept of ''diversity spend'' down to an exhaustive list would frustrate the purpose of HERA 1116, which is intentionally open-ended (''to the maximum extent possible . . . . in all businesses and activities of the regulated entity at all levels'') to account for the wide range of opportunities on which the respective regulated entities might capitalize.

Others commented on challenges meeting the outreach and material clause requirements for vendors that prefer to use their own boilerplate contracts for goods and services. In response to the commenters' concerns about the administrative burden of the requirement for material contracts, the final rule increases the threshold for materiality from $10,000 to $25,000 (*See discussion infra*).

G. Request To Expand Scope of Outreach Requirements To Include the LGBT Community

Commenters requested that FHFA expand the scope of the contracting provisions of the MWI rule to include the LGBT community. The existing MWI rule captures the LGBT community in its EEO provisions, but this final rule does not change the scope of the 2016 NPRM's supplier diversity provisions because there is no statutory support for such a change.

Commenters also requested that the MWI rule be expanded to include veterans and veteran-owned businesses for supplier diversity purposes, affordable housing program grants and lending, and other initiatives.

The preamble to the 2016 NPRM affirmed that, even absent a specific statutory mandate, each regulated entity may expand beyond the requirements of section 1116 of HERA and the regulations at 12 CFR part 1223 to include veteran- and LGBT-owned businesses. FHFA, through this final rule, continues to encourage the regulated entities to include other aspects of D&I in their outreach programs.

H. Direct Spend

The proposed amendments encourage the regulated entities to expand contracting opportunities for minorities, women, individuals with disabilities, and MWDOBs through subcontracting arrangements. This would be achieved by a majority-owned prime contractor (tier 1) using a diverse subcontractor (tier 2) to supply goods and/or services that directly benefit the regulated entity. The regulated entities' annual reports would include information on the number and size of prime contracts under which the prime contractor (tier 1) extends work to MWDOBs (tier 2).

A few commenters requested that FHFA clarify whether the regulated entities would be authorized to report on both direct and ''indirect'' (tier 2) spending. Other commenters expressed concern over the proposed requirement to report on the total number and size of subcontractor (tier 2) transactions, noting that requests to obtain data from the primary contractors (tier 1), allocated by MWDOBs, could prove to be ''extremely difficult'' because the regulated entities have no mechanism by which to require primary contractors (tier 1) to collect this information from their subcontractors (tier 2) or to disclose such information.

While the comments above may appear unrelated, they both stem from questions about direct and indirect spend. ''Direct spend'' on subcontract (tier 2) can be defined as payments to a subcontractor (tier 2) that can be tracked to a specific contract or purchase order between a regulated entity and a primary contractor (tier 1). ''Indirect spend'' is a primary contractor's (tier 1) payment to a subcontractor (tier 2) that is not directly tied to any specific customer, *e.g.,* a primary contractor's (tier 1) payments to a subcontractor (tier 2) to maintain the primary contractor's place of business (*i.e.,* overhead costs). Indirect spend on subcontractors (tier 2), is not covered by the final rule, and should not be reported as ''diversity spend.''

In response to commenters' concerns about obtaining data from primary contractors, FHFA believes that some commenters did not understand that the proposed subcontractor (tier 2) reporting requirement is predicated upon the subcontract relating to the contractual arrangement between the regulated entity and the prime contractor (tier 1). FHFA's proposed definition of ''subcontractor (tier 2)'' clearly provides that the contract between the prime contractor (tier 1) and a supplier to the prime contractor (tier 1) must be to provide goods and/or services ''*for the benefit of the regulated entity*.'' In instances where a prime contractor (tier 1) has a business relationship with a subcontractor (tier 2) that mixes services that benefit a regulated entity with services that do not, there should be a process to identify what portion of payment allocated to a subcontractor (tier 2) directly relates to a benefit enjoyed by the regulated entity. This is an important component of a contract, particularly if the prime contractor's (tier 1) use of a diverse subcontractor(s) (tier 2) was a factor in the evaluation and awarding of the contract.

I. Public Disclosure of MWI Reports

Commenters requested that FHFA disclose the annual MWI reports to the public. The reports and data FHFA obtains from the regulated entities are related to examinations and examination, operation, or condition reports. FHFA considers the collected information to be non-public, and subject to non-disclosure laws and regulations, including FHFA's Availability of Non-Public Information rule,[12] the examination privilege, and Freedom of Information Act exemption (b)(8). However, FHFA will continue to permit each regulated entity to disclose publicly its own data and information about its D&I programs (*i.e.,* the data underlying FHFA supervisory

[12] 12 CFR psrt 1214.

information) at the regulated entity's discretion.

J. Religious Accommodations

The EEOC recommended that FHFA amend the MWI rule to require the regulated entities to develop policies and procedures that address reasonable accommodations for employees to observe their sincerely held religious beliefs. FHFA revised the rule, accordingly.

K. Filing Date for MWI Report

Commenters requested that FHFA change the filing deadline for the annual MWI report from March 1 to April 30 to give the regulated entities more time to satisfy additional reporting requirements and obtain approvals from the regulated entities' boards of directors. The commenters also noted that the current deadline competes with several other filing deadlines which constrain the resources of the regulated entities.

FHFA recognizes the resource constraints and changed the filing date to no later than March 31 of each year, beginning in 2018. A March 31 filing date ensures that FHFA will continue to receive the annual reports by no later than the end of the first quarter of the following year.

L. Effective Date of Final Rule

Commenters requested that FHFA delay the effective date of the final rule for one year to allow the regulated entities more time to make regulatory and technological changes.

FHFA believes that delaying the effective date of the final rule would also delay its positive effect. If necessary, each regulated entity can comply with the final rule by factoring the final rule requirements into an existing strategic planning process or by establishing a dedicated strategic planning effort to meet the new requirements.

III. Section-by-Section Analysis

Section 1223.1 Definitions

FHFA proposed to add, revise, or remove several definitions in § 1223.1 to clarify the existing and new regulatory requirements under part 1223.

Applicant

FHFA proposed adding the definition, ''Applicant'', to improve the consistency and comparability of applicant data the regulated entities are required to report to FHFA.

Commenters expressed concern about how to decide if an applicant is qualified and determine if an applicant has removed her- or himself from consideration.

FHFA's view is that best practices dictate that prospective employers already have a process in place for determining if applicants are qualified and eligible for hire; therefore, FHFA made no change to the definition.

D&I Strategic Planning

Commenters noted that the definition, ''D&I Strategic Planning'', unintentionally omitted a reference to businesses owned by minorities, women, and individuals with disabilities. FHFA revised the definition in the final rule, accordingly.

Disabled-Owned Business, Minority-Owned Business, and Women-Owned Business

The Proposed Amendments revised the definitions, ''Disabled-owned Business'', ''Minority-owned Business'', and ''Women-owned Business'', to clarify that ownership can be direct or indirect, with the expectation that the regulated entities would disregard the business structure of such an entity, provided it is legal and the majority of the ultimate ownership benefits are held by or accrue to disabled, minority, or women owners, respectively.

The revised definition, ''Disabled-owned Business'', contains three conditions for determining eligibility, the first of which addresses eligibility as a qualified service-disabled, veteran-owned small business concern as defined in 13 CFR 125.8 through 125.13. The second and third conditions address eligibility based on the percentage of ownership or control of the disabled owner or owners.

Commenters requested that FHFA clarify whether, in addition to satisfaction of the first condition, satisfaction of the second and third conditions are necessary to qualify as a ''Disabled-owned Business.'' FHFA notes that satisfaction of the first condition alone is sufficient to qualify. If a business does not meet the requirements of the first condition, then the remaining two conditions must be met.

A commenter requested that FHFA change the eligibility requirements in the proposed definitions, ''Disabled-owned Business'', ''Minority-owned Business'', and ''Women-owned Business'', from ''more than fifty percent (50%)'' to ''fifty-one percent (51%) or more'', which is the threshold used by the Small Business Administration and the FDIC to determine diverse business ownership, and the requirement for certification of diverse ownership by an independent third party. The regulated entity noted that since independent, third-party certification was one of its prerequisites for diverse vendors, it was already effectively implementing the fifty-one percent threshold.

FHFA acknowledges that, although industry practice generally uses fifty-one percent as the benchmark for establishing diverse ownership and control, section 1116(b) of HERA, incorporates by reference section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)), which defines minority-owned and women-owned businesses as those having more than fifty percent (50%) of the ownership or control held by one or more minority individuals and women, respectively. The final rule retains those definitions, which are broader, and as a result, create greater access to opportunities for MWDOBs.

Diversity Spend With Non-Diverse-Owned Businesses

FHFA proposed adding the definition, ''Diversity Spend with Non-diverse-owned Businesses'', to describe payments to a non-diverse-owned firm for professional services provided by a partner, member, or other equity owner who is a minority, woman, or individual with a disability.

One commenter recommended not adopting the proposed definition stating that this type of arrangement does not actually benefit the specific diverse equity owner. Another commenter requested that FHFA count all annual spend specifically allocable to services performed by a diverse employee of a non-diverse-owned business regardless of that person's ownership status. Conversely, another commenter recommended eliminating all references to the allocation of payments to a diverse owner due to potential challenges obtaining the information (*e.g.,* confidentiality agreements, diverse ownership verification).

FHFA proposed this definition to account for a contracting vehicle the regulated entities already have employed to provide opportunities for minorities, women, and individuals with disabilities. Although a departure from the previous focus on MWDOBs as prime contractors, this category of diversity spend recognizes the efforts non-diverse-owned businesses have made to promote D&I in their own organizations. Rather than penalize such companies for being non-diverse-owned, FHFA's definition seeks to encourage more D&I at those firms.

Minority

Commenters recommended revising the definition, ''Minority'', to include non-U.S. citizens. FHFA notes that the existing regulation requires the regulated entities to submit their EEO–1 Employer Information Report (EEO–1 Form) in conjunction with their annual MWI reports. The EEO–1 Form contains information pertaining to minority (defined as one of six categories) employees who are not exclusively citizens and, therefore, the data the regulated entities submit on their workforce demographics using these categories, already account for non-citizen, minority employees.

Minority-Serving Financial Institution

The 2016 NPRM would have added a new definition, ''Minority-serving financial institution'', that is similar to the FDIC's Policy Statement Regarding Minority Depository Institutions.[13] The Banks commented that the new definition would require the Banks to become ''experts in analyzing the challenges of nondepository minority-serving financial institutions.'' In light of the Banks' comments, FHFA clarified the scope of its reporting expectations (*discussed below*) and removed the definition of ''minority-serving financial institution.''

Prime Contractor (Tier 1)

Commenters requested that FHFA change the term ''Prime Contractor (tier 1)'' to ''Primary Contracting Entity'' or ''Primary Vendor'' asserting that ''Prime Contractor (tier 1)'' is used exclusively in the construction industry. Certain Banks also use ''tier 1'' and ''tier 2'' to categorize vendor risk and so requested that FHFA omit them from the definitions. FHFA disagrees with these assertions.

''Prime Contractor'' is widely used across government and the private sector to designate the main contractor that enters into a contract and performs the work to satisfy its obligations. Although used in construction, the term is not exclusive to that industry. Tiers are commonly used not only to designate levels of risk associated with risk management and exposure but also to reflect the commercial distance (*i.e.,* level of direct access and accountability) of a contractor (obligor) to its counterparty (obligee). For example, tier 1 supplier obligors provide their products and services directly to the obligee, while tier 2 (and lower) suppliers provide their products and services to the supplier at the next highest level in the chain.

Promotion

FHFA proposed adding the definition, ''Promotion'', to improve the consistency and comparability of reported data. One commenter requested that FHFA revise the definition to address different conditions under which promotions occur (not only for good performance), such as when an employee's responsibilities have been increased.

The proposed definition of promotion notes ''[A] promotion is typically associated with an increase in an employee's pay due to additional or enhanced job responsibilities.'' A plain reading of the proposed definition contemplates promotions beyond those merely for good performance.

Section 1223.2 Policy, Purpose, and Scope

FHFA proposed revisions to § 1223.2(c) to clarify that the rule requires policy development and applies to all contracts. FHFA received no comments on § 1223.2(c).

Section 1223.3 Limitations

FHFA proposed an increase to the material clause threshold from $10,000 to $25,000 to alleviate administrative burdens associated with routine purchases of lower-value goods (*e.g.,* materials and supplies for day-to-day operations). All applicable comments supported the proposed increase, but recommended that FHFA extend the threshold to apply to contracts for services as well as goods. FHFA declined that recommendation.

The preamble to the 2010 MWI rulemaking indicated that FHFA understood the practical difficulties in applying a rule to cover contracts for services, contracts for goods, and contracts for all other subjects, but that FHFA sought to strike a balance between managing those difficulties and honoring the all-encompassing scope of section 1116 by establishing a threshold for contracts for goods for more than $10,000. The final rule maintains that balance, while providing the regulated entities greater flexibility to administer small contracts for goods without having to report the associated data.

FHFA also proposed adding paragraphs (c) and (d) to existing § 1223.3 to require each regulated entity to submit to FHFA within 90 days after the effective date of the final rule, a list of the types of contracts it considers exempt under § 1223.3(b), and any thresholds, exceptions, and limitations it establishes for implementing § 1223.21(c)(2). Proposed § 1223.3(d) would then require a regulated entity to notify FHFA within 30 days after any additional changes to the list. Commenters recommended that FHFA eliminate the initial reporting and supplemental notification requirements and replace them with a requirement to include a list of any thresholds, exceptions, and limitations as part of the annual report.

FHFA responds by noting that the ability to identify and exempt certain types of contracts from the material clause and demographic data reporting requirements was not addressed or contemplated in section 1116 of HERA. As a result, FHFA must ensure consistency in the approach the regulated entities take to implement these requirements. The 90-day requirement is a one-time occurrence that will ensure a consistent understanding and implementation of the exemption flexibilities in light of the newly revised regulatory requirements under 12 CFR part 1223. The 30-day requirement also allows FHFA to assess quickly the exemption. Therefore, FHFA declines to eliminate the notification requirements in paragraphs (c) and (d) of § 1222.3.

Section 1223.20 Office of Minority and Women Inclusion

FHFA proposed revisions to paragraphs (b) and (c) of § 1223.20 to clarify that a regulated entity's board of directors—not the regulated entity's OMWI or its designee—is ultimately accountable for the D&I mandate. FHFA addressed the comments received in response to the proposed amendment earlier in the preamble, under the section titled, *Responsibilities of Boards of Directors.* FHFA also proposed amending the regulation to require the regulated entity to ensure that any officer designated to direct and oversee the D&I programs has the necessary knowledge, skills, competencies, and abilities (talent) to implement effectively the minimum standards and requirements of part 1223. FHFA acknowledges that the regulated entities have full discretion to determine the talent required to fulfill such requirements.

Section 1223.21 Promoting Diversity and Ensuring Inclusion in All Business and Activities

FHFA proposed amending § 1223.21(a) to add sexual orientation, gender identity, and status as a parent to the list of bases covered under each regulated entity's equal opportunity statement, as required by 12 U.S.C.

[13] FDIC Policy Statement Regarding Minority Depository Institutions, April 9, 2002, *https://www.fdic.gov/regulations/resources/minority/policy.html.*

1833e, and in conformance with E.O. 11478, as amended. FHFA received several related comments from private citizens, a trade association, the regulated entities, and the EEOC, most of which were supportive but some of which advocated broadening the scope of protected classes beyond those specifically required by federal law. The commenters also requested that FHFA clarify that the addition of the new protected classes does not create new or different affirmative requirements on the part of the regulated entity to proactively inquire as to a potential employment candidate or third-party vendor's qualification for, or inclusion in, one of the protected classes described in the equal employment notice. The commenters also requested that FHFA clarify that the publication of additional categories in a regulated entity's equal opportunity in employment and contracting notice does not create additional responsibilities of inquiry or reporting.

As previously noted, the regulated entities' responsibilities under § 1223.21(a) are to provide equal opportunity in employment, prohibit employment discrimination, and promote EEO through a continuing affirmative program. The addition of sexual orientation, gender identity, and status as a parent to the regulated entities' policies on equal opportunity is required by statute and, as a result, they do not have the discretion to choose which bases to implement, as some commenters requested. The regulated entities' D&I responsibilities extend specifically to minorities, women, and individuals with disabilities and they are not required to include additional proposed bases (*i.e.,* sexual orientation, gender identity, or status as a parent) in their outreach programs. Although FHFA has affirmed that each regulated entity may expand the scope of its D&I program to these three groups and beyond, there is no requirement to do so or to inquire proactively about qualifications for, or inclusion in, one of the new protected classes described in the equal employment notice.

FHFA also proposed revising § 1223.21(b)(3), which would require a regulated entity to develop processes to give consideration to diversity when reviewing and considering contract proposals and hiring service providers.

A commenter noted that the words ''service providers'' were omitted from the text of the proposed paragraph. The final rule addresses the omission. Another commenter requested that FHFA provide a clearer explanation of how minority-owned firms will be given consideration in contract proposals. In response, FHFA notes that the practices or processes for ''giving consideration'' to the diversity of the applicant will vary from one regulated entity to another and could include, for example, developing procedures that require the inclusion of diverse firms in the solicitation and bid process for every contract proposal it pursues. If diverse firms are not available, absent from the market, or do not have the necessary skills or qualifications, the regulated entity could implement an exception process to verify and validate that it engaged in market research to identify qualified diverse firms. Consideration also could be given to firms that plan to subcontract portions of its prime contractual obligations to diverse firms. Processes could involve assessing the impact (*i.e.,* financial, community) bids by diverse vendors would likely have on an economically disadvantaged area or evaluating a firm's diversity programs and practices.

Proposed § 1223.21(b)(4) requires each regulated entity to develop policies and procedures for addressing complaints of discrimination. The final rule retains the requirement.

FHFA proposed revising § 1223.21(b)(8), which would require each regulated entity to establish a process for developing a D&I strategic plan that proactively focuses on promoting the advancement of D&I. Paragraphs (d) and (e) would address when the plan must be adopted and how often it must be reviewed, who should adopt strategies for promoting D&I, and what the plan should include (*i.e.,* vision/mission statement, measurable goals and objectives, and requirement to create action plans.)

Commenters recommended that FHFA eliminate the option to develop a stand-alone D&I strategic plan, noting that a separate plan could be perceived as an afterthought, thereby diminishing it within the regulated entity's overriding structure. The commenter noted that a clear, integrated plan would help the regulated entities grow and advance an executable D&I culture.

Although the commenters made important points about the value of integrating D&I into the existing strategic planning process, FHFA has chosen not to eliminate the option to develop a stand-alone plan because the option will provide the regulated entities flexibility in initiating the strategic D&I planning process. FHFA also believes that most regulated entities will eventually integrate D&I into their comprehensive strategic planning process, after they have developed their initial plans.

The final rule revises the wording of proposed § 1223.21(b)(8) to clarify that it addresses a requirement to develop policies and procedures and not the requirement to develop a strategic plan. FHFA also revised § 1223.21(d) to clarify when the board of directors of each regulated entity is required to adopt its first D&I strategic plan (by no later than six months after the date this Final Rule is published in the **Federal Register**).

Section 1223.23 Annual Reports—Format and Contents

FHFA proposed several revisions to § 1223.23, which provides the regulated entities guidance for preparing their annual MWI reports. For example, FHFA proposed to amend § 1223.23(b)(9), which would require the regulated entities to report the number of minorities, women, and individuals with disabilities who are involved in management.

Commenters noted that the proposed requirement to report the minority, gender, and disability classification data of individuals responsible for ''supervising employees and/or managing the functions of departments'' was ambiguous. They noted that the concept of ''managing'' a function can be construed in different ways and varies from regulated entity to regulated entity. The commenters recommended that FHFA limit the scope of the metric to the number of employees supervising other employees. FHFA opted to retain the current definition, which is consistent with the EEO–1 Form category ''Officials and Managers''—those who supervise people and/or develop/manage policies, strategy, and programs.

FHFA also proposed an amendment to § 1223.23(b)(9)(ii) that would require the regulated entities to describe the strategies, initiatives, and activities they executed during the preceding year to promote diverse individuals to management roles. In light of several related comments, FHFA notes that the proposed requirement does not ''signal'' FHFA's expectation that a regulated entity must promote a diverse individual(s) without merit or to the exclusion of others under consideration for a promotion, nor does it mandate that the regulated entity report that diverse individuals are promoted to supervisory roles each year.

Proposed § 1223.23(b)(12)(i) requires the regulated entities to include within their annual reports a provision addressing their strategies and initiatives to advance diversity and inclusion. As noted previously with respect to the proposed definition of

''minority-serving financial institution,'' FHFA revised § 1223.23(b)(12)(i) in light of commenters' concerns regarding the required assessments of certain aspects of the business operations of other institutions and the challenges those institutions may face in conducting their business operations. The revised § 1223.23(b)(12)(ii) clarifies that a regulated entity should assess whether access issues of its MWDOB counterparties' borrowers and other customers may affect the MWDOBs' level of activity with the regulated entity. Section 1223.23(b)(12)(i) has been redrafted to reference a regulated entity communicating with MWDOBs with which it does business to help identify opportunities to improve the MWDOBs' business with the regulated entity by enhancing MWDOB customer access.[14] FHFA emphasizes that the focus of the amendment is on reporting efforts, and not a command that the regulated entities select MWDOBs. The objective of 12 CFR part 1223 is to ensure that the regulated entities are implementing programs that provide opportunities for minorities, women, individuals with disabilities to compete for jobs, contracts, and business, and to have access to opportunities to provide services for the regulated entities. The use of the word ''selecting'' as a metric for evaluating financial transactions will help the regulated entity and FHFA better understand the effectiveness of the strategic initiatives taken to promote D&I. FHFA emphasizes that the diversity considerations addressed in the final regulation do not restrict a regulated entity's ability to select financial transaction participants and contractual counterparties.

For the reasons described above, FHFA has folded the proposed § 1223.23(b)(12)(iii) references to affordable housing and community investment into § 1223.23(b)(12)(i), which is focused on outreach to MWDOB counterparties, though regulated entities may also report on other areas (*e.g.,* the composition of Advisory Councils).

FHFA proposed amendments to § 1223.23(b)(16) and (17) that would require each regulated entity to report the number and dollar amounts of prime contracts (tier 1) and subcontracts (tier 2) that prime contractors had with minorities, women, individuals with disabilities, and MWDOBs. Comments on these paragraphs are addressed under the heading, *Direct Spend.*

[14] Regulated entities may also find it useful, for this purpose, to conduct broader outreach with market participants and organizations to learn more about minority and women borrowers' issues with access to credit.

IV. Consideration of Differences Between the Banks and the Enterprises

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. In preparing this final rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that the final rule would not adversely affect the Banks taking into account all of the above factors.

V. Regulatory Impacts

Paperwork Reduction Act

The final 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 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 final rule under the Regulatory Flexibility Act and certifies that the final rule is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is only applicable to the regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1223

Disability, Disabled-owned businesses, Discrimination, Diversity, Equal employment opportunity, Government contracts, Minority businesses, Regulated entities, Women-owned businesses.

Authority and Issuance

For the reasons stated in the preamble, under the authority of 12 U.S.C. 4526, FHFA hereby amends part 1223 of title 12 of the Code of Federal Regulations as follows:

PART 1223—MINORITY AND WOMEN INCLUSION

■ 1. The authority citation for part 1223 continues to read as follows:

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

■ 2. Amend § 1223.1 as follows:
■ a. Adding a definition for ''Applicant'' in alphabetical order;
■ b. Removing the definition of ''Director'';
■ c. Revising the definition of ''Disabled-owned business'';
■ d. Adding definitions for ''D&I strategic planning'' and ''Diversity spend with non-diverse-owned businesses'' in alphabetical order;
■ e. Removing the definition of ''FHFA'';
■ f. Revising the definition of ''Minority-owned business'';
■ g. Removing the definition of ''Office of Finance'';
■ h. Adding definitions for ''Prime contractor (tier 1)'' and ''Promotion'' in alphabetical order;
■ i. Removing the definition of ''Regulated entity'';
■ j. Adding a definition for ''Subcontractor (tier 2)'' in alphabetical order; and
■ k. Revising the definition of ''Women-owned business''.

The revisions and additions read as follows:

§ 1223.1 Definitions.

Applicant means an individual who submits an expression of interest in employment in conjunction with all of the following:

(1) The regulated entity acted to fill a particular position;

(2) The individual followed the regulated entity's standard process for submitting an application;

(3) The individual's expression of interest indicates that the individual possesses the basic qualifications for the position; and

(4) The individual has not removed him or herself from consideration or otherwise indicated that he or she is no longer interested in the position.

* * * * *

Disabled-owned business means a business, and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-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, directly or indirectly, 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.

D&I strategic planning is the process of analyzing the business and activities of a regulated entity to develop strategies for promoting diversity and ensuring the inclusion of minorities, women, individuals with disabilities, and MWDOBs in all activities and at every level of the organization, including management, employment, and contracting. A D&I strategic plan serves as the primary means to communicate the board of directors' long-term D&I vision for the organization, to establish measurable goals and objectives for achieving the vision, and to ensure accountability for achieving those goals and objectives.

Diversity spend with non-diverse-owned businesses means the dollar amount(s) paid by a regulated entity to a prime contractor that is not a minority-, women-, or disabled-owned business for professional services (*i.e.,* the amount paid for work performed, as may be adjusted, in connection with providing legal, accounting, or other professional or consulting services) provided by or allocated to a partner, member, or other equity owner who is a minority, woman, or an individual with a disability.

* * * * *

Minority-owned business means a business, and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, and asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-dealers, and providers of legal services—

(1) More than fifty percent (50%) of the ownership or control of which is held, directly or indirectly, 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.

Prime contractor (tier 1) means a supplier that enters into a contract with a regulated entity to provide goods and/or services directly to that regulated entity.

Promotion means the advancement of an employee within a regulated entity and may be the result of an employee's proactive pursuit of a higher job ranking or a reward for good performance. A promotion is typically associated with an increase in an employee's pay due to additional or enhanced job responsibilities.

* * * * *

Subcontractor (tier 2) means a supplier that enters into a contract with a prime contractor (tier 1) of a regulated entity to provide goods and/or services to that prime contractor (tier 1) for the benefit of the regulated entity.

Women-owned business means a business and includes, but is not limited to, financial institutions, firms engaged in mortgage banking, investment banking, financial services, and asset management, investment consultants or advisors, underwriters, accountants, brokers, broker-dealers, and providers of legal services—

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

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

■ 3. Amend § 1223.2 as follows:

■ a. Remove from paragraphs (a) and (b) the phrase ''and the Office of Finance'';

■ b. Add in paragraph (b) a comma immediately following the phrase ''to the maximum extent possible''; and

■ c. Revise paragraph (c) to read as follows:

§ 1223.2 Policy, purpose, and scope.

* * * * *

(c) *Scope.* This part applies to each regulated entity's development, implementation, and adherence to diversity, inclusion, and non-discrimination policies, practices, and principles, including opportunities to award contracts for goods and/or services.

■ 4. Amend § 1223.3 as follows:

■ a. Remove the phrase in paragraph (a) ''or the Office of Finance''; and

■ b. Revise paragraph (b) and add new paragraphs (c) and (d) to read as follows:

§ 1223.3 Limitations.

* * * * *

(b) The contract clause required by § 1223.21(b)(6) and the itemized data reporting on numbers of contracts and amounts involved required under §§ 1223.22 and 1223.23(b)(13) through (22) apply only to contracts for services in any amount and to contracts for goods that equal or exceed $25,000 in annual value, whether in a single contract, multiple contracts, a series of contracts or renewals of contracts, with a single vendor.

(c) Within ninety (90) days after August 24, 2017 each regulated entity shall submit to FHFA a list of the types of contracts it considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1223.21(c)(2). The submission shall address the criteria identified in § 1223.21(b)(9).

(d) Each regulated entity shall notify FHFA within thirty (30) days after any change in the types of contracts it considers exempt under § 1223.3(b) or any change in the thresholds, exceptions, and limitations the regulated entity establishes for the implementation of § 1223.21(c)(2).

Subpart C—Minority and Women Inclusion and Diversity at Regulated Entities

■ 5. Revise the heading of Subpart C to read as set forth above.

■ 6. Amend § 1223.20 as follows:

■ a. Remove the phrases ''and the Office of Finance'' and ''or the Office of Finance'' wherever they appear in paragraph (a); and

■ b. Revise paragraphs (b) and (c) to read as follows:

§ 1223.20 Office of Minority and Women Inclusion.

* * * * *

(b) *Adequate resources.* The board of directors of each regulated entity will ensure that the Office of Minority and Women Inclusion, or office designated to lead the regulated entity in performing the responsibilities of this part, is provided relevant resources including, but not limited to, human, technological, and financial resources sufficient to fulfill the requirements of this part. The regulated entity will also ensure that any officer(s) designated to direct and oversee its D&I programs has the necessary knowledge, skills, competencies, and abilities to effectively implement the minimum standards and requirements found in 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 leading the regulated entity's board-approved strategies, for fulfilling the requirements of this part, 12 U.S.C. 1833e(b) and 4520, and such standards and requirements as the Director may issue hereunder.

■ 7. Amend § 1223.21 as follows:

■ a. Revise the section heading;

■ b. Remove the phrases ''and the Office of Finance'', ''and Office of Finance'', ''or the Office of Finance'', and ''and the Office of Finance's'' wherever they appear;

■ c. Revise the first sentence of paragraph (a);
■ d. Revise the last sentence of paragraph (b) introductory text;
■ e. Revise paragraph (b)(2);
■ f. Redesignate paragraphs (b)(6) through (9) as paragraphs (b)(9) through (12);
■ g. Redesignate paragraphs (b)(3), (4), and (5) as paragraphs (b)(4), (5), and (7), respectively;
■ h. Add new paragraphs (b)(3), (6), and (8);
■ i. Revise newly redesignated paragraphs (b)(4), (5), (10), and (11); and
■ j. Add paragraphs (d) and (e).

The revisions and additions read as follows:

§ 1223.21 Promoting diversity and ensuring inclusion in all business and activities.

(a) *Equal opportunity notice.* Each regulated entity 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, at a minimum, regardless of race, color, religion, sex, national origin, disability status, genetic information, age, sexual orientation, gender identity, or status as a parent. * * *

(b) * * * The policies and procedures of each regulated entity, at a minimum, shall:

* * * * *

(2) Describe its practices and principles for prohibiting discrimination in employment and contracting;

(3) Describe its processes for giving consideration to MWDOBs when reviewing and evaluating contract proposals and hiring service providers as required under § 1223.2(c);

(4) Establish a process for receiving and attempting to resolve complaints of discrimination in employment and in contracting. Publication will include, at a minimum, making the procedure conspicuously accessible to employees and applicants through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site;

(5) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations of disabilities from employees or applicants for employment;

(6) Establish a process for accepting, reviewing, and granting or denying requests for reasonable accommodations for religious beliefs or practices from employees or applicants for employment;

* * * * *

(8) Establish a process for developing a stand-alone D&I strategic plan or incorporating into its existing strategic plan a D&I plan that proactively focuses on promoting the advancement of D&I. The stand-alone D&I strategic plan and the incorporated D&I plan are hereinafter referred to as the D&I strategic plan;

* * * * *

(10) Identify the types of contracts the regulated entity considers exempt under § 1223.3(b) and any thresholds, exceptions, and limitations the regulated entity establishes for implementing paragraph (c)(2) of this section. The policies and procedures must describe the following:

(i) The rationale and need for the thresholds, exceptions, or limitations;

(ii) The criteria used to implement the thresholds, exceptions, or limitations; and

(iii) Any negative or adverse impact the implementation of the thresholds, exceptions, or limitations would likely have on contracting opportunities for minorities, women, individuals with disabilities, and MWDOBs;

(11) Be published and made accessible to employees, applicants for employment, contractors, potential contractors, and members of the public through print, electronic, or alternative media formats, as necessary, and through the regulated entity's Web site; and

* * * * *

(d) *D&I strategic planning.* By no later than January 25, 2018 the board of directors of each regulated entity shall adopt a D&I strategic plan for promoting D&I of minorities, women, individuals with disabilities, and MWDOBs. The board of directors of each regulated entity shall review the D&I strategic plan at least annually and shall readopt the plan, including any interim amendments, at least every three years.

(e) *Contents of the D&I strategic plan.* The D&I strategic plan shall include the following:

(1) A vision and/or mission statement that addresses the importance of promoting diversity and ensuring the inclusion of minorities, women, and individuals with disabilities in order to fulfill § 1223.2;

(2) Measurable strategic goals and objectives for accomplishing the agreed-upon priorities and intended outcomes developed to advance diversity and ensure the inclusion of minorities, women, and individuals with disabilities at the regulated entity in accordance with § 1223.2; and

(3) A requirement to create and implement action plans to achieve the strategic goals and objectives and management reporting requirements for monitoring the implementation of those goals and objectives.

■ 8. Amend § 1223.22 as follows:
■ a. Revise the section heading and paragraph (a);
■ b. Remove the phrases ''and the Office of Finance'', and ''or the Office of Finance'' wherever they appear in paragraphs (b) and (d); and
■ c. Revise paragraph (c).

The revisions read as follows:

§ 1223.22 Regulated entity reports.

(a) *General.* Each regulated entity, 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 MWDOBs at all levels, in management and employment, in all business and activities, and in all contracts for services and those contracts for goods above the material clause threshold in § 1223.3(b) and the results of such efforts.

* * * * *

(c) *Frequency of reports.* Each regulated entity shall submit an annual report on or before March 31 of each year, 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 business day that is not a Saturday, Sunday, or Federal holiday.

* * * * *

■ 9. Amend § 1223.23 as follows:
■ a. Remove the phrases ''and the Office of Finance'', ''or the Office of Finance'', and ''or the Office of Finance's'' from all paragraphs wherever they appear, with the exception of paragraphs (b)(9) and (10).
■ b. Revise paragraph (b) introductory text;
■ c. In paragraphs (b)(3) and (7), remove the phrase ''individuals applying'' and adding in its place ''applicants'';
■ d. Redesignate paragraphs (b)(9), (10), (11), (12), (13), and (b)(14) through (20) as paragraphs (b)(10), (11), (13), (14), (15), and (b)(19) through (25), respectively;
■ e. Add new paragraphs (b)(9), (12), (16), (17), and (18); and
■ f. Revise newly redesignated paragraphs (b)(14), (15), (19), and (23).

The revisions and additions read as follows:

§ 1223.23 Annual reports—format and content.

* * * * *

(b) *Contents.* The annual report shall contain the information provided in the regulated entity's annual summary pursuant to § 1223.22(d) and shall include:

* * * * *

(9) Data showing for the reporting year by minority, gender, and disability classification—

(i) The number of individuals responsible for supervising employees and/or managing the functions or departments of the regulated entity; and

(ii) A description of the strategies, initiatives, and activities executed during the preceding year to promote diverse individuals to supervisory and management roles;

* * * * *

(12) A provision addressing the strategies, initiatives, and activities that the regulated entity has undertaken during the prior year to:

(i) Communicate with minority serving organizations to help identify ways in which it might be able to improve MWDOB business with the regulated entity by enhancing MWDOB customer access, including in affordable housing and community investment programs;

(ii) Evaluate the regulated entity's processes for identifying, considering, and selecting MWDOBs to participate in financial transactions, which evaluation shall include an assessment of the regulated entity's internal policies and practices that may have presented unique challenges to MWDOBs' participation in financial transactions of the regulated entity.

* * * * *

(14) Cumulative data separately showing the total number of contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(15) Cumulative data separately showing the total amount paid for contracts in place at the beginning of the reporting year as well as those entered into during the reporting year;

(16) Cumulative data separately showing the total number of contracts entered into during the reporting year that were—

(i) Considered exempt under § 1223.3(b);

(ii) Prime contracts (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(iii) Subcontractor (tier 2) contracts that prime contractors (tier 1) entered into with minorities, women, individuals with disabilities, or MWDOBs;

(17) Cumulative data separately showing the total amount paid for contracts entered into during the reporting year that were—

(i) Considered exempt under § 1223.3(b);

(ii) To prime contractors (tier 1) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year as well as those entered into during the reporting year;

(iii) To subcontractors (tier 2) that are minorities, women, individuals with disabilities, or MWDOBs in place at the beginning of the reporting year;

(18) Cumulative data separately showing the total diversity spend with non-diverse-owned businesses during the reporting year;

(19) The annual total of amounts paid to prime contractors (tier 1) and subcontractors (tier 2) and the percentage of which was paid separately through prime contracts and subcontracts to minorities, women, individuals with disabilities, or MWDOBs during the reporting year;

* * * * *

(23) A comparison of the data reported under paragraphs (b)(13) through (19) of this section with the same information reported for the previous year;

* * * * *

§ 1223.24 [Amended]

■ 10. Amend § 1223.24 by removing the phrase ''or the Office of Finance's''.

■ 11. Add § 1223.25 to subpart C to read as follows:

§ 1223.25 Office of Finance.

All sections of this part and the standards issued under it shall apply to the Office of Finance, as defined in § 1201.1 of this chapter, in the same manner in which it applies to the regulated entities, unless the Office of Finance is otherwise specifically addressed or excluded.

Dated: July 12, 2017.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2017–15075 Filed 7–24–17; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 63, 121, 125, 135, 147, and 170

[Docket No. FAA–2017–0733; Amdt. Nos. 1–71, 63–39, 121–379, 125–67, 135–137, 147–8, 170–4]

RIN 2120–AL10

Removal of References to Obsolete Navigation Systems; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is removing references to the obsolete navigation systems Loran, Omega and Consol that currently appear in FAA regulations.

DATES: Effective July 25, 2017.

FOR FURTHER INFORMATION CONTACT: Kevin C. Kelley, Flight Technologies and Procedures Division, Flight Standards Service, 470 L'Enfant Plaza SW., Washington, DC 20591; telephone: 202–267–8854; email: *kevin.c.kelley@faa.gov*.

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Further, section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

This technical amendment removes obsolete references in title 14 Code of Federal Regulations (CFR) parts 1, 63, 121, 125, 135, 147, and 170. Loran, Consol, and Omega ground stations have ceased operations, which makes these avionics receivers obsolete and useless. Continued mention of these obsolete navigation aids in title 14 of the CFR serves no purpose, and could only confuse the public. Any additional delay in correcting the regulations would be unnecessary because the