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VIA EMAIL TO REGCOMMENTS@FHFA.GOV

Alfred M. Pollard, Esq.
General Counsel
Federal Housing Finance Agency
Fourth Floor
1700 G Street, N.W.
Washington, D.C. 20552

Re: Comments on Proposed Rulemaking Regarding Minority and Women Inclusion; RIN 2590-AA28

Dear Mr. Pollard:

The Federal Home Loan Bank of Des Moines ("FHLB Des Moines") appreciates this opportunity to comment on the Federal Housing Finance Agency ("FHFA") proposed rule on minority and women inclusion (the "Proposed Rule"), which seeks to implement Section 1116 of the Housing and Economic Recovery Act of 2008 ("HERA"). The FHFA has invited comments on all aspects of the Proposed Rule.

The FHLB Des Moines embraces diversity and is committed to supporting an inclusive environment. The FHLB Des Moines demonstrates this commitment in a number of ways - through its diverse workforce, by encouraging diversity on its Board of Directors as reflected in the Board-approved Corporate Governance Principles, through the diversity of membership on its Affordable Housing Advisory Council and by recently becoming a founding corporate sponsor of a college preparatory school in Des Moines for economically disadvantaged youth.

Overall, the FHLB Des Moines supports the general principle underlying the Proposed Rule - to encourage diversity. However, the FHLB Des Moines is proposing a number of revisions to the Proposed Rule which it believes will result in an improved final regulation. Therefore, the FHLB Des Moines respectfully submits the following comments for your consideration.

I. General Comments

Refining the Legal Standard in HERA "To the Maximum Extent Possible"

Proposed sections 1207.2(b) and 1207.21(b) require the regulated entities to maintain standards and procedures to ensure, "to the maximum extent possible," the inclusion and utilization of diverse individuals and companies. The language "to the maximum extent possible" derives from HERA and is found in 12 U.S.C. §4520(b).

In our view, the regulation would be much improved if the FHFA were to clarify the meaning of "to the maximum extent possible," to resolve certain ambiguities in a regulated entity's compliance obligations. We strongly believe that 12 U.S.C. §4520(b) does not grant to the FHLB Des Moines a license to pursue

inclusion efforts in any way that is inconsistent with our obligations to (i) comply with other federal laws and regulations,[1] (ii) to ensure safety and soundness, or (iii) to fulfill our statutory mission to promote affordable housing and community development and to provide liquidity to members.[2] The FHLB Des Moines therefore urges the FHFA to provide a definition of "to the maximum extent possible" to make clear that the FHLBanks are only required to seek inclusiveness in a manner consistent with these fundamental and non-negotiable duties.

The FHFA may want to review similar diversity regulations issued by other Federal Banking Regulators in order to provide guidance relating to the proper weighing of competing issues of outreach efforts, the FHLBank's obligations listed above, and common business issues such as cost and reliability. For example, the Office of the Comptroller of the Currency states that "The OCC awards contracts consistent with the principles of full and open competition and best value acquisition and with the concept of contracting for agency needs at the lowest practical cost." See 12 C.F.R. Part 4.63.

Recognition of Demographic Differences

The FHLB Des Moines asks that the FHFA recognize in the preamble to the final regulation that each FHLBank has differing demographics based on its location from the other regulated entities, and even within its own district. Because of this fact, FHFA expectations regarding compliance and outreach must be tailored to and evaluated based upon the regional demographics of each individual FHLBank.

Impermissibility of Formal or Informal Quotas

It is noteworthy that neither 12 U.S.C. §4520 nor the Proposed Rule permits or requires a regulated entity to create minimum quotas or apply other numbers-based models in promoting diversity in their employment and contracting processes. This is appropriate since these kinds of approaches could be unlawful under applicable US Supreme Court decisions and Title VII of the Civil Rights Act of 1964, which requires equal employment opportunities for all genders and racial groups. We also note that regulations of the Department of Labor's Office of Federal Contract Compliance Programs provide that "[q]uotas are expressly forbidden."[3]

In order to ensure that FHLBanks are not required to promote diversity in such a way that could run afoul of applicable laws, the FHLB Des Moines requests that the FHFA clarify in the final regulation that it will not expect the regulated entities to use quotas and numbers-based models in their inclusion efforts, and will not permit agency personnel to promote the use of such an approach through the examination process.

[1] For example, to the extent Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, 42 U.S.C. 1981, and other federal antidiscrimination laws prohibit an FHLBank from engaging in certain practices, all of these prohibitions would remain in effect and undisturbed by 12 U.S.C. 4520 and the proposed regulation.

[2] See, e.g., 12 U.S.C. 4513(f)(1)(B) and (C).

[3] 41 C.F.R. § 60-2.16(e)(1).

Scope of Contracts Subject to Inclusion

Proposed sections 1207.2(b) and 1207.22(a) apply to "all contracts *for services*," while proposed section 1207.23(b)(10) references soliciting contractors "to provide *service*" to the regulated entity. (emphasis added) These provisions are consistent with 12 U.S.C. §4520(c), which provides that "this section shall apply to all contracts of a regulated entity *for services* of any kind...." (emphasis added)

However, other sections of the Proposed Rule purport to apply to all contracts of a regulated entity, and not just contracts for services.[4] The regulated entities, like most companies, are party to a wide range of contracts that are not contracting opportunities under any traditional understanding. Such contracts for an FHLBank would include: standby letters of credit; lien release and intercreditor agreements; contracts with members, housing associates and beneficiaries of AHP grants and loans; contracts with principals in financial transactions (including contracts with swap counterparties and agreements with issuers and trustees evidencing MBS and other investments by a regulated entity);[5] contracts evidencing debt or equity issued by a regulated entity to its investors; indemnification agreements in favor of employees, officers, and directors; and information sharing agreements with state and federal banking regulators. Imposing procurement outreach obligations on such contracts will make compliance impossible and detract from the effectiveness of our inclusion efforts on actual contracting opportunities.[6] Therefore, we request that the FHFA clarify which contracts are within the purview of the proposed regulation, including clarifying the sections that discuss "contracts for services," soliciting contractors "to provide service," contracts "for services of any kind," and "all types of contracts."

In addition, it is critical that each regulated entity ensures that its accounting systems for tracking spending match up with the FHFA's ultimate definition of which contracts are subject to the reporting requirements in sections 1207.23(b)(11) - (13). Specifically, with respect to companies providing goods and services paid for by FHLBank employees or directors who are then reimbursed by the FHLBank, we do not maintain the same level of detailed information regarding these companies as we would for vendors receiving payment directly from the FHLB Des Moines. We expect this is true of the accounting systems for other regulated entities as well. Therefore, we request that, for purposes of reporting to the FHFA on contracting inclusion efforts, a regulated entity be permitted to exclude payments not made directly by a regulated entity to a vendor (e.g., employee or director reimbursement payments).

[4] See proposed Sections 1207.1 (definition of "business and activities" includes "all types of contracts"), 1207.21(b) (inclusion efforts to cover "all types of contracts"), 1207.21(b)(6) (nondiscrimination clause to be inserted in "each contract [a regulated entity] enters"), 1207.21(c)(1) (contracting outreach efforts "(a)pply to all contracts entered by the regulated entity"), and 1207.23(b)(11) (obligation to report "the number of contracts" entered with diverse businesses and individuals).

[5] Of course, to the extent that a regulated entity pays an institution to broker a financial transaction, contracts for such brokerage services (e.g., insurance brokerage and brokered overnight Fed Funds transactions) are properly considered within the scope of Part 1207.

[6] For example, how would a regulated entity comply with the requirement to consider diversity as a component when it sells debt or equity to investors? When it purchases investments for its own portfolio? When it operates its core business of providing funding to its customers? Moreover, given the dollar amounts involved, these activities -- if subject to the contractor reporting rules -- would overwhelm and distort the reporting related to actual diverse vendor purchases by a regulated entity.

Reliance on Voluntary Self-Identification by Employees, Directors, and Individual Contractors

For individuals who are employees, directors or contractors, a regulated entity will need to rely (for both practical and legal reasons) on voluntary self-identification to determine whether such individuals are minorities, women, or persons with disabilities. Based on our experience, many such individuals will not self-identify. It is also possible that some such individuals may self-identify inaccurately. These two factors necessarily limit the accuracy of certain data and information required in the section 1207.23 annual report.

Please clarify that section 1207.23(a), officer certification, as to the accuracy of the data in the annual report may be made subject to the above caveats and other reasonable limitations on the accuracy of a regulated entity's diversity reporting, to the extent such limitations are clearly identified in the annual report.

In addition, the FHLB Des Moines is concerned that the proposed regulation may conflict with the Americans with Disabilities Act ("ADA"), which bars companies from asking applicants for employment about disabled status unless doing so is necessary under federal law to identify applicants or clients with disabilities in order to provide them with required special services, as opposed to data collection and reporting purposes. The ADA may also limit a company from making a similar inquiry of individuals who are being considered as potential contractors. To the extent this is true, a regulated entity will not, as a practical matter, be able to consider the disabled status of such individuals as a component when the regulated entity reviews and evaluates offers from individual contractors. Please clarify that a regulated entity's duty to comply with such a prohibition under the ADA would partially supersede its obligations under proposed section 1207.21(c)(3).

II. Comments on Specific Sections of the Proposed Rule

1207.1 Definitions

Business and Activities
The definition of business and activities is very broad and makes compliance with various sections of the regulations virtually impossible.

HERA anticipates broad coverage, but not as broad as the definition set forth in the proposed regulations. HERA refers to "all business and activities of the regulated entity at all levels, including in 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 its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives.)" 12 U.S.C. §4520(b).

By contrast, the definition in §1207.1 includes "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." While the list of examples in the section is consistent with the regulations, the "operational, commercial, and economic endeavors" language encompasses anything a regulated entity does. This seems to exceed the scope of the rules requiring inclusion in employment and contracting.

Disability
The definition of disability is problematic for several reasons.

First, HERA specifically limits its inclusion and diversity requirements to women and minorities, and specifically defines those terms. 46 U.S.C. § 4520(b). It does not cover individuals with disabilities or disability-owned businesses. Thus, the regulations exceed FHFA's authority to the extent they include individuals with disabilities or disabled-owned businesses. Protections for individuals with disabilities are provided under other federal laws including the ADA. While the FHLB Des Moines applauds the efforts and well-meaning intentions of the FHFA to help other potentially disadvantaged groups, it is the role of Congress to create law and public policy on this point. Therefore, we request that the FHFA remove references in the final regulation to disabilities.

Should the FHFA retain references to disability in the final regulation, the definition of disability is problematic because it defines disability to have the same meaning as that provided by 29 C.F.R. 1630.2(g) and 1630.3, regulations interpreting the ADA.[7] That definition includes individuals "regarded as" having an impairment that substantially limits a major life activity. It is not clear, in the context of the proposed regulations, how someone would be "regarded as," and this has been a subject of great confusion in the courts. Indeed, under the pre-2009 version of the ADA, several courts of appeals have held that an employer had an obligation to accommodate individuals regarded as having disabilities. The revision to the ADA has eliminated that issue, but we expect continuing litigation over a company's obligations with respect to those "regarded as" having a disability.

Disabled-Owned Business
The definition of disabled-owned business is problematic, in part, because it includes businesses more than 50 percent owned or controlled by a person with a disability, and businesses for which more than 50 percent of the net profit or loss accrues to one or more persons with a disability.

One practical issue is that this information is not readily available to the public. As discussed above, identifying those businesses would require individuals to self-identify as having disabilities. As a result, businesses with individuals willing to self-identify will receive the benefits of the regulations while individuals not willing to self-identify would not. This approach does not seem reasonably calculated to include all disabled individuals of disabled-owned businesses in contracting opportunities.

Moreover, because the definition of disability includes individuals regarded as having a qualifying impairment, the definition of disabled-owned business includes businesses where individuals "regarded as" having a disability own or control more than 50 percent of the business or are responsible for more than 50 percent of the net profit or loss. The "regarded as" prong of the ADA definition of disability does not make sense in this context.

Minority
The definition of minority is inconsistent with the statutory language, which incorporates the definition of minorities in Section 1204(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

[7] Under 29 C.F.R. Part 1630.2(g), "Disability" means, with respect to an individual, (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a record of such impairment; (3) or being regarded as having such an impairment. Note that the regulations under the ADA are in the process of revision and have not yet been finalized.

That section defines the term minority as "any Black American, Native American, Hispanic American, or Asian American." By contrast, the regulations define minority as Black or African American, American Indian or Alaska Native, Hispanic or Latino American, and Native Hawaiian or Other Pacific Islander.

1207.20 Structure of a Regulated Entity's Designated Office of Minority and Women Inclusion

Proposed section 1207.20 requires each regulated entity[8] to establish and maintain an office of minority and women inclusion (or designate and maintain an existing office) to perform the responsibilities under the Proposed Rule, under the direction of an officer of the regulated entity who reports directly to either the Chief Executive Officer or the Chief Operating Officer or the equivalent.

Please clarify that regulated entity employees responsible for a portion of the compliance processes need not formally report to the officer directing the entity's inclusion efforts and that the officer's role under section 1207.20(a) is to coordinate the regulated entity's inclusion efforts. For example, a regulated entity may designate its head of human resources as its responsible officer, but then rely on a separate accounting department to track diverse contractor spend amounts or on a separate procurement department to meet certain of the contracting requirements. The FHLB Des Moines therefore seeks clarification that some of the Part 1207 responsibilities may be performed by employees not within the regulated entity's office of minority and women inclusion.

1207.21(a) Equal Opportunity Notice - Notices Provided in Alternative Media

Requirements in sections 1207.21(a) and (b) that relate to the publication of the policies and procedures that require media (Braille & audio) would be burdensome requirements to comply with. Requirements assume that each FHLBank would update its EEO notice, policies and procedures, and job postings on an ongoing basis to be both Braille and audio accessible, regardless of whether the FHLBank has employees or applicants who are vision or hearing impaired. The FHLB Des Moines is cognizant of the ADA and where employees or applicants request accommodations, the FHLBank will comply with all its legal obligations.

1207.21(a) Equal Opportunity Notice – Classifications

The prescribed equal opportunity notice set forth in §1207.21(a) exceeds the scope of the FHFA's regulatory authority. It includes "race, color, national origin, sex, religion, age, disability status, or genetic information." HERA limits inclusion and diversity requirements to women and racial minorities.

1207.21(b)(3) Internal Procedures to Resolve Complaints in Discrimination in Employment and Contracting Which Shall Include Mandatory Alternative Dispute Resolution Techniques

The FHLB Des Moines asks that the FHFA remove this section from the final regulation. The provisions of this section relating to resolving disputes in contracting run afoul of the contracting rights of the FHLBank as set forth by the Federal Home Loan Bank Act ("FHLB Act") at 12 U.S.C. 1432, the contracting rights of the vendor, and section 1207.3 of the Proposed Rule.

[8] For convenience, each reference to "regulated entity" in this comment letter should be read to include the Office of Finance unless the context clearly indicates otherwise.

First, the Proposed Rule interferes with the FHLBank's power "to make contracts," which is an explicit right granted to the FHLBank in the FHLB Act. See 12 U.S.C. 1432(a). In order for the FHLB Des Moines to use an alternative dispute resolution with its vendors, such language must be included in the contract. Proposed section 1207.21(b)(3) represents a restriction on an FHLBank's right to make contracts inasmuch as it would require each FHLBank to enter into only those contracts that include ADR provisions. This narrows the FHLBank's statutory rights under the FHLB Act, which only Congress may do.

In addition, Federal Banking regulators have been cautious of the use of ADR processes with regard to certain contracts, such as external audit engagement letters. The Interagency Advisory on the Unsafe and Unsound Use of Limitation of Liability Provisions in External Audit Engagement Letters (the "Advisory") cautions that mandatory ADR provisions could limit the liability of the auditor. The Advisory noted that "[b]y agreeing in advance to submit disputes to mandatory ADR, financial institutions may waive the right to full discovery, limit appellate review, or limit or waive other rights and protections available in ordinary litigation proceedings." Although the Advisory did not find ADR provisions to be unsafe and unsound on their face, it urges federal banking agencies to provide guidance to their institutions to "carefully review mandatory ADR and jury trial provisions in engagement letters, as well as any agreements regarding rules of procedure, and to fully comprehend the ramifications of any agreement to waive any available remedies."

Second, this section interferes with the vendors' contracting rights. Many contractors disfavor ADR clauses for a myriad of reasons, including potentially high costs and perceived biases against full recoveries that may otherwise be available in a court of law. To the extent that the Proposed Rule requires the FHLBanks to attempt to resolve complaints through an ADR process, which could necessitate a renegotiation of existing contracts to add ADR language, the vendor could claim an interference with its contracting rights.

Third, with regard to vendors who were not awarded contracts by the FHLB Des Moines, this section contradicts section 1207.3, which states that "the regulations in this part do not…create any right or benefit…by any party against…a regulated entity or the Office of Finance, their officers, employees or agents, or any other person." Granting failed vendors the opportunity to use ADR processes would be granting a right and a benefit, and is a contravention of the protections of section 1207.3.

The FHLB Des Moines recommends that the provisions of section 1207.21(3) relating to complaints of discrimination in employment should also be removed from the final regulation. This section is at odds with recent legislative initiatives to preclude mandatory arbitration of employment-related claims. For example, the American Recovery and Reinvestment Act of 2009 ("ARRA") precludes pre-dispute arbitration agreements for claims under the ARRA employee whistleblower provision, except for certain disputes arising under a collective bargaining agreement. See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Section 1553(d)(1)-(3). Similarly, the final version of the FY 2010 Defense Appropriations Bill, which President Obama is expected to sign into law, prohibits federal contractors on certain defense projects from requiring employees and independent contractors to agree to arbitrate certain employment discrimination and harassment claims as a condition of employment. See H.R. 3326, 111th Cong. (2009).

In addition, the FHLB Des Moines notes that the proposed regulation does not require the agency to utilize ADR in the contracting context.

1207.21(b)(4) Requests for Reasonable Accommodations

The reasonable accommodation provision in section 1207.21(b)(4) falls outside the scope of HERA. Moreover, this provision, as applied, would create substantive rights not otherwise available under applicable law, which is inconsistent with §1207.3.[9] For example, the language anticipates accommodation of all individuals with disabilities for all purposes, not, for example, reasonable accommodation for qualified individuals with disabilities that does not impose an undue hardship per the ADA. Regulated entities are not required to accommodate all disabilities under current, applicable law.

The FHLBank also requests that the FHFA clarify the term "effective procedures."

1207.21(b)(6) Material Clauses in Contracts

Section 1207.21(b)(6) of the Proposed Rule would require a regulated entity to include in each contract it enters into with a contractor "a material clause committing a contractor to practice principles of equal opportunity and non-discrimination in all its business activities …." The FHLBank is concerned that many potential or current vendors with whom it contracts will be unwilling to include such a clause in their contracts, and that this section will therefore impair our ability to enter into contracts with otherwise reliable vendors who may provide critical services to the FHLB Des Moines. In addition, the FHLB Des Moines does not have the ability to monitor or enforce subcontractors to ensure compliance with this section of the Proposed Rule. Based on the foregoing, we respectfully request that section 1207.21(b)(6) is omitted from the final regulation.

1207.21(c) Outreach for Contracting

The FHLB Des Moines seeks clarification that the reference in section 1207.21(c)(1) to "all contracts" means contracts for goods and services as written in 12 C.F.R. §361.6 and implemented by the Federal Deposit Insurance Company ("FDIC"). Application of these standards to membership agreements and other non-goods and services contracts does not appear consistent with the intent of this Proposed Rule.

1207.22(c) Annual Reporting Cycle

Proposed section 1207.22(c) establishes a calendar year reporting period and requires each regulated entity to submit its annual report by February 1 of each year. The FHLB Des Moines requests revisions to this section to allow an FHLBank until April 1 of each year to submit the annual report. This will provide sufficient time to compile and report on the previous year's data. We believe that the current one-month period under the Proposed Rule is inadequate for purposes of preparing and reporting the requested information.

1207.21(c)(2) Contracting Opportunity Publication Requirements

The FHLB Des Moines seeks clarification that in establishing standards and procedures for publishing contracting opportunities under proposed section 1207.21(c)(2) each regulated entity has the discretion to

[9] Section 1207.3 provides that the regulations are not intended to create any right or benefit, substantive or procedural, enforceable at law, in equity, or through administrative proceeding.

create reasonable exceptions to the publication requirements. For example, a regulated entity could create an exception to the publication requirement for contracts (i) below a certain dollar threshold, (ii) involving time sensitive engagements, and (iii) for confidential engagements.

1207.22(d) Annual Summary

The FHLB Des Moines requests clarification as to the difference between "third-party contractors" and "contractors that are minorities…." We ask that either the FHFA clarify what is meant by "third-party contractor" either in the final regulation or to provide guidance in the preamble.

1207.23(b)(3) Reports Showing Disability Classifications

Section 1207.23(b)(3) would require, among other things, that a regulated entity annually report to the FHFA the number of persons with disabilities applying for employment with the regulated entity.

However, the Equal Employment Opportunity Commission (EEOC) advises employers against making disability-related inquiries prior to making an offer of employment, and therefore, the regulated entity will not be able to provide data showing the disability classification of individuals who apply for but are not offered employment as requested by this section. In fact, asking for this data would violate the ADA. *See e.g.*, EEOC Notice No. 915.002, *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (October 10, 1995), available at www.eeoc.gov/policy/docs/preemp.html; *Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act (ADA)*, available at www.eeoc.gov/policy/docs/qanda-inquiries.html; *EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act ("ADA")*, available at www.eeoc.gov/policy/docs/guidance-inquiries.html.

We therefore recommend that section 1207.23(b)(3) is modified to remove this requirement.

Sections 1207.23(b)(3), (7), and (8) Collection of Data Related to Job Applicants and Employee Promotions

The data required by sections 1207.23(b)(3), (7) and (8) appears to encompass all job applicants and employees, regardless of whether the individual is qualified for the specific job position sought. Specifically, these sections seek data regarding the number of individuals who apply for employment with the regulated entity by minority, gender, and disability classification, as compared to the number of individuals hired for employment by minority, gender, and disability classification, without regard to whether the individual meets the minimum qualifications required for the job position at issue. The same problem exists with regard to the requirements concerning promotion data.

By comparison, the EEOC and the Department of Labor's Office of Federal Contract Compliance Programs have focused on comparative analysis by utilizing a concept where the employer can apply minimum job qualifications to eliminate unqualified persons, thus making the comparison between qualified applicants and those chosen for the position more reflective of real-life determinations. Otherwise, an "apples versus oranges" problem arises and comparisons between those who apply and those who are chosen mean very little.

Therefore, we request that the final regulation clarify that a regulated entity may apply minimum job qualifications to eliminate unqualified persons, for purposes of reporting the number of individuals applying for employment or promotion under sections 1207.23(b)(3), (7) and (8).

1207.23(b)(5) Collections of Data Regarding Terminations

Because many FHLBanks have a small number of employees with few separations, the FHLB Des Moines is concerned that the Proposed Rule's requirement to report employee separations by disability classification may make the identity of a separated employee and his or her disability easily ascertainable. In such circumstances, the sharing of this information would conflict with the goals under the ADA and Health Insurance Portability and Accountability Act ("HIPAA") to maintain the confidentiality of such information, and is also in conflict with section 1207.22 of the Proposed Rule, which provides that the "FHFA is not requiring, and does not desire, that reports under this part contain personally identifiable information."

1207.23(b)(10) Annual Reports – Outreach Activities

The FHLBank supports outreach activities to low-income or inner-city populations. However, the FHLBank respectfully requests that the FHFA remove the provisions in proposed section 1207.23(b)(10) requiring reporting on outreach activities to low-income and inner-city populations. The provisions of 12 U.S.C. §4520 that apply to the regulated entities focus on the inclusion and utilization of minorities and women, but do not require outreach to low-income or inner-city populations. Although an FHLBank might find such outreach useful at times as part of its program to include and utilize minorities and women, such program would not necessarily need to include outreach to low-income and inner-city populations and, alternatively, outreach to low-income and inner-city populations would not necessarily achieve the purposes of 12 U.S.C. §4520 as it applies to the regulated entities. The FHFA appropriately included expanded workforce diversity requirements for the FHFA as mandated by 12 U.S.C. §4520(f), which requires the FHFA to sponsor and recruit at job fairs in urban communities. The FHFA did not impose such requirements on the FHLBanks because Congress specifically limited such requirements to the FHFA. Similarly, the FHFA should exclude the regulated entities from reporting on inner-city outreach activities since the provisions requiring recruitment in urban communities apply only to the FHFA.

The FHLB Des Moines also requests that the FHFA removes the provision requiring that regulated entities report on activities to provide financial literacy education. Such requirements are only imposed on the FHFA under 12 U.S.C. §4520(f). However, financial literacy education is substantially beyond the scope of 12 U.S.C. §4520 as it applies to the regulated entities, and accordingly the regulated entities should not be required to engage in, nor report on, financial literacy education activities since the provisions on financial literacy education apply only to the FHFA.

Finally, the FHLB Des Moines requests that the FHFA remove the requirement that the regulated entities report on efforts to provide technical assistance for participation in the contracting process. Although the FHFA set forth an affirmative duty requiring the FHFA to offer technical assistance in proposed section 1207.11(b)(2), the regulated entities should be excluded from such requirement since they are not US government agencies with a duty to provide technical assistance to the public.

1207.23(b)(18) and (19) Annual Reports

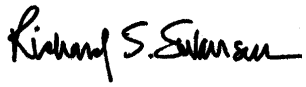
Proposed sections 1207.23(b)(18) and (19) require the regulated entities to annually provide a narrative report identifying and analyzing successful and unsuccessful activities with respect to achieving the purpose and policy of the diversity regulations, describing the progress made from the previous year, discussing areas where improvement is necessary, and describing anticipated efforts and results expected in the succeeding year. The FHLB Des Moines believes that the information requested exceeds the scope of 12 U.S.C. §4520(d) and is not necessary to achieve its purposes. Information concerning an FHLBank's success or lack of success in achieving the purpose of regulations, and areas in which efforts need to improve, should be addressed in the confidential examination process rather than a report that might be subject to public disclosure under the Freedom of Information Act. The FHLB Des Moines is concerned that public disclosure of such information could increase the possibility of litigation, or at a minimum increase public scrutiny that could be potentially harmful to the reputation and safety and soundness of the regulated entities.

The FHLBank accordingly requests that the FHFA remove proposed sections 1207.23(b)(18) and (19). In the alternative, if the FHFA believes the information is necessary for a complete report, we respectfully request that the final regulation specifies that information received pursuant to those reporting requirements shall be considered "Unpublished Information" as defined in 12 C.F.R. §911.1.

The FHLB Des Moines thanks the FHFA for its consideration of these comments.

Sincerely,

Federal Home Loan Bank of Des Moines



Richard S. Swanson
President and Chief Executive Officer