

BY ELECTRONIC DELIVERY at www.fhfa.gov/open-for-comment-or-input

December 27, 2016

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
400 Seventh Street, SW
Eighth Floor
Washington, DC 20219

Re: Notice of Proposed Rulemaking on Minority and Women Inclusion Amendments; RIN 2590-AA78

Dear Mr. Pollard:

Freddie Mac is pleased to submit these comments in response to FHFA's notice of proposed rulemaking regarding amendments to its regulations on minority and women inclusion (the "Proposal").¹ Freddie Mac supports the efforts of FHFA to amend this existing rule ("MWI Rule"). We are committed to the principles of equal opportunity in our employment and contracting practices, and we have demonstrated this commitment in our policies, our procedures, and our actions.² Our employment practices are designed to ensure all interested candidates are given fair opportunity and consideration in the hiring process. We continue to expand our outreach practices to attract more women-, minority-, disabled-owned and other diverse firms in our contracting and subcontracting transactions so that our suppliers reflect the diverse communities we serve. Moreover, we believe that diversity and inclusion should be an integral part of who we are as a company, and that fostering diversity and inclusion helps us to achieve superior business results.

As explained below, we make certain recommendations that would clarify several of the Proposal's requirements and definitions.

¹ 81 Fed. Reg. 74730 (Oct. 27, 2016).

² Freddie Mac is proud to be recognized by numerous organizations for its leadership in advancing diversity in the workplace. Within just the last three years, this recognition includes: Latina Style - Top 50 Employers; Asia Society – Best Employer for Asian Employee Advancement; Working Mother - Top 100 Companies; Disability Equality Index – 100% score; Corporate Equality Index – 100% score; and National Association of Female Executives – Top 25 Employers.

1. Board of Directors' Role

a. Strategic Plan Timing

We recommend that FHFA clarify the timing of the board of directors' adoption and review of a diversity and inclusion strategic plan ("Strategic Plan"). The preamble to the Proposal states that the Strategic Plan "would cover three years and be reviewed and affirmed by the board of directors annually."³ However, the relevant text of the Proposal provides that "[n]o later than 45 days after the commencement of *each* calendar year, the board of directors ... shall adopt" a Strategic Plan.⁴ We believe that the intent of the Proposal is for the board of each regulated entity to adopt a three-year Strategic Plan once every three years. It would then be required to "review and annually affirm" that the Strategic Plan "remains applicable and appropriate during the two-year period that follows the adoption of the plan."⁵ Accordingly, we recommend that the following language be substituted at the start of Proposed 12 C.F.R. § 1207.21(d):

No later than 45 days after the commencement of the first calendar year following finalization of this rule, and at least once every three years following such date, the board of directors of each regulated entity shall adopt....

b. Board Oversight

We recommend that FHFA slightly revise the Proposal's provisions for board of directors' oversight of the Office of Minority and Women Inclusion (or equivalent office). The Proposal states that "the board of directors of each regulated entity will ensure that the Office of Minority and Women Inclusion ... is provided relevant resources, including, but not limited to, human, technological, and financial resources sufficient to fulfill the requirements of this part."⁶ Given the traditional roles of a corporation's board, the Proposal appears to be requiring operations or activities by the board that more typically are reserved for management. In particular, we believe that the Proposal's explicit statement that the board "ensure" appropriate "human, technological and financial resources" assigns to the board responsibilities beyond its traditional oversight role. We therefore recommend that the Proposal call for the board to oversee management's role in providing relevant resources to the regulated entity's diversity office.

We agree that the board should adopt and review the regulated entity's Strategic Plan. We assume that relevant board committees, where appropriate, could carry out functions in support of the board's overall responsibility under the MWI Rule.

³ 81 Fed. Reg. at 74735.

⁴ Proposed 12 C.F.R. § 1207.21(d) (emphasis added).

⁵ Proposed 12 C.F.R. § 1207.21(d).

⁶ Proposed 12 C.F.R. § 1207.20(b).

2. Diversity and Inclusion Outreach

We recommend that FHFA clarify the Proposal's requirement for information relating to multifamily mortgage credit. As part of certain additional content in the annual report, the Proposal would require:

A description of strategies, initiatives, and activities the regulated entity implemented to advance diversity and inclusion in conjunction with its efforts to –

- (i) Promote access to single- and multi-family mortgage credit by—
 - (A) Assessing challenges and impediments minority-serving financial institutions face in accessing the secondary mortgage market and/or providing access to single- and multi-family mortgage credit for creditworthy borrowers; and
 - (B) Supporting lenders who serve minority communities;⁷

We seek clarification regarding FHFA's reference to "multi-family mortgage credit for creditworthy borrowers." With respect to the multifamily segment of the mortgage market, Freddie Mac facilitates the financing of multifamily housing by doing business with a network of lenders that provide the financing to the borrower; that is, the owner of the multifamily housing. We seek clarification on whether the focus of this provision is on the lenders that provide financing; on the multifamily borrower (*i.e.*, the owner of the multifamily housing); or on both the lender and the borrower.

3. Contracting Requirements

We support FHFA's overall goal of obtaining further information about diversity and inclusion in the regulated entities' contracting efforts. Some of the Proposal's contracting requirements present challenges in obtaining data (which exist today, as we rely in many cases on vendor self-certification of diversity status), and in measuring certain contract information. Below we provide further explanations and recommendations.

a. Data Collection

i. "Diversity spend with non-diverse-owned businesses"

We support FHFA's effort to identify "diversity spend with non-diverse-owned businesses." This term is defined as follows:

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,

⁷ Proposed 12 C.F.R. § 1207.23(b)(12).

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.⁸

This definition is used in connection with Proposal's requirement for data in the annual report "showing the total diversity spend with non-diverse-owned businesses during the reporting year."⁹ Such spending is a significant means by which companies can advance diversity and inclusion in a variety of markets.

ii. "Subcontractor (tier 2)"

The Proposal defines "Subcontractor (tier 2)" as "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."¹⁰ The Proposal then requires the annual report to identify, for each reporting year, the "total number of contracts" that were "Subcontractor (tier 2) contracts that prime contractors (tier 1) entered into with minorities or minority-owned businesses, women or women-owned businesses, and individuals with disabilities or disabled-owned businesses."¹¹ The Proposal also requires information on amounts paid to subcontractors (tier 2) that are minorities, women, individuals with disabilities, or businesses owned by them.¹²

We believe that it could be difficult to gather and validate information from small vendors about their subcontractors. For example, the majority of our REO department ("HomeSteps") vendors consist of small real estate brokers, law firms, and general contractors. To provide services to HomeSteps, they may hire a "subcontractor" to perform some work, such as lawn mowing or interior cleaning. These small vendors typically do not have the administrative or compliance resources (or systems and processes) to allow them readily to collect, monitor and report demographic information about their subcontractors. Accordingly, we suggest that FHFA require subcontractor information only from those prime contracts of a certain minimum size, such as those performing more than \$1 million in business annually on behalf of each regulated entity.

iii. Diversity Classification

It can be difficult to verify how a business might be classified in a diversity category, without relying on a self-certification from that business. While there are organizations that will certify

⁸ Proposed 12 C.F.R. § 1207.1.

⁹ Proposed 12 C.F.R. § 1207.23(b)(18).

¹⁰ Proposed 12 C.F.R. § 1207.1.

¹¹ Proposed 12 C.F.R. § 1207.23(b)(16).

¹² Proposed 12 C.F.R. § 1207.23(b)(17).

the diversity status of businesses,¹³ not all businesses may seek out such third-party certifications. Accordingly, we recognize, as is currently the case under the MWI Rule, that there are potential limitations on the quality of the data supporting outreach and data collection efforts.

b. Measuring “exempt” and multi-year contracts

We recommend that FHFA revise the Proposal’s requirement for the regulated entities to measure “exempt” contracts. The Proposal would require new reporting on certain contract information, including:

- “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”;¹⁴
- “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”;¹⁵
- “Cumulative data separately showing the total number of contracts entered into during the reporting year that were ... [c]onsidered exempt under § 1207.3(b)...”;¹⁶ and
- “Cumulative data separately showing the total amount paid for contracts entered into during the reporting year that were ... [c]onsidered exempt under § 1207.3(b).”¹⁷

The contracts “considered exempt under § 1207.3(b)” are those that are contracts for subjects other than “goods” or “services.”¹⁸ These contracts for “other subjects” include such things as “financial contracts, loans, financial transactions, financial instruments, realty, deeds, mortgages, letters of credit, confidentiality and non-disclosure agreements, software and other licenses, corporate operating agreements and similar arrangements....”¹⁹

These contracts for “other subjects” comprise a vast amount of Freddie Mac’s business activities. In the rulemaking process for the existing MWI Rule, FHFA recognized the “practical

¹³ Such certifying organizations include the National Minority Supplier Development Council, the Women’s Business Enterprise National Council, the U.S. Business Leadership Network, and the National Veteran Business Development Council.

¹⁴ Proposed 12 C.F.R. § 1207.23(b)(14).

¹⁵ Proposed 12 C.F.R. § 1207.23(b)(15).

¹⁶ Proposed 12 C.F.R. § 1207.23(b)(16)(i).

¹⁷ Proposed 12 C.F.R. § 1207.23(b)(17)(i).

¹⁸ 12 C.F.R. at § 1207.3. The MWI Rule requires demographic data reporting for “services” and certain “goods,” but it “exempts from the ... demographic data reporting requirements ... *all other contracts.*” 75 Fed. Reg. at 81397 (emphasis added).

¹⁹ 75 Fed. Reg. at 81397.

difficulties” in applying a rule to cover the category of contracts for “other subjects.”²⁰ We believe that collecting data for “other subjects” contracts would be a burdensome task, given the size of this category. Moreover, we believe that the data for “other subjects” contracts would not be particularly meaningful, as they would overwhelm the figures for contracts for goods and services. For example, the total amount of Freddie Mac’s Single Family loan purchases and guarantees—only one component of contracts for “other subjects”—amounted to \$351 billion in 2015.²¹ In contrast, Freddie Mac’s contracting amount for relevant “goods” and “services” (not “other subjects”) under the MWI Rule was just over \$1.5 billion in 2015.²²

We therefore recommend removing the Proposal’s requirement for reporting on data related to contracts for “other subjects.” Alternatively, we recommend permitting the regulated entities to use reasonable estimates for any required reporting on data related to contracts for “other subjects.”

In addition, we seek clarification on the measurement of contracts that: (1) cover a term of more than one year; (2) are amended during the year; or (3) contain options to renew. We recommend that the regulated entities be permitted to account for such contracts in a reasonable manner and to disclose in the annual report the methods that they use.

4. Employment Information

We recommend that FHFA clarify the Proposal’s use of the terms “supervisory” and “management,” in connection with new data that would be required for the annual report. Among other things, the Proposal would require the annual report to contain:

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.²³

We believe that the terms “supervisory” and “management” are roughly equivalent, as they are used to describe oversight over individuals as well as programs. Freddie Mac’s human resources policies and systems treat them in such a way. Accordingly, we request that the FHFA treat them in a like manner.

²⁰ 75 Fed. Reg. at 81397.

²¹ Freddie Mac Form 10-K at 44 (Feb. 18, 2016).

²² Freddie Mac Annual Report on Minority and Women Inclusion at Ex.10 (Feb. 29, 2016).

²³ Proposed 12 C.F.R. § 1207.23(b)(9).

5. Effective Date of Final Rule

In light of the number of new and revised definitions under the Proposal, as well as the additional data required for the annual reports, we believe that the regulated entities would need a reasonable amount of time to implement the rule once it is finalized. Furthermore, the annual report should be based on the use of consistent definitions over the course of a calendar year, with sufficient time for the regulated entities to collect relevant information. Accordingly, we recommend that FHFA provide a one-year delay for implementing the new information requirements for the annual report. For example, if the rule is finalized on June 30, 2017, then the new required information would be collected in 2018 and first used in the annual report to be submitted by March 1, 2019. We also recommend that the new requirements related to strategic planning be made effective at least a six months after FHFA finalizes the rule, in order to provide sufficient lead time for board preparations.

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Freddie Mac appreciates the opportunity to provide its comments in response to the Proposal. Please contact me if you have any questions or would like further information.

Sincerely,



Wendell J. Chambliss
Vice President and Deputy General Counsel
Mission, Legislative and Regulatory Affairs Department
Legal Division