December 27, 2016

Submitted Electronically

Alfred M. Pollard, Esq.
General Counsel
Attn: Comments/RIN 2590-AA78
Federal Housing Finance Agency
400 Seventh Street SW, Eighth Floor
Washington DC 20219

cc: FHFA Director Melvin Watt, Esq.

Re: Comments/RIN 2590-AA78; Minority and Women Inclusion Amendments

Dear Mr. Pollard,

Thank you for the opportunity to comment on the proposed amendments to the Minority and Women Inclusion regulation. Please find attached a detailed comment letter signed by various senior staff of the 11 Banks of the Federal Home Loan Bank System and the Office of Finance.

As the Presidents and CEOs of the FHLBanks and the Office of Finance, we are each committed to diversity and inclusion throughout the System. Together, we are working to implement an OMWI model that reflects diversity and inclusion – as Director Watt characterized it at our May 2016 Federal Home Loan Bank Directors' Conference – as "a business imperative, not just an effort to fulfill a statutory obligation."

We are committed to developing and implementing a strategic vision that ensures our work places, our hiring practices, our work forces, and our vendor relationships are diverse and inclusive. We strive daily, as the Housing and Economic Recovery Act of 2008 directs, "to the maximum extent possible, to use minorities, women, and minority- and women-owned businesses across all lines and activities of the entities."

We believe this can be achieved in a manner that is both consistent with our mission and with our pledge to safety and soundness. As such, we highlight two areas of concern that if addressed, will help ensure we can each move forward with our OMWI strategic plans with certainty:

- adherence to the OMWI regulation should be appropriately balanced with our obligation to operate in a safe and sound manner, and to comply with other outstanding legal requirements impacting diversity and inclusion activities;
- a recommendation to extend the proposed reporting deadline from March 1 to April 30 so that the OMWI report receives the dedicated attention it deserves without competing with existing Securities and Exchange Commission 10-K filing deadlines.

While the attached comment letter identifies many complexities and challenges of the current proposed amendment, such as a requirement to track and monitor subcontractors that is difficult to implement and verify, please know that the leadership of the FHLBanks are dedicated to a solution that fully realizes diversity and inclusion as a key element of our mission, and of our shared success. We embrace this vision every day, and look forward to continued opportunities to partner with FHFA to deliver a diverse and inclusive FHLBank System.

Sincerely,

Federal Home Loan Bank of Atlanta

W. Wesley McMullan
President and Chief Executive Officer

Federal Home Loan Bank of Boston

Edward A. Hjerpe III
President and Chief Executive Officer

Federal Home Loan Bank of Chicago

Matthew R. Feldman
President and Chief Executive Officer

Federal Home Loan Bank of Cincinnati

Andrew S. Howell
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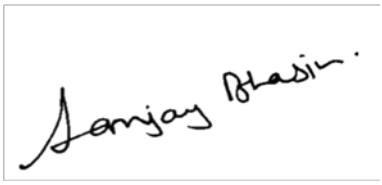
Federal Home Loan Bank of Dallas



Sanjay K. Bhasin
President and Chief Executive Officer

Federal Home Loan Bank of Des Moines

Michael L. Wilson
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Federal Home Loan Bank of Indianapolis

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Federal Home Loan Banks Office of Finance

John D. Fisk
Chief Executive Officer

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Re: Comments/RIN 2590-AA78; Minority and Women Inclusion Amendments

Dear Mr. Pollard:

On behalf of the undersigned Federal Home Loan Banks and the Office of Finance ("FHLBanks"), we appreciate this opportunity to comment on the proposed amendments to the Minority and Women Inclusion regulation[1] ("Amendments") issued by the Federal Housing Finance Agency ("FHFA").

We offer the following comments and observations, in an attempt to address certain concerns and seek clarification with respect to certain provisions included in the Amendments. Our substantive and policy comments are set forth first with our more technical corrections and comments on many of the definitions in the Amendments located toward the end of this letter.

Discussion of Substantive Comments

1. ***The new data collection requirements in amended §§1207.23(b)(16)(iii) and 1207.23(b)(17)(iii) of the Amendments, requiring the FHLBanks to collect data from primary contractors regarding the number of subcontracts and annual spend incurred pursuant to such subcontracts, which would be allocable to minority-, women- and disabled-owned businesses, will be extremely difficult and at times unworkable to enforce in practice, because the FHLBanks have no mechanism, legal or contractual, by which to require primary contractors to collect this information from their subcontractors or to disclose such information to the FHLBanks.***

It would be difficult, and in some cases impossible, for the FHLBanks to collect accurate, reliable information and data regarding diverse subcontractor contracts and related spend from their primary contractors, as appears to be required by amended §§1207.23(b)(16)(iii) and (b)(17)(iii). Without reliable data, the reporting process and integrity of the FHLBanks' OMWI efforts would be undermined.

There are a number of practical reasons for this difficulty. First, by definition, a subcontractor does not have direct contractual privity with the FHLBank. Therefore, it would not be possible in many cases for the FHLBanks to require the subcontractors to provide this information directly; nor, in many cases, would the subcontractors be willing to volunteer the requested information in the absence of a contractual or legal requirement. Many subcontractors work for multiple customers serviced by the same primary contractor, not just the regulated entities, and may be reluctant to disclose information which might implicate such confidential information held between themselves and the primary contractor in areas such as pricing, total number of contracts, or even the subcontractor's status (or lack thereof) as a minority-, women-, or disabled-owned business.

[1] 81 Fed. Reg. 74730 (October 27, 2016).

For the same reason (including the fact that they may be constrained by confidentiality obligations arising from the subcontract), it would be difficult if not impossible in many cases to secure this information from the primary contractor. In other situations, the data may simply not be available from a primary contractor; many primary contractors do not track spend allocated to diverse suppliers as compared to non-diverse suppliers, nor do they track diversity ownership or other demographic information regarding such subcontractors. Furthermore, to the extent any such data may be provided by a primary contractor, the FHLBanks would have no way to document the manner in which such data is collected or to independently verify or test the accuracy of such data.

It is also worth noting that for the most part, vendors of the FHLBanks are not themselves federal contractors and therefore, are not subject to the reporting rules enforced upon federal contractors pursuant to the Federal Acquisition Regulation and other relevant laws and regulations. Many of these vendors, including both primary contractors and subcontractors, have never been required to compile data regarding diversity makeup of their employee force or diverse spend, and their accounting systems and software (as well as the existing accounting systems and software of the FHLBanks themselves) are not designed to capture this data. The FHLBanks are concerned that the proposed Amendments could lead to unintended consequences such as impairing the willingness of certain vendors to do business with the FHLBanks.

Notwithstanding the issues relating to collecting the proposed data from vendors, it would take a substantial effort and re-engineering of existing systems to allow the FHLBanks to further break out this spend and to restructure their procurement procedures, so as to break down the percentage of spend on, for example, tier 1 non-diverse vendors which may indirectly flow to tier 2 diverse subcontractors. This process would be very costly and time consuming and would require additional personnel at the FHLBanks with no guarantee of fully-accurate data because the FHLBanks would largely rely on data provided by primary vendors and subcontractors themselves (who, as previously noted, may not be currently capturing any of this information).

For the above reasons, the FHLBanks request that the tier 2 subcontractor data-tracking and reporting requirements of §§1207.23(b)(16)(iii) and (b)(17)(iii) of the Amendments be deleted, and that the FHLBanks be allowed to report available data at their option. In the alternative, the FHLBanks request that they only be required to report on such verifiable data relating to primary contractors as they are able to capture through their accounting and vendor procurement systems, and be permitted to rely on the self-reported diversity status of the primary contractors without being required to independently verify the diverse status, percentage of effort devoted to FHLBank-related contracts, or prorated diverse spend, of such primary vendors' subcontractors.

2. ***The additional reporting requirements regarding total amount of diverse contracts entered into during the reporting year, as well as the additional requirements to break such data out by prime contractor (tier 1) and subcontractor (tier 2), in amended/new §§1207.23(b)(14) through (b)(19) and new §1207.23(b)(23), impose substantial new duties on the FHLBanks which are extremely burdensome and problematic. The FHLBanks would request that the FHFA streamline some of the reporting requirements in these sections, and eliminate others.***

Amended/renumbered §§1207.23(b)(14) through (b)(19) and new §1207.23(b)(23) of the Amendments add several new categories of data collection and reporting to the FHLBanks' existing OMWI annual reporting requirements, which deal with cumulative and year-over-year reporting of number of third-party

contracts entered into by the FHLBanks during the reporting year[2], total spend relating to such contracts[3], a breakdown of such contracts by status including contracts exempt from the requirements of §1207.3(b) and all prime contracts and subcontracts entered into with diverse vendors[4], a similar breakdown of annual vendor spend according to the same categories[5], data capturing the newly-added category of "diversity spend with non-diverse businesses"[6], a comparison of total spend (subcategorized into "spend with prime contractors" vs. "spend with subcontractors") during the reporting year to diverse-business-only spend in those same subcategories during the reporting year[7], and, finally, a comparison of all such data reported in all of the preceding categories listed above, to the data accumulated during the preceding reporting year[8].

This is a substantial amount of new data, which the FHLBanks are being requested to capture and analyze for the first time, some of which may not be obtainable (as explained in Section 1 above) and some of which has not been compiled by the FHLBanks in the format and categories required by the Amendments.

Additionally, there are a number of ambiguities in the requirements themselves regarding exactly what sorts of "contracts" are required to be counted, and for which annual spend must be calculated, under these new rules.[9] It would be burdensome and would require considerable time and personnel, to formulate comprehensive policies and procedures that would govern the collection, tracking and reporting of these categories of information, as well as determining which data and which contracts, if any, are exempt from the proposed reporting requirements.

Therefore, in order to facilitate accurate and timely reporting, the FHLBanks request that the FHFA streamline some of the individual categories into fewer reporting requirements which would achieve the same functional objectives in terms of providing useful and actionable data to the FHFA as part of the OMWI annual report, and, as requested above, eliminate certain requirements related to primary contractors and subcontractors.

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[2] Proposed §1207.23(b)(14), at 74738.
[3] Proposed §1207.23(b)(15), at 74738.
[4] Proposed §1207.23(b)(16), at 74738.
[5] Proposed §1207.23(b)(17), at 74738.
[6] Proposed §1207.23(b)(18), at 74738.
[7] Proposed §1207.23(b)(19), at 74738.
[8] Proposed §1207.23(b)(23), at 74738.
[9] By way of just a few examples, it is unclear whether, for example, the following should each be counted, and their associated spend tracked, as separate "contracts" for purposes of the above requirements: (i) real estate leases; (ii) custom-designed software licenses and "shrink-wrap" licenses for off-the-shelf software products (as well as embedded licenses relating to code modules created by one software provider which modules are then integrated into a larger software package); (iii) individual statements of work or work orders submitted under pre-existing master service agreements; (iv) individual "one-off" invoices or purchase orders for purchases on open account which are not, themselves, the subject of new separate master purchasing agreements; (v) periodic renewals of subscription license fees or maintenance and support fees which do not themselves necessitate the execution of a new subscription or support agreement; or (vi) small dollar-value agreements to provide limited services for the convenience of FHLBank daily operations (such as labor and delivery charges incurred as a result of a luncheon being delivered to FHLBank employees during training services or catering services for visitors on FHLBank premises). Other categories, not anticipated above, may also arise as a result of day-to-day FHLBank operational requirements or expedient necessities.

3. The capital markets diversity requirements in amended §1207.23(b)(12)(ii) raise concerns for the FHLBanks from a safety and soundness perspective, since a FHLBank's selection of broker-dealers and trading counterparties must comply with the FHLBank's risk parameters, and, therefore, cannot be based solely on the broker-dealer's or counterparty's status as a minority-, women-, or disabled-owned business enterprise.

Amended §1207.23(b)(12)(ii)(B) requires each FHLBank to provide, as part of its OMWI annual report, a description of

> strategies, initiatives, and activities the regulated entity implemented to advance diversity and inclusion in conjunction with its efforts to … [p]romote diversity in capital markets transactions by … [i]dentifying, considering, **and selecting** minority-, women-, and disabled-owned businesses to participate in capital market or financial transactions[.][10]

The requirement that an FHLBank develop strategies and initiatives to select minority-, women- and disabled-owned businesses to participate with the FHLBank in capital markets transactions raises potential concerns from a safety and soundness perspective. The FHLBanks agree that it is valuable to identify diverse capital markets participants (whether broker-dealers, trading counterparties, or other entities serving various roles in the capital markets such as futures commission merchants) and add such parties to the pool of entities considered for capital markets trading and transactional activity. In fact we are already doing so. However, the ultimate decision whether to select a particular capital markets participant for a particular transaction must be based on multiple factors, many unrelated to the participant's diversity status. Safety and soundness and risk assessment considerations generally, as well as the Prudential Management and Operations Standards[11], constrain the FHLBanks in terms of their ability to select only those capital markets transaction counterparties that can comply with an FHLBank's requirements regarding, among other matters, capital adequacy, access to relevant markets, and price.

For a number of different reasons, smaller capital markets participants, whether they are diverse or not, may not meet the criteria under the FHLBank's risk parameters. Some of the challenges that these broker-dealers face include limited transactional capabilities, potential for increased credit risk, and constraints relating to access to capital. Additionally, diverse broker-dealers and other capital markets participants may have a limited operating history, and as a result may have limited ability to inventory or structure bonds or other debt instruments to meet FHLBank needs or to structure transactions with terms or issuance sizes large enough to meet the economies of scale sought by the FHLBanks.

Furthermore, extending FHLBank trades over a larger pool of smaller and potentially-riskier counterparties could impair an FHLBank's existing counterparty relationships that are important for the FHLBanks' liquidity requirements. It is worth noting that the FHLBank System's Capital Markets officers have created a working group with the intent to propose and pursue inclusion initiatives with existing and potential counterparties. The working group is focusing their efforts on initiatives which balance such inclusion initiatives with safety and soundness concerns.

Accordingly, the FHLBanks request that the requirement to report strategies and initiatives to "select" minority-, women-, and diverse-owned businesses be deleted from the Amendments, and that the

[10] Proposed §1207.23(b)(12)(ii)(B), at 74738; emphasis added.
[11] 12 CFR Part 1236.

FHLBanks remain free to select capital market participants and contractual counterparties (after considering diverse counterparties which may have been identified as part of the diversity outreach and assessment process in amended §1207.23(b)(12)(ii)(A)) based on the FHLBank's economic requirements and the safety and soundness considerations of the FHLBank and the system as a whole.

4. ***The FHLBanks have concerns that the requirement in revised §1207.21(a), to add new protected classes to the categories of equal opportunity employment and contracting notice that must be published under such subsection (a), may create an obligation to inquire into certain statuses of a potential employment applicant or candidate which inquiry would cause the FHLBank to violate other applicable Federal employment laws.***

The Amendments to §1207.21(a) of the Rule, regarding the equal opportunity notice with respect to a regulated entity's commitment to the principles of equal opportunity and contracting, add several categories to the list of classes covered by the notice, including the classes of "race" (as distinct from "color" and "national origin", which appear in the original version of the Rule), "sexual orientation", "gender identity", and "status as a parent". While the FHLBanks support the FHFA's commitment to expanding the scope of equal opportunity in employment and contracting on a policy basis, the FHLBanks note that the expansion of protected classes may present challenges for those FHLBanks that are located in states, or have states in their districts, that have passed conflicting laws. While the practice of many FHLBanks is, and has been, to give equal opportunity in employment to all classes of persons, regardless of whether they can be categorized into one or more of the newly-added classes in the Amendments, the FHLBanks request that, rather than adding additional protected classes to the Rule, the FHFA leave it up to each regulated entity to add additional protected classes that are not specifically required by federal employment law.

To the extent that any new classes are added under the Rule, from an operational perspective, the FHLBanks would like the FHFA to clarify, in the Amendments, that the addition of new protected classes in an equal opportunity in employment and contracting notice does not create new or different affirmative requirements on the part of the FHLBanks themselves, including their human resources or vendor/contract management functions, to proactively inquire as to a potential employment candidate's or third-party vendor's qualification for, or inclusion in, one of the protected classes described in the equal employment notice. The FHLBanks are concerned that any attempt to make affirmative inquiries relating to the sexual orientation, gender identity, or parental status of a job candidate or potential vendor would be inappropriate and might create a perception of discrimination if such job applicant or vendor were ultimately not selected. Further, making such an inquiry in a hiring interview may place the FHLBank or its hiring manager in direct violation of Federal or state employment laws specifically forbidding such inquiries or practices.

The FHLBanks maintain that any voluntary self-identification by a potential vendor or employment applicant of such individual's membership in a protected class added by the Amendments, which self-identification is not made in response to an inquiry from the FHLBank itself, is a legitimate and permitted form of expression which may be considered by the FHLBank in terms of making business decisions which maximize inclusion and promote diversity. However, the FHLBanks would appreciate a clarification that a publication of additional categories in an FHLBank's equal opportunity in employment and contracting notice does not create additional responsibilities of inquiry or reporting on the part of such FHLBank.

5. ***The FHFA should amend §1207.22 to allow the regulated entities to submit their OMWI annual reports by April 30 of each subsequent year, rather than March 1.***

Although the Amendments currently do not propose any substantive amendments to §1207.22, regarding the timing and FHFA use of OMWI annual reports (other than certain technical conforming changes to harmonize language with definitions contained in 12 CFR §1201), the FHLBanks would like the FHFA to consider an amendment to §1207.22(c) as a result of the substantial increase in reporting requirements proposed in other sections[12] of the Amendments. Currently, the Rule requires each regulated entity to

> submit an annual report **on or before March 1 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. [Emphasis added.]

Particularly in light of the Amendments' emphasis on the ultimate responsibility of the Board of Directors for achieving the requirements of Part 1207, it is important that the FHLBanks have an opportunity, if desired, to present OMWI annual to the FHLBanks' board of directors prior to formal submission of the report to the FHFA. The current timing competes with existing Securities and Exchange Commission Form 10-K filing deadlines, which strains the resources of the FHLBanks in giving proper attention to both requirements. Further, the current schedules for FHLBank board meetings and the March 1 filing deadline do not provide sufficient time for directors to review the annual reports prior to submission. Since the relevant data to be included in the reports must run through December 31 of the preceding year according to §1207.22(c), the effort to compile, analyze and present the data currently required [13] represents a substantial operational challenge.

Since the Amendments expand and enhance both the number of reporting categories to be included in the annual report under §1207.23(b) and the types and categories of data to be captured and included in such reporting categories, the FHLBanks are concerned that they will not be in a position to adequately present such a wealth of additional material in a meaningful manner to their boards of directors in time to meet a March 1 filing deadline. Therefore, the FHLBanks ask the FHFA to consider, in light of the enhanced reporting requirements, changing the filing deadline in §1207.22(c) from March 1 to April 30 of each year. This would allow the FHLBanks to submit draft OMWI annual reports to their boards for review during the first quarter of each year, and provide for a more meaningful opportunity to collect, process and analyze the various categories of data that would be required under amended §1207.23(b).

6. The FHLBanks should maintain discretion regarding standards relating to organizational structure of the OMWI office, as well as any minimum standards relating to knowledge, skills and competencies required of OMWI officers, consistent with the regulation.

The Amendments propose that

> The regulated entity will also ensure that any officer(s) designated to direct and oversee its diversity and inclusion programs has the necessary knowledge, skills, competencies, and abilities to effectively implement the minimum standards and requirements found in this part.[14]

The FHLBanks would appreciate confirmation from the FHFA that, with respect to such "necessary knowledge, skills, competencies and abilities", the FHLBanks have full discretion to make the

[12] Proposed §1207.23(b)(9) through (b)(23), at 74738.
[13] 12 CFR §1207.23(b)(1) through (b)(20).
[14] Proposed §1207.20(b), at 74737.

determination as to what knowledge, skills, competencies and abilities are required in order to fulfill the requirements of the Rule.

7. Amended §1207.23(b)(12)(i) appears to impose new substantive, and potentially significant, expectations that go well beyond the scope of the OMWI Rule and its implementing statute.

Section 1207.23(b)(12)(i) of the Amendments requires the FHLBanks to describe their efforts to promote, among other things, access to single- and multi-family mortgage credit through (A) assessing challenges and impediments facing "minority-serving financial institutions," and (B) supporting "lenders who serve minority communities."

Given the unique cooperative structure of the FHLBanks, we ask the FHFA to remove this requirement for the FHLBanks as the FHLBanks are not in a position to directly promote access to mortgage credit. In the alternative, we ask the FHFA (i) to clarify its intentions with respect to the use of the term "minority-serving financial institutions" in clause (A) by limiting the term to *members* of the FHLBank that are majority owned/controlled by minorities, as further described below in Section 25 of this letter and (ii) to confirm that that the reference to "lenders who serve minority communities" in clause (B) refers to the same entities referenced in clause (A), and, assuming that is the case, we ask that the defined term "minority-serving financial institutions" be used in both places.

8. The revision to §1207.20(b) noting that the FHLBank's board of directors "will ensure that" the Office of Minority and Women Inclusion has relevant resources sufficient to fulfill the requirements of the Rule, should be clarified to state that the board's role is one of oversight, not of active management of this function.

The Preamble to revised §1207.20 of the Amendments states that:

> FHFA is proposing to revise paragraphs (b) and (c) of § 1207.20 to clarify that a regulated entity's board of directors **has ultimate responsibility for achieving the requirements of part 1207** – not the regulated entity's OMWI (or office designated to perform the responsibilities of part 1207).[15]

The FHLBanks are concerned that assigning each regulated entity's board of directors "ultimate responsibility" for this function may pose issues from a governance standpoint, since an FHLBank's board of directors, unlike its management, may not be able to fully and directly execute the management, ministerial and technical requirements of the Rule, or ensure that they are executed according to the time frames set forth in the Rule, especially given that each board only meets on a periodic basis. Therefore, since the actual text of the Amendments states that

> [t]he board of directors … **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 … sufficient to fulfill the requirements of this part[,][16]

[15] Preamble to Amendments, Section VII (The Proposed Amendments), at 74734 [emphasis added].
[16] Proposed §1207.20(b), at 74737 [emphasis added].

the FHLBanks request that the words "will ensure that" above be further clarified to state that the board's ultimate responsibility in this regard, commensurate with its other duties as a board of directors to a regulated entity, is that of providing oversight of this function only, and does not rise to the level of active management over the allocation of resources to the OMWI office, or management of the OMWI office itself.[17]

In addition, since the thrust of §1207.20 appears to be centered around the direct responsibilities of a regulated entity's OMWI (or equivalent office), the FHLBanks request that the FHFA include language in the Amendments clarifying that the specific regulatory requirements created under §1207.20 are intended to be limited to initiatives allocated specifically to that office by statute and regulation – namely, initiatives related to promoting the inclusion of women, minorities, and disabled persons – and that, to the extent that an FHLBank's board conducts the oversight of broader inclusion initiatives beyond those required by the Rule (for example, initiatives related to sexual orientation, gender identity, veterans, or other dimensions of diversity), it does so in the spirit of inclusion, and not pursuant to the technical requirements of §1207.20.

9. The proposed requirements to report on efforts to "promote diversity and inclusion in affordable housing programs" in amended §1207.23(b)(12)(iii) fundamentally misconstrues the relationship that the FHLBanks have with their member institutions, who are the entities ultimately doing the lending to AHP project sponsors and qualified individuals, since the FHLBanks have no authority or power to dictate to members either how they choose to lend or to whom they lend.

It is unclear what the intent is of the requirement in amended §1207.23(b)(12)(iii) that the FHLBanks describe, in their OMWI annual reports, the "strategies, initiatives and activities the [FHLBank] implemented to advance diversity and inclusion in conjunction with its efforts to … promote diversity and inclusion in affordable housing and community investment programs". Since the actual lending done by an FHLBank as part of its competitive and set-aside AHP, CIP and CICA programs is to its member institutions, rather than directly to diverse populations, such a requirement as is described in §1207.23(b)(12)(iii) would seem to imply that the FHLBank exercise some level of control or influence over how said member institutions choose to select projects and sponsors to lend to pursuant to such programs. Such control or influence is well beyond the scope of the authority granted to the FHLBanks under the Federal Home Loan Bank Act ("Act"). Moreover, the FHLBanks are concerned that the proposed requirements of §1207.23(b)(12)(iii) may be inconsistent with regulatory requirements relating to the FHLBanks' AHP, CIP and CICA programs, as well as Federal fair-lending laws.

Currently, the FHLBanks' affordable housing program initiatives serve low- and moderate-income individuals and communities, which may include many minority individuals and communities, as well as women-, disabled-, and veteran-owned businesses. The FHLBanks consider multiple factors in the scope of their scoring and awards process in an attempt to make affordable housing available to the largest possible population of qualifying individuals in each Bank's district. Consideration of diversity categorizations is not a factor identified in the current AHP Rule. The FHLBanks therefore request that any reference to engaging in, or reporting on, "strategies, initiatives and activities … to … promote diversity and inclusion in affordable housing and community investment programs" be removed from the

[17] *See also* related language in proposed §1207.20(c), at 74737, which states that the "Office of Minority and Women Inclusion … is responsible for leading the regulated entity's **board-approved strategies**, for fulfilling the requirements of this part." [Emphasis added.] The use of the term "strategies" in the preceding sentence seems to imply that the intent of the Amendments are to place the board into a strategic-planning role, not an active management role, with respect to the execution of OMWI inclusion initiatives.

regulation. In the alternative, the FHLBanks request clarification that reporting obligations are intended to be limited to a description of outreach activities that involve diverse groups.

10. The description of the newly-added definition for "applicant" should provide an option for each FHLBank to determine whether a potential employment applicant's qualifications for a position should be determined according to an objective standard based on the FHLBank's stated requirements for the position, or whether the FHLBank will count all potential interested candidates as viable applicants for the role, when submitting data as part of the FHLBank's OMWI annual report.

The Amendments propose a new definition of "applicant"[18], which is utilized at several other points throughout the Rule and the proposed Amendments, including in existing provisions mandating the collection and filing of data as part of the FHLBanks' regular OMWI annual reports[19], in proposed provisions relating to a regulated entity's development and publication of policies and procedures prohibiting discrimination in employment and contracting[20], and in providing for a method to resolve complaints alleging such discrimination[21].

The proposed definition of "applicant" contains four conditions which must be met in order for an individual applying for a job to meet the definition. The third condition is that:

> [t]he individual's expression of interest [in a particular position that the regulated entity is seeking to fill] indicates that the individual possesses the basic qualifications for the position[.][22]

The FHLBanks believe that this condition, as currently worded, is vague, insofar as it potentially leaves the determination of whether the individual possesses the necessary job qualifications up to the subjective belief of the applying individual. As a result, anyone who submits a resume or other expression of interest to an FHLBank in response to a posted job opening, and who subjectively indicates on the application that he or she meets the basic qualifications for the position, may be counted as an "applicant"[23], regardless of whether or not that individual actually does meet the minimum necessary qualifications for the position according to objective criteria as contained in that individual's resume or other expression of interest, such as proof of a certain number of years of experience in a similar position, or specific education or training in the position's job requirements.

Because different FHLBanks may use different reporting criteria under §1207.23(b)(3) to count the total pool of "applicants" in their annual reports, the FHLBanks request that the FHFA clarify that each FHLBank has the option, based on how the FHLBank currently screens interested parties for job postings, of electing whether to count as "applicants": (a) either (i) all interested parties submitting an expression of interest for a given position, or (ii) only those parties whose expressions of interest contain objective information that demonstrate that the individual meets the qualifications; and (b) other qualified

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[18] Proposed §1207.1, at 74736.

[19] 12 C.F.R. §1207.23(b)(3); the Amendments change the prior Rule nomenclature of "individuals applying for employment" to the new term "applicant".

[20] Proposed §1207.21(b)(10), at 74737.

[21] Proposed §1207.21(b)(4), at 74737.

[22] Proposed §1207.1, at 74736.

[23] This would also mean that they would need to be reported as such in the FHLBank's OMWI annual report and given the benefit of all bank policies and procedures to dispute an adverse employment determination on the grounds of discrimination.

candidates considered for the position based on a resume previously submitted and kept on file by the FHLBank or with whom the FHLBank has conducted a phone screen or interview.

11. The definition of "diversity spend with non-diverse owned businesses" does not adequately capture spend made by an FHLBank with a non-diverse owned services provider, such as a law, accounting or consulting firm, where the primary point of contact or responsibility for the services provided is a diverse individual employed by the vendor but who is not a partner, member or equity owner of the business.

The Amendments propose a new definition of "diversity spend with non-diverse owned businesses"[24], which, according to the Preamble, is designed to

> describe the dollar amount a regulated entity pays to a firm that is not owned by a minority, woman, or individual with a disability, for professional services provided by a partner, member, or other equity owner who is a minority, woman, or individual with a disability. This type of arrangement can occur when an organization bases its decision to engage a majority-owned law practice or consulting firm based upon its interactions with a specific partner(s) or non-controlling owner(s) who is also a minority, woman, or individual with a disability.[25]

The FHLBanks commend the FHFA for recognizing the realities of most professional services contracts with large firms, which may be majority- or publicly-owned, but which may nonetheless be retained by an FHLBank solely, or primarily, for the FHLBank to establish or maintain a professional relationship with an employee who may be a minority, woman or individual with a disability and who may directly bill the FHLBank for professional services provided directly by such individual or by other professionals within the firm who are referred or managed by that individual. However, the FHLBanks believe that credited diversity spend with a non-diverse owned business should not be limited to situations in which the responsible point of contact or employee of such business is a partner, member or equity owner.

To use the Preamble's example of a majority-owned law practice, an FHLBank may be interested in establishing a relationship with such a firm based solely or primarily upon work performed by a minority, woman, or person with a disability who is employed by such firm in a non-ownership capacity, such as an associate, senior associate, non-equity partner, or of counsel to a law firm. The FHLBanks might pursue such relationships based on the level of technical expertise or knowledge maintained by such diverse employee in an area of specific concern to the FHLBank, yet, as the current definition is worded, any spend which would be allocable to such diverse employee would not qualify as "diversity spend" because the employee does not have an ownership position within the firm. Additionally, other types of service providers that are not organized as a traditional or limited partnership or professional limited liability company, such as certain publicly-traded consulting firms, may nonetheless have individual employees with specialized expertise who may qualify as diverse employees and who provide individual, personal services to one or more FHLBanks, but who nonetheless do not hold ownership status within the firm.

The FHLBanks believe that the more appropriate approach, and the one which accurately captures the realities of the FHLBanks' existing relationships with many of its service providers, would be to define "diversity spend with non-diverse owned business" as all annual spend: (i) specifically allocable to

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[24] Proposed §1207.1, at 74736.

[25] Preamble to Amendments, Section VII (The Proposed Amendments), at 74734.

services performed by an employee of a non-diverse owned business who is a minority, woman, or person with a disability, regardless of whether such employee is also a partner, member, or equity owner of the enterprise; or (ii) for which such an employee who is a partner, member or equity owner receives origination or other credit in the enterprise's compensation distribution process.

12. With respect to the increase in dollar-value threshold from $10,000 to $25,000, for inclusion of the material contract clause and enhanced contract reporting for contracts for the purchase of goods, in amended §1207.3(b), the FHFA should consider instead imposing a universal mandatory threshold of $25,000 for all contracts, whether for the purchase of goods or services, and to allow optional reporting by FHLBanks with respect to contracts with a purchase amount lower than this mandatory threshold amount.

Although the FHLBanks generally appreciate the fact that the FHFA has chosen to take a fresh look at the appropriate level of minimum dollar-value threshold for contracts for goods, above which the Rule will require inclusion of the material contract clause[26] and itemized data reporting on numbers of contracts and amounts involved[27], the FHLBanks believe that a more productive approach to this issue -- especially given the additional reporting on exemptions, exceptions and limitations which would be mandated under the newly-added §§1207.3(c) and 1207.3(d) in the Amendments – would be to set a fixed minimum dollar threshold amount (which the FHLBanks recommend be set at $25,000) for all contracts, regardless of whether they are for goods or services, above which a material contract clause must be included and enhanced reporting must be conducted.

The FHLBanks also propose further amending §1207.3(b) to allow each individual FHLBank the option to elect to voluntarily report on any contracts entered into which are below this dollar-value threshold amount. In the event an FHLBank enters into multiple small-dollar-value contracts with diverse vendors of goods and services and wishes to count the value of such contracts toward its overall year-end diverse-vendor spend ratio, allowing the FHLBank the option to make this election may provide more accurate data to the FHFA with respect to such FHLBank's overall diversity and inclusion initiatives in the area of vendor management and procurement, and would allow the FHLBank to pursue such small-dollar-value goods or services contracts with diverse small-business providers who may not otherwise be willing or able to agree to the requirements of the material contract clause.

13. The additional contract reporting requirements of newly-added §§1207.3(c) and 1207.3(d), relating to the 90-day time frame and 30-day post-change notification requirement for disclosure of the types of contracts that each FHLBank considers exempt from the material contract clause and reporting requirements and any thresholds, exceptions and limitations it establishes for implementation under §1207.21(c)(2), should instead be included as part of each FHLBank's annual report requirements under §1207.23(b).

The Amendments add two new reporting requirements, in new §§1207.3(c) and 1207.3(d), which require each regulated entity to submit, as an initial filing 90 days after the effective date of the Amendments (§1207.3(c)) and as an additional supplemental filing within 30 days after any change (§1207.3(d)), a list of the types of contracts that the regulated entity considers to be exempt from the requirements of §1207.3(b), and any thresholds, exceptions and limitations the regulated entity establishes for the implementation of §1207.21(c)(2). In order to lessen the administrative burden on both the FHLBanks and the FHFA in terms of collecting and analyzing this material, the FHLBanks propose eliminating both

[26] As described in 12 C.F.R. §1207.21(b)(6).
[27] As required by 12 C.F.R. §§1207.22 and 1207.23(b)(13) through 1207.23(b)(22).

§1207.3(c) and §1207.3(d), and instead requiring that this list of the types of exemptions, thresholds, exceptions and limitations be included as part of the regular OMWI annual reporting requirements under §1207.23(b), and therefore be submitted on an annual basis.

Alternatively, the FHLBanks would be amenable to keeping the initial 90-day requirement of notification after the effective date of the Amendments in §1207.3(c), but replacing just the 30-day supplemental notification requirement of §1207.3(d) with an additional notification requirement as part of the annual report in §1207.23(b).

14. Amended §1207.23(b)(9)(ii), as currently worded, appears to impose an additional substantive requirement that goes beyond mere data collection and which requires the FHLBanks to engage in activities to promote diverse individuals into supervisory roles, which seems to require that the FHLBank engage in such promotions regardless of the merit of the pool of prospective candidates or their qualification for the requirements of the position.

The FHLBanks are concerned that the new requirement imposed by amended §1207.23(b)(9)(ii) goes farther than requiring mere data collection by an FHLBank for purposes of including such data in its OMWI annual reports, and may in fact impose a substantive responsibility on each FHLBank to create, implement and enforce

> strategies, initiatives, and activities executed during the preceding year **to promote diverse individuals** to supervisory and management roles;[28]

regardless of qualifications. The FHLBanks request that the FHFA consider replacing the phrase "promote diverse individuals" in the above-quoted section of the Amendments with a phrase such as "provide inclusive consideration of individuals for supervisory or management roles", or "increase diversity generally in its supervisory and management positions", so as to avoid suggesting (i) that internal promotion of diverse individuals is required in all circumstances, regardless of qualifications, and (ii) that internal promotion is favored in all cases over external hiring of diverse (or otherwise-qualified, regardless of their diversity status) supervisors and managers.

As currently formulated, the fact that the Amendments anticipate that this information must also be included in an annual report also implies that such promotions must be shown to have occurred each year. However, the FHLBanks promote individuals based not just on merit, but also on the operational requirements of the organization itself, and it is plausible to expect that in some years, there may be neither qualified individuals (whether diverse or not) to promote into supervisory or managerial positions, nor available positions in which to promote such individuals. Therefore, the FHLBanks believe that the more realistic and inclusive approach would be one which does not mandate, or imply the requirement of, annual promotions.

15. The requirement in amended §1207.23(b)(9)(i) to include minority, gender and disability classification data in the annual report showing the number of individuals responsible for "supervising employees and/or managing the functions of departments" should be clarified so that the definition or classification of "supervising employees" is consistent with what is reported by the FHLBanks in their annual Form EEO-1 filings.

[28] Proposed §1207.23(b)(9)(ii), at 74738; emphasis added.

The Amendments have added a new data collection requirement in amended §1207.23(b)(9) that now requires the regulated entities to include, in their OMWI annual reports,

> [d]ata showing for the reporting year by minority, gender and disability classification … [t]he number of individuals responsible for supervising employees and/or managing the functions or departments of the regulated entity[.][29]

As a threshold matter, the addition of the language requiring the FHLBanks to track individuals "responsible for … managing the functions or departments" of an FHLBank introduces a substantial level of ambiguity into the data collection mandate, since the concept of "managing" a function within an FHLBank can be construed a number of different ways, not just from one FHLBank to the next, but also from one functional area or department to the next within the same FHLBank. The FHLBanks therefore propose that the relevant data metric, and the one which §1207.23(b)(9) should limit itself to, is data showing, by relevant diverse-category classification, the number of employees supervising other employees only, since the focus of this section of the Amendments appears to be to capture data on, and support the inclusive consideration of, personnel managers.

Additionally, the former version of §1207.23(b)(9)(i) (which requested data collection relating to diverse individuals serving on an FHLBank's board of directors, and which has been renumbered pursuant to the Amendments as §1207.23(b)(10)) contained another qualifier, which was that all such data collected should use the same classifications of job categories as those listed on the Form EEO-1.[30] In order to reduce potential ambiguity over whether a particular job category qualifies as one which "supervis[es] employees" or otherwise serves in a managerial function, the FHLBanks believe that a desirable practice would be to require data submitted under amended §1207.23(b)(9) to conform to the classifications listed on the Form EEO-1 as well.

16. The elimination of the requirement that the regulated entity "[e]stablish internal procedures to receive and" attempt to resolve complaints of discrimination appears to require an FHLBank to publish a fixed process which may then bind the entity to strictly following such process, even when an alternative method of resolution might be more prudent or desirable.

Amended §1207.21(b)(4) eliminates the requirement that an FHLBank "establish internal procedures to receive" complaints of discrimination, and instead states that the policies and procedures of the regulated entity shall "attempt to resolve" complaints.

It is possible to envision a particular complaint for which a policy or procedure may not result in the most effective or desirable method of resolution, such as situations where litigation outside the scope of those procedures might be the most appropriate avenue for resolution. The FHLBanks therefore ask that the FHFA revert back to the original language in this section.

17. The requirement that the policies and procedures of a regulated entity should "develop a stand-alone diversity and inclusion strategic plan" or incorporate diversity and inclusion initiatives into its existing strategic plan, should be deleted from amended §1207.21(b)(7),

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[29] Proposed §1207.23(b)(9), at 74738.
[30] 12 CFR §1207.23(b)(9)(i)(B).

because the requirement to develop such a strategic plan outside of the entity's published policies and procedures already exists under amended §1207.21(d) and (e).

The Amendments add new section §1207.21(b)(7), an additional requirement for a regulated entity's policies and procedures, which specify that the policies and procedures should

> [d]evelop a stand-alone diversity and inclusion strategic plan or incorporate into [the entity's] existing strategic plan a diversity and inclusion plan that proactively focuses on promoting the advancement of diversity and inclusion. The stand-alone diversity and inclusion strategic plan and the incorporated diversity and inclusion plan are hereinafter referred to as the diversity and inclusion strategic plan.[31]

The FHLBanks believe that including this requirement as an element of a regulated entity's policies and procedures, as it currently stands by virtue of its status as a subcategory of section (b) of §1207.21 (which deals exclusively with elements that must be included in "[t]he policies and procedures of each regulated entity"), is unnecessary and redundant, because the requirement to develop a stand-alone diversity and inclusion strategic plan (or an element of an existing strategic plan specifically dealing with diversity and inclusion) is already required under the Amendments by new §§1207.21(d) and (e)[32], which sections do not deal with the policies and procedures of the regulated entity but instead treat the strategic plan, appropriately, as its own separate, stand-alone document.

The current formulation of amended §1207.21(b)(7) is confusing insofar as it states that the "policies and procedures … at a minimum, shall … [d]evelop a stand-alone diversity and inclusion strategic plan…". It is not the normal function of an entity's policies and procedures documents to "develop" a plan, which itself exists as a stand-alone document. Moreover, policies and procedures are documents that set forth the principles, rules and practices of the regulated entity as they currently exist; they do not function as strategic statements of a future aspirational state of existence, which is the role of a strategic plan document, not a policy or procedure. Therefore, the FHLBanks recommend that new section §1207.21(b)(7) be deleted in its entirety, as the subject matter of this section is already fully covered by the requirements of new sections §§1207.21(d) and (e).

18. ***The language in new section §1207.21(e)(2) requiring the FHLBanks to establish "measurable strategic goals and objectives for accomplishing … agreed-upon priorities and intended outcomes developed to … ensure the inclusion of minorities, women, and individuals with disabilities"[33], as part of their strategic plans, should be clarified to note that the goals and objectives anticipated under this paragraph do not require the FHLBanks to focus on specific "intended outcomes" in such strategic plans.***

The combination of the phrases "measurable goals and objectives", "intended outcomes", and "ensure the inclusion" in amended §1207.21(e)(2), read in conjunction with each other and in the context of the larger regulation, seem to suggest that the FHLBanks' strategic plans must strive for the achievement of specific numeric results. If this is not the FHFA's intent, then the FHLBanks would appreciate either a re-formulation of the language in §1207.21(e), or an affirmative statement to the effect that specific numeric outcomes are not contemplated under this subsection of the Rule.

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[31] Proposed §1207.21(b)(7), at 74737.
[32] Both sections, at 74737-38.
[33] Emphasis added.

Additional Proposed Technical Revisions To Definitions

19. The definition of "disabled-owned business" is unclear insofar as it does not indicate whether a qualified Service-Disabled Veteran-Owned Small Business Concern must also accrue more than fifty percent (50%) of its net profit or loss to one or more persons with a disability, in order to meet the definition.

The Amendments contain an amended definition of "disabled-owned business"[34], which contains three conditions, some but not all of which must be met by such a business in order to qualify under the definition. However, the unclear conjunctive use of "and", and disjunctive use of "or", at the end of the first and second of the three listed conditions, respectively, results in an unintended ambiguity as to whether the third condition (that "[m]ore than fifty percent (50%) of the net profit or loss of [the business] accrues to one or more persons with a disability") must be met in all situations where *either* of the first two conditions are also met, or in situations where *only* the second of the three conditions is also met.

The FHLBanks believe that the intent of the FHFA is to make the third condition necessary in all situations where either of the first two conditions is met. Accordingly, we propose that the relevant portions of the definition be revised to read as follows (changes shown in strikethrough and underlined):

> *Disabled-owned business* means a business~~, and~~ (which includes, but is not limited to, financial institutions, mortgage banking firms, investment banking firms, investment consultants or advisors, financial services entities, asset management entities, underwriters, accountants, brokers, brokers-dealers, and providers of legal services) for which either condition (1)(a) or (1)(b), as well as condition (2), are satisfied.
>
> (1) Either:
>
> (a) Qualified as a Service-Disabled Veteran-Owned Small Business Concern as defined in 13 CFR 125.8 through 125.13; or ~~(2)~~
>
> (b) 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)~~
>
> (2) More than fifty percent (50%) of the net profit or loss of which accrues to one or more persons with a disability.

Of course, if the above proposed formulation does not correctly capture the intent of the FHFA, the FHLBanks would request that the definition be revised as appropriate to clarify the FHFA's actual intent.

20. The definition of "diversity and inclusion strategic planning" should be amended to make clear that all such strategic planning should be done consistent with financially safe and sound business practices.

The FHLBanks propose that the clause "*to the maximum extent possible in balance with financially safe and sound business practices*" be added to the new definition of "diversity and inclusion strategic

[34] Proposed §1207.1, at 74736.

planning"[35] after the word "ensuring", to be consistent with the "purpose" provision of the current regulation[36] and the "policies and procedures" section of the equal opportunity in employment and contracting portion of the regulation[37].

21. The current definition of "minority" in the regulation (which has not changed in the Amendments) should be amended to account for non-"American" minorities.

Although the Amendments as currently written do not propose any changes to the existing definition of "minority"[38], the FHLBanks propose that the FHFA consider revising such definition to expand the reach of the definition beyond races or ethnicities that are "American", such as the current "Black (or African) American", "Hispanic (or Latino) American", and "Asian American". The FHLBanks believe that the definition would be more inclusive if it also included minority populations, such as Black, Hispanic/Latino, or Asian individuals, whether or not they hold U.S. citizenship.

22. The newly-defined term "prime contractor (tier 1)" should be changed to "primary contracting entity" or "primary vendor", to avoid confusion with similar terms that have established meanings in other industries, as well as to avoid confusion with the FHLBanks' own pre-existing vendor risk categorization criteria.

The Amendments add a new definition for "prime contractor (tier 1)".[39] Although the FHLBanks agree that making definitional distinctions between primary third-party vendors and such vendors' subcontractors is necessary given some of the new reporting responsibilities proposed in amended §1207.23 and elsewhere, we note that the term "prime contractor" is a term currently used in the construction industry, and has a specific meaning in that context which is not applicable to non-construction contractor entities with which the FHLBanks may enter into agreements. The FHLBanks therefore believe that the use of this term in the context of the Rule is inappropriate, and would suggest the use of a different term, such as "primary contracting entity" or "primary vendor", which does not have an established meaning.

Additionally, certain of the FHLBanks currently use the terms "tier 1" and "tier 2" in their own internal vendor management programs as a way to categorize vendors according to risk criteria. In order that there not be confusion generated in the nomenclature used to categorize primary vendors and subcontractors, the FHLBanks would request that the terms "tier 1" and "tier 2" be omitted from the definitions of "primary contracting entity/primary vendor" and "subcontractor".

23. The definitions of "minority-owned business", "disabled-owned business" and "women-owned business" should be modified to allow the FHLBanks to rely on the self-reported status of each of these business categories, with respect to verifying or validating business ownership by one or more minorities, persons with a disability, or women, respectively.

Each of the amended definitions of "minority-owned business", "disabled-owned business", and "women-owned business"[40] contains new language, not in the current version of the Rule's definitions, which

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[35] Proposed §1207.1, at 74736.
[36] 12 C.F.R. §1207.2(b).
[37] 12 C.F.R. §1207.21(b).
[38] 12 C.F.R. §1207.1.
[39] Proposed §1207.1, at 74736.
[40] Each, in proposed §1207.1, at 74736.

states that a business can qualify under one of the three respective categories if, in addition to meeting other conditions,

> more than fifty percent (50%) of the ownership or control [of such business] is held, directly or indirectly, by one or more [qualifying diverse persons].

In order to simplify the investigatory and due diligence responsibilities that verifying or validating such ownership or control status would otherwise place on the FHLBanks, the FHLBanks propose that the FHFA consider adding language to each of these definitions, allowing an FHLBank to rely on an enterprise's self-reported status regarding whether more than 50% of an ownership or control interest is held by one or more qualifying diverse individuals (either minority individuals, disabled individuals, or women, as the context of each respective definition may require).

24. A definition of "veteran" and "veteran-owned business" should be added to the Amendments and the FHLBanks should be allowed to count transactions with veteran-owned businesses toward diverse-qualified annual spend. The FHLBanks should be permitted, but not required, to report such transactions with veteran-owned businesses as part of their OMWI annual reports, at their option.

The FHLBanks request that veterans be added to the list of protected classifications and included in the FHLBanks' diversity and inclusion efforts with respect to procurement, capital markets transactions, employment, AHP grants and lending, and other FHLBank initiatives, for the purpose of allowing the FHLBanks to count such transactions toward diverse-qualified annual spend in their annual OMWI reports. The FHLBanks value the contributions made by veterans and believe the addition of veterans would be consistent with the spirit of inclusion and encourage creativity and innovation in addressing the unique needs of veterans. Further, from a practical perspective there are resources available for identifying veteran-owned businesses as potential vendors. Therefore, it would be practicable to engage this segment of the population by searching for veteran-owned businesses during the RFP and vendor engagement process.

The FHLBanks propose that qualifying transactions with veteran-owned businesses not be made subject to the mandatory reporting categories set forth in the Amendments to §1207.23(b), but that the FHLBanks be allowed the option to include such transactions in their annual reporting.

25. The newly-defined term "minority-serving financial institution" should be revised to reflect the unique cooperative structure of the FHLBanks and to clarify majority ownership or control.

The FHLBanks ask that the definition of "minority-serving financial institution" be revised in two ways, as applied to the FHLBanks. First, it should be limited to *members* of the FHLBank. Without limiting the definition to a FHLBank's members, the use of the term in §1207.23(b)(12)(i) seems to suggest a regulatory expectation that the FHLBanks will undertake a significant new substantive obligation that goes well beyond what is contemplated by both the Act's authorizing provisions, and the Rule generally: to become experts in analyzing the challenges facing even *nondepository* minority-serving financial institutions (such as mortgage companies) with which the FHLBanks have no business relationship. Second, the definition should be revised so as to be limited to FHLBank members that are *majority owned/controlled by minorities*. The word "including" in the definition suggests that it could be read more broadly to encompass non-minority-owned institutions that primarily serve minorities; however, the

FHLBanks are not in a position to know the demographics of the customers their non-minority-owned-members "primarily" serve.

26. A general definition of "diversity spend" should be added to capture total qualifying diverse spend made by an FHLBank.

The FHLBanks request that the FHFA consider adding a definition of "diversity spend" generally, which would capture all qualifying spend made by an FHLBank with both diverse-owned and non-diverse owned businesses, and which could be used as a guide when calculating applicable data for the relevant reporting period.

Conclusion

The FHLBanks appreciate the effort of the FHFA in proposing enhancements to the existing Office of Minority and Women Inclusion. However, we believe that the edits to the Amendments, outlined by the FHLBanks above, may more accurately achieve an enhanced focus in a manner that is not unduly burdensome to the regulated entities and does not unintentionally conflict with other regulatory directives, such as an emphasis on safety, soundness, risk mitigation, or access to fair and unbiased credit. The FHLBanks appreciate the opportunity to offer these comments.

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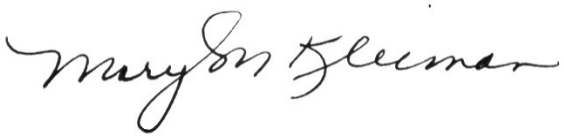

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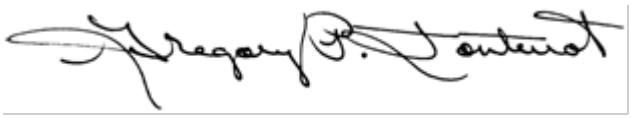

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