



Billing Code: 8070-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–12]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Contractor Workforce Inclusion Good Faith Efforts—60-day Notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as “Contractor Workforce Inclusion Good Faith Efforts,” which has been assigned control number 2590-0016 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2020.

DATES: Interested persons may submit comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments to FHFA, identified by “Proposed Collection; Comment Request: ‘Contractor Workforce Inclusion Good Faith Efforts, (No. 2020-N-12)’” by any of the following methods:

- *Agency Website:* www.fhfa.gov/open-for-comment-or-input.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by *e-mail* to FHFA at RegComments@fhfa.gov to ensure timely receipt by the agency.

- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: “Contractor Workforce Inclusion Good Faith Efforts, (No. 2020-N-12).”

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Kenneth Hunter, Office of Minority and Women Inclusion, Kenneth.Hunter@fhfa.gov, (202) 649-3127; Karen Lambert, Associate General Counsel, Karen.Lambert@fhfa.gov, (202) 649-3094; or Angela Supervielle, Counsel, Angela.Supervielle@fhfa.gov, (202) 649-3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

A. Background

Section 342(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) requires FHFA and certain other Federal agencies each to establish an Office of Minority and Women Inclusion (OMWI)

responsible for all matters of the agency relating to diversity in management, employment, and business activities.¹ Section 342(c)(1) requires the OMWI Director at each agency to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority- and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts. Section 342(c)(2) requires that the OMWI Director include in the agency's procedures for evaluating contract proposals and hiring service providers a component that gives consideration to the diversity of an applicant, to the extent consistent with applicable law. That statutory provision also requires that each agency's procedures include a written statement that a contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

Further, section 342(c)(3)(A) of the Dodd-Frank Act requires that each agency's standards and procedures include a procedure for determining whether an agency contractor or subcontractor has failed to make a good faith effort to include minorities and women in its workforce. If the OMWI Director determines that a contractor or subcontractor has failed to make such a good faith effort, section 342(c)(3)(B)(i) provides that the OMWI Director shall recommend to the agency administrator that the contract be terminated. Section 342(c)(3)(B)(ii) provides that, upon receipt of such a recommendation, the agency administrator may either terminate the contract, make a referral to the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor, or take other appropriate action.

As a means of implementing the requirements of section 342(c) of the Dodd-

¹ 12 U.S.C. 5452.

Frank Act, FHFA developed a Minority and Women Inclusion Clause (MWI Clause) that it includes in Agency contracts with a dollar value greater than the “simplified acquisition threshold” established in the Federal Acquisition Regulation (FAR).² The MWI Clause requires a contractor to confirm its commitment to equal opportunity in employment and contracting, and to implement that commitment by ensuring, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in its workforce. The MWI Clause also requires that a contractor include the substance of the MWI Clause in all subcontracts with a dollar value greater than \$150,000 awarded under the contract. (Hereinafter, contractors that are subject to the MWI Clause and subcontractors that are subject to a similar clause required to be included in a subcontract are referred to as “covered” contractors and subcontractors.)

Finally, the MWI Clause requires a contractor to provide, when requested by FHFA, documentation demonstrating that the contractor, as well as any covered subcontractor has made a good faith effort to ensure the fair inclusion of minorities and women in its workforce. The MWI Clause provides that such documentation may include, but is not limited to: (1) the contractor’s total number of employees, and the number of minority and women employees, by race, ethnicity, and gender (*e.g.*, an EEO-1 Employer Information Report (Form EEO-1)); (2) a list of the subcontracts the contractor awarded including the dollar amount, date of the award, and the ownership status of the subcontractor by race, ethnicity, and/or gender; (3) information similar to

² See FAR 2.101. The FAR appears at 48 CFR chapter 1. Although the FAR has not yet been updated, Congress increased the simplified acquisition threshold to \$250,000 in 2017. See National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, section 805, 131 Stat. 1283, 1456 (2017), *codified at* 41 U.S.C. 134. The Civilian Agency Acquisition Council Memorandum for Civilian Agencies dated February 16, 2018 provides instructions to agencies that desire to issue a class deviation prior to this change being incorporated in the FAR. To date, FHFA has not issued such a deviation to increase the simplified acquisition threshold.

that required under the first item above for each subcontractor; and (4) the contractor's plan to ensure that minorities and women have appropriate opportunities to enter and advance within its workforce, including outreach efforts (hereinafter, a "workforce inclusion plan"). A request for documentation by FHFA pursuant to this provision of the MWI Clause constitutes a "collection of information" within the meaning of the PRA.

On March 9, 2018, FHFA finalized its "Policy Establishing Procedures to Determine Compliance by Contractors with the Minority and Women Inclusion Contract Clause" (Good Faith Efforts Policy (GFEP)), which establishes a process to determine whether covered contractors or subcontractors are making good faith efforts to ensure the fair inclusion of minorities and women in their respective workforces. The GFEP ensures transparency, clarity, and consistency in the good faith effort review process. Covered contractors agree to provide documentation of the good faith effort they have made in support of this commitment within 10 business days after a request from FHFA. According to the GFEP, "OMWI will rely on the conclusions of a prior GFE review if OMWI conducted that review within the past two fiscal years."

FHFA's OMWI implemented the GFEP by conducting its first round of reviews of 20 covered contractors in May 2018. OMWI initiated another round of reviews in December 2018. The contractors' sizes ranged from small companies to large corporations. In March 2019, OMWI provided a summary of its reviews of 32 covered contractors. OMWI's GFEP review found that all the selected contractors had submitted satisfactory information to show compliance with their GFE contractual obligation. OMWI also considered developing new tools to capture and display information from GFE reviews to streamline the current process.

B. Need for and Use of the Information Collection

The purpose of this information collection is to fulfill the requirements of section 342(c) of the Dodd-Frank Act. The collected information allows FHFA's OMWI Director to determine whether covered contractors and subcontractors have complied with their contractual obligations to make good faith efforts to ensure, to the maximum extent possible consistent with applicable law, the fair inclusion of minorities and women in their respective workforces.

C. Burden Estimate

FHFA estimates that the average annual burden imposed on all respondents by this information collection over the next three years will be 172 hours.

Because, as explained below, the amount of burden imposed upon a contractor by this information collection will differ depending upon whether the contractor has 50 or more employees, FHFA has based its total burden estimate on two separate sets of calculations—(1) one for contractors and subcontractors with 50 or more employees (16 hours); and (2) another for contractors and subcontractors with fewer than 50 employees (156 hours).

FHFA includes the MWI Clause in Agency contracts with a dollar value greater than \$150,000. Under the MWI Clause, FHFA may also request information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who, because the substance of the MWI Clause would be included in their subcontracts, would have a contractual obligation to keep records and report data as required under the MWI Clause.

FHFA data on the dollar value of contracts awarded by the Agency from the beginning of fiscal year 2016 through the third quarter of fiscal year 2019 shows that 61 contractors were subject to the MWI Clause. FHFA believes that 44 of those contractors have 50 or more employees, while 17 contractors have fewer than 50 employees. FHFA estimates that no more than two subcontracts with a dollar value of \$150,000 or more were awarded by Agency contractors during that same time period. Both of those subcontractors have 50 or more employees each. Thus, over the preceding three years, a total of 63 contractors and subcontractors were subject to the MWI Clause—46 of which have 50 or more employees and 17 of which have fewer than 50 employees.

Based on these figures, FHFA estimates that, on average over the next three years, 48 contractors and subcontractors with 50 or more employees and 18 contractors or subcontractors with fewer than 50 employees will be subject to the MWI Clause at any given time. As mentioned above, the GFEP provides that OMWI will rely on the conclusions of a prior GFE review if OMWI conducted that review within the past two fiscal years. Accordingly, a covered contractor or subcontractor is required to submit new information only once within any three year period.

(1) Documentation Submitted by Contractors with 50 or More Employees

FHFA estimates that the average annual burden on contractors with 50 or more employees will be 16 hours (0 recordkeeping hours + 16 reporting hours).

Because Federal contractors with 50 or more employees are already required to maintain the same types of records that may be requested pursuant to the MWI Clause under regulations implementing Title VII of the Civil Rights Act of 1964³ and Executive

³ 42 U.S.C. 2000e, *et seq.*

Order 11246 (E.O. 11246),⁴ this information collection does not impose additional recordkeeping burdens on such contractors and subcontractors. FAR 52.222-26, Equal Opportunity, requires that such contractors' contracts and subcontracts include a clause implementing E.O. 11246. OFCCP regulations require each contractor with 50 or more employees and a Federal contract or subcontract of \$50,000 or more to maintain records on the race, ethnicity, gender, and EEO-1 job category of each employee.⁵ OFCCP regulations also require each such contractor to: (1) demonstrate that it has made a good faith effort to remove identified barriers, expand employment opportunities, and produce measurable results;⁶ and (2) develop and maintain a written program summary describing the policies, practices, and procedures that the contractor uses to ensure that applicants and employees received equal opportunities for employment and advancement.⁷ In lieu of creating and maintaining a separate workforce inclusion plan to submit in satisfaction of the MWI Clause, a contractor or subcontractor with 50 or more employees could submit the written program summary that it is already required to maintain under the OFCCP regulations to demonstrate its good faith efforts to ensure the fair inclusion of minorities and women in its workforce.

With respect to reporting burden, FHFA estimates that it will take each contractor or subcontractor with 50 or more employees approximately one hour to retrieve, review, and submit the documentation specified in the MWI Clause. Thus, the estimate of the triennial burden upon contractors or subcontractors with 50 or more employees associated with reporting requirements under this information collection is 48

⁴ Exec. Order No. 11246, 30 FR 12319 (Sept. 28, 1965).

⁵ See 41 CFR 60-1.7.

⁶ See 41 CFR 60-2.17.

⁷ See 41 CFR 60-2.31.

hours (48 respondents x 1 hour per respondent) and the annual burden is 16 hours.

(2) *Documentation Submitted by Contractors with Fewer Than 50 Employees*

FHFA estimates that the average annual burden on contractors and subcontractors with fewer than 50 employees will be 156 hours (150 recordkeeping hours + 6 reporting hours).

OFCCP regulations require contractors with fewer than 50 employees to maintain records on the race, ethnicity, and gender of each employee.⁸ FHFA believes that such contractors also keep EEO-1 job category information in the normal course of business, despite the fact that they are not required by law to do so. However, contractors or subcontractors with fewer than 50 employees may not have the type of written program summary that is required of larger contractors under the OFCCP regulations or any similar document that could be submitted as a workforce inclusion plan under the MWI Clause. Accordingly, such contractors or subcontractors may need to create a workforce inclusion plan to comply with the MWI Clause.

In order to estimate the burden associated with creating a workforce inclusion plan, FHFA considered the OFCCP's burden estimates for the time needed to develop the written program summaries required under its regulations.⁹ In its OMB Supporting Statement, the OFCCP estimated that a contractor with 50 to 100 employees would take approximately 73 hours to create an initial written program summary. While the OFCCP regulations require contractors to perform time-consuming quantitative analyses when developing their written program summaries, such analyses would not be required

⁸ See 41 CFR 60-3.4.

⁹ See PRA Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply and Service Program, OMB Control No. 1250-0003, at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201906-1250-001.

in connection with the creation of a workforce inclusion plan. For this reason, FHFA believes that a contractor could develop a workforce inclusion plan in about one-third of the time that it would take to develop the written program summary required under the OFCCP regulations.

FHFA estimates that a contractor or subcontractor with fewer than 50 employees would spend approximately 25 hours creating a workforce inclusion plan for the first time. It is likely that, going forward, many small contractors and subcontractors will simply submit updated versions of workforce inclusion plans that they have submitted previously. For purposes of this burden estimate, however, FHFA has assumed that all small contractors and subcontractors will need to create a new plan every time they are required to submit information under the MWI clause. This results in an estimated average triennial recordkeeping burden on all contractors and subcontractors with fewer than 50 employees over the next three years of 450 hours (18 respondents x 25 hours per respondent), with an annual burden of 150 hours.

As with larger entities, FHFA estimates that it will take each contractor and subcontractor with fewer than 50 employees approximately one hour to retrieve, review, and submit the documentation specified in the MWI Clause. Thus, FHFA estimates that the average triennial reporting burden on all contractors and subcontractors with fewer than 50 employees will be 18 hours (18 respondents x 1 hour per respondent), with an annual burden of 6 hours.

D. Comment Request

FHFA requests written comments on the following: (1) whether the collection of information is necessary for the proper performance of FHFA functions, including

whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Robert Winkler,
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