



“CONTRACTOR WORKFORCE INCLUSION GOOD FAITH EFFORTS”

OMB NUMBER 2590-0016

SUPPORTING STATEMENT

A. JUSTIFICATION

1. Circumstances necessitating the collection of information

Section 342(a)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) requires the Federal Housing Finance Agency (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-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

¹ 12 U.S.C. 5452.

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 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

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.

GFE contractual obligation. OMWI also considered developing new tools to capture and display information from GFE reviews to streamline the current process.

2. Use of data

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.

3. Use of information technology

Respondents have the option of complying with this information collection requirement by using electronic or paper submissions.

4. Efforts to identify duplication

This information collection avoids duplication by allowing respondents to fulfill the reporting requirement, where possible, by submitting information that already is available to, or compiled by, respondents for other purposes.

5. Impact on small entities

This information collection will not have a significant economic impact on a substantial number of small entities. The collection will affect small as well as larger entities. As described in Item #12 of this Supporting Statement, FHFA believes the reporting and recordkeeping burdens will be low for all entities, regardless of size.

6. Consequences of less frequent collection and obstacles to burden reduction

Generally, under the GFEP, covered contractors and subcontractors will be required to submit information on their good faith inclusion efforts only once during any three-year period. To require less frequent submissions would compromise the ability of the Agency to fulfill its duty under section 342(c)(3) of the Dodd-Frank Act to determine whether any covered contractor or subcontractor has failed to make a good faith effort to ensure the fair inclusion of minorities and women in its workforce.

7. Circumstances requiring special information collection

The MWI Clause and the GFEP requires each covered contractor and subcontractor to provide documentation to demonstrate its good faith efforts to ensure the fair inclusion of minorities and women in its workforce within 10 business days of a written request from FHFA's Contracting Officer, or such longer time as the Contracting Officer determines. Although the minimum response time provided in the MWI Clause is shorter than the 30-day guideline provided in 5 CFR 1320.5(d)(2)(ii), FHFA believes that the 10 days provided under the MWI Clause is a

reasonable amount of time to respond to a request to submit the specified documentation and is justifiable given the requirements of section 342(c) of the Dodd-Frank Act.

Section 342(c) and the MWI Clause require contractors to engage in good faith efforts at all times during the term of a contract and not merely in the 30 days preceding the Contracting Officer's review. Because each covered contractor and subcontractor should have a workforce inclusion plan in place at all times during the term of the contract, 10 days should normally be sufficient time to submit a copy of the plan to the Contracting Officer. The other data that may be required to be submitted under the MWI Clause are factual in nature, and it is reasonable for contractors to be prepared to provide them. Moreover, the MWI Clause requires that information be provided within 10 business days of a written request "or such longer time as the Contracting Officer determines." Federal Contracting Officers have a duty to act in good faith in administering contracts. Thus, if unusual circumstances exist that would prevent a contractor from providing the requested data within 10 days, the Contracting Officer would be required to provide the contractor a reasonable period of time in which to respond to the request.

In addition, because most respondents may fulfill the reporting requirement by submitting information that has already been prepared for other purposes, the specified documentation should in most cases be readily available when the request is received. As explained in Item #12 of this Supporting Statement, FHFA estimates that it will take contractors on average approximately one hour to retrieve and submit the documentation specified in the MWI Clause.

8. Solicitation of comments on information collection

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published a request for public comments regarding this information collection in the *Federal Register* on May 27, 2020.³ The 60-day comment period closed on July 27, 2020. FHFA received no comments.

9. Provision of payments or gifts to respondents

No payment or gift will be provided to any respondent.

10. Assurance of confidentiality

FHFA makes no express assurance of confidentiality in relation to this information collection. However, contractors and subcontractors submitting information that is considered sensitive and confidential will be advised to follow the procedures under FHFA's regulations implementing the Freedom of Information Act (FOIA) for designating information as confidential business information or seeking confidential treatment.⁴

11. Questions of a sensitive nature

There are no questions of a sensitive nature in this information collection.

³ See 85 FR 31777 (May 27, 2020).

⁴ See 12 CFR part 1202.

12. Estimates of the hour burden of the information collection on respondents

FHFA estimates that the average annual burden imposed on all respondents by this information collection over the next three years will be 172 hours. The estimated annualized cost associated with this burden estimate is \$15,486.⁵

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

⁵ FHFA has based its estimates as to the hourly costs associated with the burdens imposed by this information collected on data contained in the United States Bureau of Labor Statistics publication "Employer Costs for Employee Compensation" for March 2019 (https://www.bls.gov/oes/current/oes_nat.htm#43-0000). That publication shows mean hourly compensation of \$20.87 for "Secretaries and Administrative Assistants" (occupational category #43-6010) and \$62.29 for "Human Resources Managers" (occupational category #11-3121). For purposes of the cost burden calculations, FHFA has added 50% to those amounts to account for benefits and overhead and rounded up that figure to the next highest whole dollar.

FHFA estimates that the average annual burden on contractors with 50 or more employees will be 16 hours (0 recordkeeping hours + 16 reporting hours) and that the annualized cost associated with this burden will be \$1,008.

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 1964⁶ and Executive Order 11246 (E.O. 11246),⁷ 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.⁸ 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;⁹ 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.¹⁰

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. Based upon that assumption, FHFA estimates that the annual reporting burden imposed upon such contractors and subcontractors will be 16 hours, with associated costs of \$1,008, calculated as follows:

Administrative support staff of contractor or subcontractor retrieves and, after managerial review and approval, submits documentation.

- Time per contractor: 0.5 hours
- Total contractors: 48
- Total hours triennially: 24
- Total hours annually: 8
- Hourly rate: \$32 (includes salary, benefits, and overhead)
- Total cost: \$256

⁶ 42 U.S.C. 2000e, *et seq.*

⁷ E.O. 11246, 30 FR 12319 (Sept. 28, 1965).

⁸ See 41 CFR 60-1.7.

⁹ See 41 CFR 60-2.17.

¹⁰ See 41 CFR 60-2.31.

Managerial and professional employees of contractor or subcontractor review and approve submission of documentation.

- Time per contractor: 0.5 hours
- Total contractors: 48
- Total hours triennially: 24
- Total hours annually: 8
- Hourly rate: \$94 (includes salary, benefits, and overhead)
- Total cost: \$752

(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) and that the annualized cost associated with this burden will be \$14,478.

OFCCP regulations require contractors with fewer than 50 employees to maintain records on the race, ethnicity, and gender of each employee.¹¹ 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.¹² 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 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. Based upon those assumptions, FHFA estimates that the recordkeeping burden imposed upon

¹¹ See 41 CFR 60-3.4.

¹² 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.

contractors and subcontractors with fewer than 50 employees will be 150 hours and that the associated costs will be \$14,100, calculated as follows:

Managerial and professional employees of contractor or subcontractor draft, edit, and approve workforce inclusion plan.

- Time per contractor: 25 hours
- Total contractors: 18
- Total hours triennially: 450
- Total hours annually: 150
- Hourly rate: \$94 (includes salary, benefits, and overhead)
- Total annual cost: \$14,100

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. Based upon that assumption, FHFA estimates that the reporting burden imposed upon contractors and subcontractors with fewer than 50 employees will be 18 hours, with associated costs of \$378, calculated as follows:

Administrative support staff of contractor or subcontractor retrieves and, after managerial review and approval, submits documentation.

- Time per contractor: 0.5 hours
- Total contractors: 18
- Total hours triennially: 9
- Total hours annually: 3
- Hourly rate: \$32 (includes salary, benefits, and overhead)
- Total cost: \$96

Managerial and professional employees of contractor or subcontractor reviews and approves submission of documentation.

- Time per contractor: 0.5 hours
- Total contractors: 18
- Total hours triennially: 9
- Total hours annually: 3
- Hourly rate: \$94 (includes salary, benefits, and overhead)
- Total cost: \$282

13. Estimated total annualized cost burden to respondents

FHFA has not identified any costs to respondents other than the hourly personnel costs detailed under item #12.

14. Estimated cost to the federal government

FHFA estimates that the average annual burden on the federal government in connection with this information collection will be 66 hours and that the annualized cost associated with this burden will be \$6,468. These estimates are based on the following calculations:

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

FHFA senior policy analyst reviews and analyzes documentation submitted pursuant to the MWI Clause by contractors with 50 or more employees:

- Hours per submission: 3
- Total submissions: 48
- Total hours triennially: 144
- Total hours annually: 48
- Hourly rate: \$98 (includes salary, benefits and overhead)
- Total cost: \$4,704

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

FHFA senior policy analyst reviews and analyzes documentation submitted pursuant to the MWI Clause by contractors with fewer than 50 employees:

- Hours per submission: 3
- Total submissions: 18
- Total hours triennially: 54
- Total hours annually: 18
- Hourly rate: \$98 (includes salary, benefits and overhead)
- Total cost: \$1,764

15. Reasons for change in burden

FHFA has decreased the estimated total annual burden hours to 172 from the 368 that were shown in the 2017 Supporting Statement submitted in connection with this information collection. This decrease is due primarily to the fact that the 2017 estimates assumed that most covered contractors and subcontractors would be required to submit information on their good faith inclusion efforts annually. In fact, covered contractors and subcontractors are now required to submit information on their good faith inclusion efforts only once during any three-year period. Thus, the burden hours are now averaged over a three-year period, rather than annually, significantly reducing the annual burden hours estimate.

The estimated costs associated with the burden hours decreased to \$15,486 from \$20,256. This was due to the overall decrease in estimated burden hours, but also offset by an increase in the estimated per hour costs for the employees performing the functions.

16. Plans for tabulation, statistical analysis and publication

FHFA will not publish the results of this information collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate

FHFA plans to display the expiration date for OMB approval.

18. Explain each exception to the topics of the certification statement identified in “certification for paperwork reduction act submission”

There are no exceptions to the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”

B. Collection of Information Employing Statistical Methods

The information collection does not employ statistical methods.