

RESOLUTION TRUST CORPORATION**12 CFR Part 1617**

RIN 3205-AA08

Minority and Women Owned Business and Law Firm Program

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) hereby promulgates a final rule implementing section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), section 401 of the RTC Refinancing, Restructuring and Improvement Act of 1991 (RRIA) and section 21A(w) of the Federal Home Loan Bank Act (FHLBA), which was added by section 3(a) of the Resolution Trust Corporation Completion Act of 1993, (RTCCA). The final rule augments the RTC's existing outreach program, which ensures the inclusion of minorities and women and entities owned by minorities and women in RTC contracting to the maximum extent possible, by meeting the mandates in RRIA and the RTCCA. Specifically, this rule augments the bonus points required by the RRIA for firms owned or controlled by minorities or women, as well as for other entities in which they have substantial involvement. The final rule implements new requirements imposed by the RTCCA, including the requirement that the RTC revise its contracting procedures to ensure that minority and women owned businesses and law firms are not inadvertently excluded, and that contracts with fees of equal to or greater than \$500,000 not be awarded unless the contractor subcontracts specified percentages of work to minority or women owned businesses and law firms.

EFFECTIVE DATE: This regulation is effective February 8, 1995.

FOR FURTHER INFORMATION CONTACT: Johnnie B. Booker, Vice President, Division of Minority and Women's Programs, Resolution Trust Corporation, 801 17th Street, N.W., Washington, DC 20434-0001, 202-416-6925. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**A. Background**

FIRREA, enacted on August 9, 1989, amended the FHLBA, 12 U.S.C. 1421 *et seq.*, by adding section 21A, that established the RTC. Section 21A(b)(11)(A)(ii) provides that, in carrying out the duties of the RTC, the services of independent contractors shall be utilized if deemed practicable

and efficient by the RTC. FIRREA, at section 1216, 12 U.S.C. 1833e, additionally required the RTC to prescribe regulations to establish and oversee a minority and women outreach program to ensure inclusion, to the maximum extent possible, of minorities and women and entities owned by minorities and women in contracting activities of the RTC.

On August 15, 1991, the RTC published in the (56 FR 40484) an Interim Final Rule (12 CFR 1617) (1991 Rule) to govern the outreach portion of the program. The 1991 Rule also provided standards for qualifying as a minority and women owned business (MWOB) or minority and women owned law firm (MWOLF) for purposes of the program. Public comment was solicited, and 57 comments were received.

In November of 1991, Congress passed the RRIA. The RRIA required that in evaluating contract offers, the RTC provide technical bonuses of at least 10 percent and cost bonuses of at least 5 percent to MWOBs, MWOLFs and certain joint ventures. The RRIA also gave the RTC authority to adjust the level of bonus points as necessary.

On August 10, 1992, the RTC published (57 FR 35728) a second Interim Final Rule, 12 CFR 1617, (1992 Rule) to incorporate the mandates of the RRIA and to respond to comments that were filed in response to the 1991 Rule. The 1992 Rule set forth the scope of the RTC's Minority and Women Outreach and Contracting Program (MWOC) and set out as its mission the identification, promotion, and certification of appropriate entities for inclusion in RTC contracting activities. The 1992 Rule incorporated the Congressionally mandated program for awarding cost and technical bonuses to eligible individuals and firms, including qualified joint ventures.

The RTC stated in the preamble to the 1992 Rule, its expectation that implementation of its augmented outreach program and authority to award cost and technical bonus points would increase the percentage awarded to MWOBs to 30 percent annually. The RTC also expected that the percentage of fees paid would be commensurate with the percentage of awards to MWOBs. The RTC expected that the Division of Legal Services would increase the level of legal fees paid annually on new assignments to MWOLFs to at least 20 percent. In addition, the RTC expected that at least 10 percent of the fees paid annually to law firms would be for services performed by minority or women partners and other minority and women attorneys in non-MWOLFs. Public comment on the 1992 Rule was

solicited and four comments were received.

On December 17, 1993, the RTCCA was enacted which amended section 21A of the FHLBA. The RTC is specifically required to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs; to promulgate sanctions for failure to comply with MWOB and MWOLF subcontracting provisions; and to establish procedures to require all contracts let, including legal services, under which the contractor would receive fees or other compensation in an amount equal to or greater than \$500,000, to have a subcontract with a MWOB or MWOLF.

Section 21A(w)(6)(A) requires the RTC to revise the procedures for reviewing and qualifying applicants for eligibility for future contracts on all Basic Ordering Agreements/Task Order Agreements (BOAs/TOAs) to ensure that minorities and women are not excluded from eligibility for task orders or other contracting mechanisms. Section 21A(w)(6)(B) requires the RTC to review all lists of contractors determined to be eligible for future task orders and other contracting mechanisms to ensure the maximum participation level possible of minority and women owned businesses; and to issue appropriate regulations and procedures. In keeping with these requirements, this rule defines procedures for ensuring that MWOBs and MWOLFs are not excluded from eligibility for task orders and other contracting mechanisms.

Section 21A(w)(7) requires the RTC to establish procedures and uniform standards, and to commit sufficient resources, including personnel, to contract oversight and enforcement of all laws, regulations, orders, policies and standards governing contracts with the Corporation. This rule identifies procedures for contract oversight and enforcement relating to Minority and Women's Programs.

Section 21A(w)(15) requires the RTC to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of the class of MWOBs and MWOLFs whose total number of certified contractors comprise not less than 5 percent of all MWOBs and MWOLFs. The RTCCA states that these guidelines may reflect the regional and local geographic distribution of contracts awarded, but shall not be accomplished at the expense of any