

eligible MWOBs and MWOLFs in any subgroup that falls below the 5 percent threshold in any region or locality. The RTC is studying this issue to assess the reasonable distribution of contract awards with commensurate fees to each ethnic and gender subgroup on a region-by-region basis. Guidelines will be issued separately from this regulation.

Section 21A(w)(16) requires the RTC to prescribe regulations which provide contract sanctions for failure to comply with subcontract and joint venture requirements. Under this provision, regulations defining sanctions relating to violation of MWOB joint venture and subcontracting plans, as well as, violations of MWOLF joint referral arrangements are incorporated in this rule.

Section 21A(w)(18) requires the RTC to establish reasonable goals for contractors for services with the Corporation to subcontract with MWOBs and MWOLFs. The RTCCA states that the RTC may not enter into any contracts under which the contractor would estimate to receive fees or other compensation for services in an amount equal to or greater than \$500,000, unless the contractor subcontracts with MWOBs and MWOLFs in an amount commensurate with the percentage of services provided by the businesses. This rule sets forth guidelines and procedures to meet the statutory mandates.

Given RTC's sunset date of December 31, 1995, and that contracting activity is expected to decline in both awards and contract dollars, the mandatory subcontracting goals are being set at a level that seem, at a minimum, achievable based on RTC's data. For all contracts awarded to non-MWOB and non-MWOLF prime contractors, and MWOB joint ventures and MWOLF joint referrals with less than 50 percent MWOB/MWOLF participation, a mandatory MWOB/MWOLF subcontracting requirement of 10 percent has been established for all contracts equal to or greater than \$500,000. In other words, on each such contract, a minimum of 10 percent of the fees and other compensation must be paid to an MWOB or MWOLF subcontractor, which shall be commensurate with the percentage of the services performed by such MWOB or MWOLF. For a MWOB or MWOLF prime contractor, and a MWOB joint venture or a MWOLF joint referral with 50 percent or more MWOB/MWOLF participation, the RTC has established a 5 percent MWOB/MWOLF subcontracting requirement. These requirements serve the dual purpose of increasing MWOB/MWOLF

participation levels while still encouraging MWOB joint venture and MWOLF joint referral arrangements. For purposes of this subcontracting provision, if a non-MWOLF, MWOLF or RTC joint venture, co-counsel, joint-counsel or consortium arrangement is to be allocated legal fees equal to or greater than \$500,000, it is required to subcontract with an MWOLF, and this MWOLF's share of the work and commensurate fees must equal no less than 5 percent or 10 percent of the contract amount, as described above. In the RTC Refinancing, Restructuring and Improvement Act of 1991, Congress mandated that the RTC "provide additional incentives to minority- or women-owned businesses by awarding any such business an additional 10 percent of the total technical points and an additional 5 percent of the total cost preference points achievable" when evaluating contract proposals from such businesses. FHLBA section 21(A)(r), 12 U.S.C. 1441a(r). Congress required that such points be afforded to offers by qualifying joint ventures as well as by prime contract offerors. Congress authorized the RTC to adjust the points prescribed by statute "to the extent necessary to ensure the maximum participation level possible for minority- or women-owned businesses." 12 U.S.C. 1441a(r)(3). These statutory mandates were incorporated in the 1992 Rule at 12 CFR 1617.61.

In light of the RTC's experience in contracting, and the limited time until the RTC's sunset at the end of 1995, the RTC finds that, in order to comply with Congress's directive to ensure the maximum participation possible by MWOBs and MWOLFs for the duration of the RTC, the RTC has, since March 30, 1994, found it necessary to increase the bonus points available to MWOB and MWOLF prime contractors and joint ventures. This was done in keeping with the increased emphasis by Congress on ensuring maximum participation by MWOBs and MWOLFs, as evidenced by the numerous management reforms prescribed in the RTCCA in late 1993. Based upon its experience since that time, the RTC finds that it is necessary to continue to provide the increased level of bonus points contained in §§ 617.51 (MWOBs) and 1617.201 (MWOLFs) of the 1995 Rule. The RTC finds that the increased bonus point structure provides additional incentives to improve their competitive positions as prime contractors with the RTC and to encourage non-MWOBs and non-MWOLFs to enter into more substantial,

longer-lasting business arrangements with MWOBs and MWOLFs.

B. The 1995 Final Rule

The RTC is hereby adopting a final rule (1995 Rule) that incorporates the new requirements contained in section 21A(w) (6), (7), (16) and (18) of the FHLBA which relate to the RTC's contracting program, and makes certain technical changes based on RTC's experience under the 1992 Rule and the comments submitted in response to the 1992 Rule.

A specific regulatory change to the 1992 Rule intended to increase the participation of MWOLFs is that the RTC will now, in competitive solicitations for legal services, give higher bonus points to MWOLFs and MWOLF joint ventures than to other joint referral arrangements. In doing so, the regulation recognizes that joint ventures may take many forms. Since the primary intent of this provision (which is consistent with the mandates of FIRREA and RRIA) is to increase fees to MWOLFs and MWOLF joint ventures, the bonus points provided to MWOLF joint ventures which have a single tax identification number are greater than to MWOLF joint-counsel arrangements wherein the law firms retain their individual tax identification number.

Since announcing its MWOB/MWOLF contracting expectations in the 1992 Rule, the RTC has demonstrated the ability to reach these expectations. The RTC is mindful, however, that it is necessary to continue to meet these expectations each year.

During 1991, the RTC awarded 47,540 non-legal contracts with related estimated fees of \$1,675.4 million, of which 13,219 contracts (28 percent) were awarded to MWOBS with related fees of \$316.7 million (19 percent). During 1992, the RTC awarded 45,949 non-legal contracts with related estimated fees of \$1,293.8 million, of which 16,093 contracts (35 percent) were awarded to MWOBs with related fees of \$303.9 million (23 percent). During 1993, the RTC awarded 24,500 non-legal contracts with related estimated fees of \$560.3 million, of which 10,483 contracts (43 percent) were awarded to MWOBs with related fees of \$210.3 million (38 percent). In 1994, the RTC awarded 17,946 non-legal contracts with related estimated fees of \$555.8 million, of which 8,725 contracts (49 percent) were awarded to MWOBs with related fees of \$268.8 million (48 percent).

Regarding legal services, the RTC had similar success. During the 1991 calendar year, the RTC paid \$251,525,563 in fees to outside counsel;