

of that amount, \$6,866,275 (2.7 percent) was paid to MWOLFs. During 1992, the RTC paid \$351,329,268 in fees to outside counsel; of that amount \$36,204,201 (10.3 percent) was paid to MWOLFs. During 1993, the RTC paid \$389,230,203 in fees to outside counsel; of that amount, \$61,713,140 (15.9 percent) was paid to MWOLFs. In 1994, the RTC paid \$232,100,704 in fees to outside counsel; of that amount \$60,344,296 (26.0 percent) was paid to MWOLFs.

On May 20, 1992, the Legal Division established a goal of increasing fees paid on new referrals to MWOLFs to at least 20 percent per year. The Legal Division has met this goal each year. From May 20, 1992 to December 31, 1992, the RTC paid \$27.5 million to outside counsel on new referrals (i.e. referrals made since May 20, 1992), and of that amount, \$7.4 million (26.8 percent) was paid to MWOLFs. During 1993, the RTC paid \$145.3 million to outside counsel on new referrals, of that amount, the RTC paid \$38.7 million (26.7 percent) to MWOLFs; and during 1994, the RTC paid \$129.9 million on new referrals, of that amount, the RTC paid \$46.7 million (36 percent) to MWOLFs. The RTC will continue its efforts to maximize participation by MWOBs, MWOLFs, and minority and women partners in non-MWOLF firms.

It should be noted that the RTC's outreach efforts to minorities and women include other matters beyond contracting. They also include outreach to potential purchasers of assets from financial institutions under the RTC's control and to acquirors of such institutions. In addition, in keeping with the principles underlying the Americans with Disabilities Act, the RTC provides outreach to individuals with disabilities who wish to participate in its contracting and other programs. The 1995 Rule, however, addresses only the RTC's MWOB/MWOLF contracting program and strict conformance to this regulation is required. FIRREA, RRIA, RTCCA, FHLBA and this regulation create no private right of action and no such right should be inferred.

### C. Discussion of Comments on the 1992 Rule

The following discussion summarizes comments submitted in response to the 1992 Rule, and provides the RTC's response to those comments. All comments were considered, however all were not specifically addressed.

Four comments were filed in response to the 1992 Rule. Two commenters were concerned that the RTC is interpreting both the MWOB and the MWOLF provisions of the rules to exclude

persons of Portuguese descent from the categories of minorities entitled to participate in the program. Both commenters asserted that the term "Hispanic American," one of the categories of minorities that the RTC recognizes, includes descendants of Spain or Portugal. They asserted that the RTC should either include Portuguese Americans as among the categories of Hispanic Americans or revise the rules to make Portuguese Americans an additional category.

The commenters cited several bases for their arguments. First, the commenters asserted that, whether or not Portuguese Americans technically fall within the category of Hispanic Americans, the language in FIRREA should be as inclusive as possible, and that the burden would be on the RTC to justify excluding Portuguese Americans from the program. Second, the commenters argued that Portuguese are historically included in the definition of Hispanic. Next, the commenters asserted that federal agencies that have adopted regulations concerning minority-related programs treat persons of Portuguese descent as Hispanic. In addition, the commenters asserted that federal agencies that have not adopted regulations concerning minority-related programs, in practice, treat Portuguese Americans as Hispanic Americans. They asserted that regardless of technicalities, Portuguese Americans face discrimination as a minority group.

Another commenter commended the use of bonuses, but stated that the RTC requirement that contractors have liability insurance coverage impeded participation by minority-owned contractors. The commenter suggested that future contract solicitations provide certain considerations or assistance for minority contractors to enable them to compete.

The last comment was filed by the National Bar Association (NBA). The NBA offered suggestions for improving certain sections of the rule. First, the NBA asserted that, in regard to § 1617.3, awards and fees should be tracked as follows: (1) white men; (2) white women; (3) African Americans; (4) Hispanic Americans; (5) Asian Americans and Pacific Islanders; and (6) American Indians. The commenter asserted that this tracking procedure also should apply to the law firms. The commenter also asserted that, in regard to § 1617.91, the word "and" should connect subparagraphs 1 and 2 to help the RTC more readily determine whether or not a woman has the requisite ownership of the firm.

In regard to § 1617.100, the commenter suggested that RTC program

personnel report results of their tracking efforts on a semi-annual basis to the senior counsel for the MWOLF program in Washington, and that senior counsel should make such reports available to the legal community and in particular minority bar associations. This change would purportedly eliminate the need to make Freedom of Information Act requests, and would provide an incentive for RTC personnel to reach out to MWOLFs. The same comment was made in regard to MWOBs as well as MWOLFs. The commenter also argued that § 1617.102 should be amended to allow the legal minority and women outreach coordinators in the field to report directly to the senior counsel in Washington rather than reporting to their field supervisor. Finally, the commenter argued that the RTC should promulgate stronger inspection and enforcement regulations that will apply to firms that fraudulently certify that they are minority or women owned law firms. The commenter suggested that suspension or debarment should be made part of this regulation. The commenter also argued that the Small Business Act of 1978 applies to the RTC and that each contractor should be required to submit to the RTC a subcontracting plan to ensure that the concentration of subcontracts in the hands of large companies is reduced and that a fair proportion will be placed with minorities and women.

The RTC hereby responds to these comments as follows:

The commenters raised the issue of whether persons of Portuguese descent should be included in the definition of Hispanic American. Some federal agencies have included persons of Portuguese descent in their definitions of Hispanic American. RTC's definition of minority is based on the definition in section 1204 of FIRREA, 12 U.S.C. 1811. After due consideration, the definition in section 1204 does not provide a basis for expanding the definition of Hispanic American. The RTC's definition of minority includes persons of Central and South American origin. RTC's definition, in common with that of other federal agencies, does not include any persons with origins in Europe.

Regarding the comment on liability insurance requirements, the RTC will review this in the context of its contracting procedures. It does not feel that it would be appropriate to remove this requirement as a part of this rulemaking proceeding. However, for those contracts where insurance requirements may be lowered, a Division of Minority and Women's Program representative shall coordinate