

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 361**

**RIN 3064-AD23**

**Minority and Women Outreach Program Contracting**

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** This proposal would amend existing FDIC regulations regarding the FDIC's contracting activities under its Minority and Women Outreach Program (MWOP). These are relatively minor amendments designed to eliminate several provisions rendered obsolete by significant reductions in FDIC contracting activities and decreases in FDIC staff to monitor the contracting activities of Minority and Women-Owned Businesses (MWOBs).

**DATES:** Comments must be received on or before [insert date 60 days from date of publication in the Federal Register].

**ADDRESSES:** You may submit comments by any of the following methods:

- *Agency Web site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>.  
Follow instructions for submitting comments on the Agency Web site.
- *E-mail:* [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include "Part 361 - Minority and Women Outreach Program Contracting" in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: FDIC: Robert P. Elcan, Chief, Minority & Women Outreach Program Section, Office of Diversity and Economic Opportunity, at [RElcan@fdic.gov](mailto:RElcan@fdic.gov) or (703) 562-6070; or Trisha M. Bursey, Assistant Director, Division of Administration, Acquisition Services Branch, Policy and Operations Section, at [TBursey@fdic.gov](mailto:TBursey@fdic.gov) or (703) 562-2212; or Chris J. Conanan, Counsel, Legal Division, Corporate Operations Branch, Corporate and Legal Operations Section, Contracting and Internal Review Unit, at [CConanan@fdic.gov](mailto:CConanan@fdic.gov) or (703) 562-2335.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 1216 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 provides that the FDIC “shall prescribe regulations to establish and oversee minority outreach program[s] . . . to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women . . . in all contracts entered into by the agency . . .” 12 U.S.C. 1833e(c). Since 1992, the FDIC has promulgated Outreach Regulations implementing this statutory directive and has used various approaches to ensure the maximum inclusion of MWOBs in contracts entered into by the agency, including, among other things, formal solicitations and a focus on Small Disadvantaged Businesses (SDBs). The MWOP is administered by the FDIC’s Office of Diversity and Economic Opportunity (ODEO); however, actual contracts are awarded by the FDIC through the Acquisition Services Branch, Division of Administration.

Nonetheless, since promulgation of the Outreach Regulations, and amendments made in 1995 and 2000, FDIC contracting activities have significantly declined, which has resulted in fewer contract awards to MWOBs. Consequently, FDIC staff involved in MWOB registration, monitoring, and data collection has been significantly reduced, and the provisions in the Outreach Regulations that correspond to these staff activities have not been operational for several years. For these reasons, the FDIC proposes elimination of obsolete regulatory provisions. Specifically, the FDIC proposes to eliminate current regulatory provisions that call for registration of MWOBs; quarterly MWOB data reports

from Offices or Divisions within the FDIC to ODEO; and the designation of MWOP coordinators within FDIC Offices or Divisions.

## **II. Request for Comments**

The FDIC welcomes comments on all aspects of this proposal.

## **III. Solicitation of Comments on Use of Plain Language**

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

#### **IV. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (RFA) requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis (IRFA) of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 605. The proposed rule primarily affects the internal operations of the FDIC, does not impose any obligations or restrictions on depository institutions, including small depository institutions, and does not impact the contracting opportunities of small businesses or SDBs. The FDIC certifies pursuant to 5 U.S.C. 605(b) that this proposed rule, if it is adopted in final form, will not have a significant impact on a substantial number of small entities. Commenters are nevertheless invited to provide the FDIC with any information they may have about the likely quantitative effects of the proposal.

#### **V. Paperwork Reduction Act**

The FDIC has determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### **VI. The Treasury and General Government Appropriations Act, 1999-- Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act,

enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

## **List of Subjects**

### *12 CFR Part 361*

Government contracts, Individuals with disabilities, Lawyers, Legal services, Minority businesses, Reporting and recordkeeping requirements, Women.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend title 12, chapter III, of the Code of Federal Regulations as follows:

## **PART 361—MINORITY AND WOMEN OUTREACH PROGRAM**

### **CONTRACTING**

1. The authority citation for Part 361 continues to read as follows:

AUTHORITY: 12 U.S.C. 1833e.

2. Revise section 361.3 as follows:

#### **§ 361.3 Who may participate in this outreach program?**

Any MWOB contractor qualified to provide goods and services to the FDIC.

3. Revise section 361.5 as follows:

#### **§ 361.5 What are the FDIC's oversight and monitoring responsibilities in administering this program?**

The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate

the identification and solicitation of MWOBs. ODEO shall also collect and analyze data on contracting dollars awarded to MWOBs as provided by the FDIC's Division of Administration.

4. Revise section 361.6 as follows:

**§ 361.6 What outreach efforts are included in this program?**

(a) Outreach includes the identification and solicitation of MWOBs who can provide goods and services to the FDIC and the distribution of information concerning the MWOP. The identification and solicitation of MWOBs for the provision of legal and non-legal services will primarily be accomplished by:

- (1) Obtaining lists and directories of MWOBs maintained by other federal, state, and local governmental agencies;
- (2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by MWOBs;
- (3) Conducting seminars, meetings, workshops and other various functions to promote the identification and solicitation of MWOBs;
- (4) Placing MWOP promotional advertisements in minority- and women-owned media indicating opportunities with the FDIC; and
- (5) Monitoring FDIC staff interacting with the contracting community to ensure they are knowledgeable of, and actively promote the MWOP.

By order of the Board of Directors.

Dated at Washington, DC, this \_\_\_th day of \_\_\_\_, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[Insert Federal Register docket number, date and time filed]

[Insert billing code]