

SUPPLY CHAIN DIVERSITY GUIDE

Regulatory and Certification Framework



American Mortgage
Diversity Council

Where Diverse Groups Share Common Goals.



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EQUIPPING THE INDUSTRY

The Supply Chain Subcommittee of the American Mortgage Diversity Council has put together a quick reference guide for use by organizations that are attempting to begin the process of getting certified as a minority business entity. This guide equips organizations by, first, offering the regulatory framework upon which the practices of supply chain diversity are built. Subsequently, the guide lays out the specific procedures and documentation requirements for many of the mortgage industry's most common certifications. For more information visit MortgageDiversityCouncil.com.

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REGULATORY FRAMEWORK

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 Public Law 111-203 Sec 342

Sub Sec. (c) Inclusion in All Levels of Business Activities

Part (1) In General-Each Office must develop and implement standards and procedures to ensure the inclusion and utilization of minorities, women, minority-owner and women-owned businesses in all business and activities at all levels including procurements, insurance, and all types of contracts.

Part (2) Contracts-The review and evaluation of contract proposals from service providers must include a component giving consideration to the diversity of the provider. This must include a written statement that the contractor ensures fair inclusion of women and minorities in its workforce (and subcontracts).

Sub Sec. (d) Applicability-This section shall apply to all contracts of an agency for any services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial service entities, underwriters, accountants, investment consultants and providers of legal services.

Sub Sec. (e) Reports-Each office within the agency shall report to congress annually the following:

1. the total amounts paid to contractors since the previous report;
2. the percentage amounts described in 1 (above) that were paid to contractors described in sub section (c)(1);
3. the success achieved, and challenges faced by the agency in operating minority and women outreach programs;
4. the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned business;
5. any other information, findings, conclusions, and recommendations for legislative or agency action, as deemed appropriate.

Set Aside: No

Organization(s) Required to Follow: All Market Participants

Federal Acquisition Regulations (FAR) 19.202-1 Encouraging Small Business Acquisitions

This section lays the foundation and explains the intent of the government to utilize a variety of small business concerns for both supply and service contracts. It also encourages prime contractors to subcontract with small business concerns.

Set Aside: No

Organization(s) Required to Follow: FHA, VA, and USDA



Housing and Economic Recovery Act of 2008 Public Law 110-289 Sec. 1116

Sub Sec. (b) Inclusion at All Levels of Business Activities-Each regulated entity must develop and implement standards and procedures to ensure the inclusion and utilization of minorities, women, minority-owner and women-owned businesses in all business and activities at all levels including procurements, insurance, and all types of contracts(including contracts for the issuance or guarantee of any debt, equity, or mortgage related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives).The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

Sub Sec. (c) Applicability-This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

Sub Sec. (d) Inclusion in Annual Reports-Each regulated entity shall include, in the annual report submitted by the entity to the Federal Housing Finance Agency, detailed information describing the actions taken by the entity pursuant to this section, which shall include a statement of the total amounts paid by the entity to third party contractors since the last such report and the percentage of such amounts paid to businesses described in sub section (b).

Set Aside: No

Organization(s) Required to Follow: FNMA, FHLMC, and any Federal Home Loan Bank

Federal Acquisition Regulations (FAR) 48 CFR 19.5 Set-Asides for Small Business

This Section set forth the actual set-aside requirements. Specifically, Sub Sec 19.502-2 sets forth the total small business set-asides.

Set Aside: Yes

Organization(s) Required to Follow: FHA, VA, and USDA

FHA Single Family Policy Handbook 4000.1 Sec I. DOING BUSINESS WITH FHA Sub. Sec. A FHA LENDERS AND MORTGAGEES Part 6. Post-Approval Operations Sub. Part j. Use of Contractors

iii. Standard

The Mortgagee must ensure that the contracting out of certain functions does not and will not materially affect the underwriting or servicing decisions or otherwise increase financial risk to FHA.

The Mortgagee remains responsible for the quality of its FHA-insured Mortgages and must ensure that its contractors fully comply with all applicable laws and FHA requirements.

A Mortgagee may own or have an ownership interest in a separate business Entity that offers such contract services.

iv. Required Documentation

The mortgagee and its contractor must have a valid contractual agreement in place that specifies the roles and responsibilities of each party.

Set Aside: No

Organization(s) Required to Follow: FHA Lenders, Mortgagees, and Service Providers



Federal Acquisition Regulations (FAR) 48 CFR 19.704 Statutory Requirements

Any contractor receiving a contract with a value greater than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

Set Aside: Yes

Organization(s) Required to Follow: FHA, VA, and USDA

Federal Acquisition Regulations (FAR) 48 CFR 19.708 Contract Clauses

All subcontracts must utilize or refer to Sub Sec 52.219-8 except personal services contracts or contracts to be completed entirely outside of the United States.

Set Aside: Yes

Organization(s) Required to Follow: FHA, VA, and USDA

Federal Acquisition Regulations (FAR) 48 CFR 52.219-8 Utilization of Small Business Concerns

Sets forth the language that must appear in a contract between the acquiring agency and the prime contractor regarding utilization of small business concerns as subcontractors to fulfill the terms of the service contract.

Set Aside: Yes

Organization(s) Required to Follow: FHA, VA, and USDA



CERTIFICATION GUIDELINES

HUBZone (Historically Underutilized Business Zones)

Program Guidelines:

<https://www.sba.gov/contracting/government-contracting-programs/hubzone-program>

HUBZone Maps for qualification purposes

(Find out if your business resides in a designated HUBZone area):

<https://www.sba.gov/contracting/government-contracting-programs/hubzone-program/hubzone-maps>

HUBZone designation qualifies an entity to participate in federal contracts related to Low-Income Tax Credit areas as defined below:

The US Department of Housing and Urban Development (HUD) designates Qualified Census Tracts (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) program. The LIHTC program is defined in Section 42 of the Internal Revenue Code of 1986. The LIHTC is a tax incentive intended to increase the availability of affordable rental housing.

The LIHTC statute provides two criteria for QCT eligibility.

A census tract must either:

- » Have a poverty rate of at least 25 percent; or
- » 50 percent or more of its householders must have incomes below 60 percent of the area median household income. The area corresponds to a metropolitan or a non-metropolitan area.

Further, the LIHTC statute requires that no more than 20 percent of the metropolitan area population reside within designated QCTs (this limit also applies collectively to the nonmetropolitan counties in each state). Thus, it is possible for a tract to meet one or both of the above criteria but not be designated as a QCT.

The Census Bureau defines the boundaries of Census tracts in cooperation with local authorities every ten years for the purposes of the decennial census and, following a public comment period, has completed defining tract boundaries for the 2010 Census. Note that when census tract boundaries are set, they remain unchanged for the next decade. Thus, tract boundaries will not be changed until the 2020 Decennial Census.

A QCT may be located in a nonmetropolitan county or metropolitan area.

Self-Certification Available: No

Franchises Eligible: Yes

Business Size Restrictions: Yes

Certification Qualified for Government Set Asides: Yes

Statutory Set-Asides Exist for Certification: No.

Please reference HERA Section 1116: The Housing and Economic Recovery Act of 2008 (HERA) requires each entity that FHFA regulates to establish an OMWI, or its functional equivalent, to promote diversity in all activities at every level of their respective organizations, including employment, management and contracting. FHFA must



also comply with Section 1116(f) of HERA that, among other things, charges the Agency with seeking diversity in its workforce. An identical provision was adopted in section 342 of the Dodd-Frank Act which applies to the federal agencies listed in section 342(g)(1), including FHFA. Altogether, FHFA's OMWI is responsible for carrying out the obligations of: Section 342 of the Dodd-Frank Act; section 1116(f) of HERA; the rules and regulations of the Equal Employment Opportunity Commission's Office of Federal Programs; Executive Order 13583; and other applicable executive orders governing federal agencies' diversity and inclusion programs. OMWI also offers to its employees and contractors Alternate Dispute Resolution services for conflicts internal to the Agency. These conflicts may or may not be related to EEO concerns and complaints.

LGBT-Owned

- » Ownership is defined as 51 percent of total outstanding shares as being owned and actively managed by a person identifying as gay, lesbian, bisexual, transgender, or alternatively oriented.
- » For third-party independent certification, companies are encouraged to conduct formal submission through the National Gay & Lesbian Chamber of Commerce (NGLCC).
- » To register, businesses should start at My.NGLCC.org and complete the questionnaire.
- » Submit required documents (which may include the following): \$400 fee for registration (waived if the organization is a sponsor member), provide legal entity documents evidencing ownership meets the requirement, proof of ownership contribution of capital (bank statements or sworn statement from ownership), and proof of daily operational involvement by the applicant, including evidence of operational control.
- » Franchises are eligible for certification.
- » National Certification Committee meets monthly and selects qualified entities for in-person site inspections to conduct a formal audit prior to certification.

Self-Certification Available: Yes

Franchises Eligible: Yes

Business Size Restrictions: No

Certification Qualified for Government Set Asides: Yes

Statutory Set-Asides Exist for Certification: No

Service Veteran-Owned

Ownership defined as any individual owning a minimum of 51 percent of the total outstanding shares of the entity who demonstrates a historic record of active service duty within any branch of the United States military, having been honorably discharged or retired from duty. Dishonorable discharges may be considered ineligible depending on the contract restrictions of the set aside amount.

Self-Certification Available: Yes

Franchises Eligible: Yes

Business Size Restrictions: No

Certification Qualified for Government Set-Asides: Yes

Statutory Set-Asides Exist for Certification: No



HBCU or Minority Institute

Historically black colleges and universities and minority institutions are educational institutions that existed prior to 1964 with the primary purpose of educating African-American, Hispanic, and American Indian students.

Self-Certification Available: No

Franchises Eligible: N/A

Business Size Restrictions: No

Certification Qualified for Government Set-Asides: No

Statutory Set-Asides Exist for Certification: No

Small Business Entity (SBE)

Size Standards can be found:

<https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/small-business-size-regulations>

Industry definition codes can be located at:

<https://www.sba.gov/contracting/getting-started-contractor/determine-your-naics-code>

To qualify for a “small business set-aside,” you must first be a for-profit business concern and meet the small business size standard for the NAICS code that the contracting officer assigns to the procurement. That may or may not be the same as your principal business activity. However, if it is not, it does not stop you from bidding if you meet the size standard and can fulfill the contract requirements.

To participate in Federal procurement (whether or not you are a small business concern) and some other programs, you must register your firm in the Federal government’s System for Award Management (SAM). To access the System for Award Management:
<https://sam.gov/portal/SAM>

Self-Certification Available: No

Franchises Eligible: Yes, in specific cases. Must qualify as a sponsored Franchise and be on the SBAs approved list.

Business Size Restrictions: Yes, see NAICS codes for specific restrictions.

Certification Qualified for Government Set-Asides: Yes

Statutory Set-Asides Exist for Certification: No



8(a) Classification

Additional information on 8(a) can be found at:

<https://www.sba.gov/content/about-8a-business-development-program>

Requirements and Goals of the 8(a) Business Development Program:

The overall program goal is to graduate 8(a) firms that will go on to thrive in a competitive business environment.

There are some requirements in place to help achieve this goal. Program goals require 8(a) firms to:

Maintain a balance between their commercial and government business.

Limit on the total dollar value of sole-source contracts that an individual participant can receive while in the program: \$100 million or five times the value of its primary NAICS code.

To make sure 8(a) firms are on track to accomplish their goals and are following requirements, the SBA district offices monitor and measure the progress of participants through:

- » Annual reviews
- » Business planning
- » Systematic evaluations

In addition, 8(a) participants may take advantage of specialized business training, counseling, marketing assistance, and high-level executive development provided by the SBA and our resource partners. You can also be eligible for assistance in obtaining access to surplus government property and supplies, SBA-guaranteed loans, and bonding assistance for being involved in the program.

Self-Certification Available: No

Franchises Eligible: Yes, in some cases. Master Franchise agreement may cause business ineligibility based on state and geographic region of franchise incorporation.

Business Size Restrictions: Yes. Program specifically designed to disqualify entities once they reach a certain size and scale.

Certification Qualified for Government Set-Asides: Yes

Statutory Set-Asides Exist for Certification: No



Woman-Owned Business Entity (WBE)

Disadvantaged Woman-Owned Business Entity Qualifications are relative for both and additional set-asides are not classified separately based on which of the criteria is selected at this time.

The SBA provides enhancement, benefit, and contractual set-asides for businesses having ownership and controlling interest of at least 51 percent women. Program details can be found at:
<https://www.sba.gov/contracting/government-contracting-programs/women-owned-small-businesses>

This program enables Economically Disadvantaged WOSBs (EDWOSBs) to compete for federal contracts that are set-aside for EDWOSBs in industries where women-owned small businesses are underrepresented. It also allows set-asides for WOSBs in industries where women-owned small businesses are substantially underrepresented.

For Self-Certification, individuals can visit:
certify.sba.gov

WBENC (Women's Business Enterprise National Council) conducts third-party certification and audits.

Certification Process:

- » Gather the following documents:
- » Signed sworn affidavit attesting to nature of ownership and management
- » Signed WBENC2.0 user agreement
- » Non-refundable processing fee (may differ based on sponsorship levels)
- » A short history of the business
- » Any professional licenses (where applicable)
- » Resume and photo ID, including evidence of gender and a copy of birth certificate for all owners
- » Three years' tax returns (all schedules) and accompanying financial statements (comparative P&Ls and balance sheets)
- » Copies of any outstanding loans, promissory notes, security agreements, leases, and surety agreements evidenced on the balance sheet
- » Copy of current bank signature card
- » Proof of capital invested by female ownership (copies of banks statements or written statement from the owner)
- » A list of all full- and part-time employees along with accompanying payroll record for most recent month-end
- » Any current management agreements
- » ESOP statements
- » Service or consulting agreements and information regarding any known affiliates or subsidiaries

You can begin the application at:
www.wbenclink.org

- » Submission can be made via online portal
- » Certification can occur as quickly as 48 hours from submission

Self-Certification Available: Yes

Franchises Eligible: Yes

Business Size Restrictions: Yes, depending on the set-aside. No specific size restrictions that would prohibit organizations of any scale from registering or participating in peer review and annual audits.

Certification Qualified for Government Set-Asides: Yes

Statutory Set-Asides Exist for Certification: No



Minority Business Entity (MBE)

Disadvantaged Business Entity (DBE) set-asides are not qualified differently based on which category a business elects on their application. Applications are started with identifying a regional office of the NMSDC for registrations. Regional offices can be located here: <http://www.nmsdc.org/our-network/>

Certification begins with the National Minority Supplier Development Council:
<http://www.nmsdc.org/mbes/mbe-certification/>

How to get started:

Review certification criteria to ensure that your business qualifies:

Business owners must be United States citizens.

Minority businesses must be at least 51 percent minority-owned operated and controlled. For the purposes of NMSDC's program, a minority group member is an individual who is at least 25 percent Asian, Black, Hispanic, or Native American. Minority eligibility is established via a combination of screenings, interviews, and site visits. Ownership, in the case of a publicly owned business, means that at least 51 percent of the stock is owned by one or more minority group members.

Must be a profit enterprise and physically located in the U. S. or its trust territories.

Management and daily operations must be exercised by the minority ownership member(s).

Gather required documentation.

Documentation requirements:

- » History of the business
- » Certificate of Incorporation
- » Articles of Incorporation
- » Stock certificates and stock ledger
- » Minutes to Board of Directors meetings, as well as shareholders meetings
- » Bylaws (executed and attested) and amendments (if applicable)
- » All agreement(s) pertaining to ownership, operation, and control of the business
- » Business cards that list appropriate corporate titles
- » Copies of resumes
- » Copy of driver's licenses and proof of U.S. citizenship (birth certificates or U.S. passports only) for all Principals
- » Corporate Bank Resolution Agreement(s) to include bank signature card(s)
- » Business Lease Agreement(s) (and Security Deeds if home-based)
- » Proof of general liability insurance and, in some cases, bonding
- » Copies of the businesses' cancelled checks
- » Complete the online application in full.
- » Application fee must be paid online via credit card.
- » Upload the required documentation via the online certification/recertification application.
- » Schedule site visit and interview. These will be performed by a NMSDC Certification Specialist.
- » Wait for final approval from both Committee and Board Members.

Self-Certification Available: Yes

Franchises Eligible: Yes

Business Size Restrictions: No specific size metrics to prohibit certification process. However, specific set-asides may limit participation to smaller or less mature entities.

Certification Qualified for Government Set-Asides: Yes

Statutory Set-Asides Exist for Certification: No

For more information on the American Mortgage Diversity Council,
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