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Dodd-Frank Act  
Have Been Slow  
to Implement:  
Section 342**

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# Some Parts of the Dodd-Frank Act Have Been Slow to Implement: Section 342

*Section 342 is the Act's Diversity Clause, and it's one that, unfortunately, hasn't had a lot of support and even faces opposition*

BY VLADIMIR BIEN-AIME



Vladimir Bien-Aime

**Critics argue that it isn't a positive part of Dodd-Frank, but many of those critics do not fully understand what Section 342 requires and what it is set out to achieve.**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) that was approved and signed in 2010 by President Obama with the intention of creating drastic reform in the financial sector and ultimately to protect consumers. It consists of more than 25,000 pages. Some components of the Act have received more attention than others, with the creation of the Consumer Financial Protection Bureau (CFPB) being one of the most notable agencies to spawn from Dodd-Frank, among numerous rules and regulations.

The Dodd-Frank Act has clearly had a monumental impact on the way the entire mortgage industry does business. Many parts of it have had a positive effect on the financial markets, while some of it makes doing business onerous due to the complicated nature of changing rules and regulations. Some parts of Dodd-Frank are yet to even be implemented.

## BY THE NUMBERS

The well-respected and trusted international law firm Davis Polk, LLP closely tracks and publishes monthly status reports on the progress that Dodd-Frank is making. According to the firm, as of December 1, 2014, a total of 280 Dodd-Frank rulemaking requirement deadlines have passed; 104 (37.1%) have been missed; and 176 (62.9%)

have been met with finalized rules. In addition, 231 (58.04%) of the 398 total required rulemakings have been finalized, while 94 (23.62%) rulemaking requirements have not yet been proposed.

With missing and/or being late in passing various rules in Dodd-Frank, we clearly still have a long way to go in effectuating change. One of the rules that I feel strongly about is Section 342 of the bill, which was designed to create more parity and diversity among minorities and women in business. It is being driven by California Congresswoman Maxine Waters, who proposed Section 342 of the bill. The implementation of Section 342 has been met with rather slow-moving success and even some resistance. Critics argue that it isn't a positive part of Dodd-Frank, but many of those critics do not fully understand what House Representative Waters' Section 342 rule requires and what it is set out to achieve.

## BREAKING DOWN SECTION 342

Representative Waters made the statute start with several of the major federal financial agencies. It creates at least 20 Offices of Minority and Women Inclusion (OMWI) at various regulatory agencies, which includes the Department of the Treasury, the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the

Currency (OCC), the 12 Federal Reserve Banks, and the Consumer Financial Protection Bureau (CFPB), among others.

Specifically, Section 342 calls for the development of standards for:

“(A) Equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency;

(B) Increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses;

(C) Assessing the diversity policies and practices of entities regulated by the agency.”

The use of “standards” in the aforementioned is notable. The statute states, “The standards and procedures developed and implemented under this subsection shall include a procedure for a determination whether an agency contractor, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.”

Once the “standards” have been established, the offices are tasked with monitoring the degree of diversity achieved at the agencies in addition to contractors or subcontractors. In total, government contracts amount to billions of dollars each year and are generally given to private firms.

## MISUNDERSTOOD

Some proponents of Section 342 say that Representative Waters is driving quota-based legislation. That couldn’t be further from the truth. Section 342 does not state that any race or gender numbers are required. It only encourages that certain measures are taken, starting with contractors for government projects and engagements. Representative Waters identified that lots of qualified minority- and women-owned businesses are regularly left out of government contracting engagements. She seeks to change that.

I’ve observed Representative Waters as being a long-time advocate for diversity in both the public and private sectors. In a 2009 floor speech, she said, “Qualified minority- and women-owned businesses continue to be excluded from contracting opportunities made available by the government’s historic intervention at banks and other financial institutions.”

What she is basically saying here is that placing diversity regulators within various government agencies

will assist in modifying racial and gender imbalances in the agencies’ subcontracting processes, with the ultimate goal of creating a movement that looks to cure inequities in the private business sector.


The bill simply asserts that if an agency’s compliance director determines a contractor has not made what is termed “a good faith effort to include minorities and women in its work force,” then that agency’s chief has rights to terminate the contract, transfer the matter to the Office of Federal Contract Compliance Programs, or take other unnamed corrective measures.

## WE’RE GETTING THERE

Notable is that the Housing and Economic Recovery Act of 2008 requires Fannie Mae, Freddie Mac, and the Federal Home Loan Banks to submit thorough reports on the advancement of their diversity programs. Section 342 will likely be similar and I don’t see that as a bad thing.

Sure. There have been strides made to establish equality in the workplace over the past couple decades, but we still have a way to go. There are still barriers to reach promotion and pay parity for minorities and women in both the public and private sectors. A glass ceiling still exists. Representative Waters is simply evangelizing and driving equality for the betterment of business and government. Her critics should take note of this.

I believe strongly in furthering equal opportunities and I feel that Section 342 of the Dodd-Frank Act is another step in the right direction.

Congresswoman Waters has 37 years of public service, and, in 2002, she was elected to her twelfth term in the House of Representatives. I commend her for being a strong supporter of diversity. Diversity is one of the things that make America great, and I hope that Section 342 helps make a difference. 

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