

# Implementing Section 342 of the Dodd-Frank Act: Adoption is Still Slow

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As we well know, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010. The act contained 2,300 pages of new regulations, rules, and requirements that instantly made compliance a major concern for numerous organizations. And there is still a lot of Dodd-Frank that is yet to be implemented. One aspect of it that unfortunately hasn't received much attention and made much headway is Section 342.

## AN OVERVIEW OF SECTION 342

Section 342 requires that appointed government agencies and the 12 Federal Reserve Banks establish what's called an Office of Minority and Women Inclusion (OMWI). The OMWI is designed to set up and oversee various diversity initiatives and programs that help foster fair and inclusive work environments in the financial services industry, their regulators, and those who receive government

contracts.

Section 342 covers all 12 of the regional Federal Reserve Banks, the Federal Housing Finance Agency (FHFA), the Federal Reserve Board of Governors (FBG), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC), and the Department of the Treasury Department Offices (collectively, the agencies), the Consumer Financial Protection Bureau (CFPB), and any entity that contracts with or is regulated by one of the agencies.

The statute, included in Section 342 of the bill, creates 20 Offices of Minority and Women Inclusion at various regulatory agencies. Each agency is directed to establish standards for "assessing the diversity policies and practices of entities" that the agency oversees and regulates.

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 that "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.

### MOVING FORWARD

California Congresswoman Maxine Waters introduced Section 342 of the bill and has been encouraging adoption of the act for years. However, since it was introduced, the implementation has been slow.

Per Section 342, the six federal agencies issued new Diversity and Inclusion (D&I) standards. On June 10, 2015, the CFPB, SEC, Federal Reserve, FDIC, OCC, and NCUA issued the "Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies." Details of the joint standards were published on the Federal Register's website, which can be accessed

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Given that the standards were published well over a year ago, entities should have already started taking steps to incorporate them into their daily business practices and plan for their self-assessments.

For further clarification, on August 2, 2016, the Federal Reserve, FDIC, and the OCC created a FAQs document along with their interagency policy statement provided by the agencies as well as others in the summer of 2015. The FAQs can be found on the Federal Reserve's website by clicking here. Among them are:

- **Who will conduct assessments and how frequently will assessments be conducted?**

The Policy Statement envisions that a regulated entity should conduct a voluntary self-assessment of its diversity policies and practices at least annually.

- **What does a regulated entity do with the information from its self-assessment?**

The Policy Statement contemplates that a regulated entity should voluntarily provide information pertaining to its self-assessment to the Director of the Office of Women and Minority Inclusion of its primary federal financial regulator and publish information pertaining to its efforts on its website or in other appropriate forms of communication. Entities are encouraged to begin submitting self-assessments for calendar year 2015. Thereafter, self-assessments should be submitted within 90 days of the close of the calendar year.

- **Will an entity's diversity policies and practices be assessed by its primary regulator?**


An entity's diversity policies and practices will not be assessed by its primary federal financial regulator. The Agencies believe the entities are in the best position to assess their own diversity policies and practices, and the self-assessments can provide entities with an opportunity to focus on areas of strength and weakness in their policies and programs.

- **How will the Agencies use the self-assessment information provided by the regulated entities?**

The Agencies may use the self-assessment information provided by the entities to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities. The Agencies may highlight successful policies and practices. The Agencies may publish information disclosed to them, such as best practices, in any form that does not identify a particular entity or individual or disclose confidential business information.

So, for an act that was introduced in 2010, what's taking so long? Some argue that the agencies have not been given enough authority to actually enforce the provisions. As a result, the entities that are regulated aren't as motivated to act on implementing the Joint Standards that the agencies arrived at and published.

For some organizations, this may be the result of a lack of resources and/or the added cost to implement and maintain. Some say that Section 342 is driving quota-based legislation, but that couldn't be further from the truth. Nowhere in Section 342 is there anything that states race or gender numbers must be met. The goal is simply to encourage that certain measures are taken to create equality, and that starts with the Diversity and Inclusion (D&I) standards.

It is unfortunate that Section 342 of Dodd-Frank hasn't received more attention and made more progress. But, I am optimistic that all the outstanding work that Congresswoman Waters has put into Section 342 will come to fruition sooner rather than later. 

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