

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

MAXINE WATERS (CA-43), RANKING MEMBER



**THE DODD-FRANK ACT FIVE YEARS LATER:
DIVERSITY IN THE FINANCIAL SERVICES AGENCIES**

DEMOCRATIC STAFF REPORT
114TH CONGRESS

NOVEMBER 5, 2015

EXECUTIVE SUMMARY

Purpose

On March 24, 2014, the Ranking Member of the House Financial Services Committee (the “Committee”) and Democratic Members of the Subcommittee on Oversight and Investigations sent letters to the Offices of Inspectors General (“OIGs”) at the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, the Federal Housing Finance Agency, the National Credit Union Administration, and the Securities and Exchange Commission (hereafter referred to collectively as “the Agencies”) requesting an audit of their internal operations to determine whether any personnel practices have created a discriminatory workplace or have otherwise systematically disadvantaged minorities and women employees, particularly from obtaining senior-management level positions.

This Committee staff report provides a comprehensive comparison and analysis of the OIGs’ reports and other publicly available research on diversity matters. This Committee staff report also contains recommendations to enhance the Agencies’ efforts to promote and sustain racial, ethnic, and gender diversity within their workforces.

Findings

Upon review and analysis, Committee staff determined that the following trends were generally consistent across all Agencies:

1. Minorities and women remain underrepresented in their workforces.
2. Minorities and women are significantly underrepresented at the senior-management level in proportion to their overall participation rates.
3. African-American employees generally received lower performance management review (PMR) scores than White employees.

Recommendations

Committee Staff recommend that the Agencies:

1. Fully comply with the letter and spirit of all current laws, regulations, and policies that address racial, ethnic or gender-based discrimination and promote diversity and equal opportunities for minorities and women.
2. Investigate and determine whether discrimination is the root cause of the: (1) underrepresentation of minorities and women at the senior-management level at the Agencies; and (2) statistically significant differences in PMRs for minority and women employees. Pending this investigation, consider strategies for addressing potential root causes, such as unconscious bias by those who are responsible for making those decisions.
3. Should, while investigating their PMR systems, consider modification of, or alternatives to the current PMR systems.

4. Ensure accountability of managers, at all levels, by evaluating them on their progress toward achieving the Agencies' diversity objectives and their ability to manage a diverse group of employees.
5. Enhance the interactions between the Office of Minority and Women Inclusion ("OMWI") Directors and the Agencies' heads, by ensuring that the OMWI Directors report directly to the Agencies' heads and increasing the meetings between them. This dialogue will enable the OMWI Directors to influence policymaking decisions at the Agencies and ensure the Agencies' heads are closely monitoring the effectiveness of diversity practices and policies and are prepared to testify about these efforts and outcomes when appearing before Congress.
6. Re-evaluate the purpose and content of their OMWI's annual reports to, among other things:
 - a. include information on OMWI's efforts to measure and evaluate their progress on achieving diversity and inclusion goals, as recommended by the Government Accountability Office ("GAO") in 2013;
 - b. consult with other Agencies' OMWIs, in an interagency manner, to adopt uniform standards to track and report diversity data to enable meaningful cross-agency comparison; and,
 - c. provide racial, ethnic, and gender data by specific occupational classifications and supplier industry classifications.
7. Direct the OIGs to:
 - a. periodically review the Agencies' representation of minorities and women within their workforces along with their personnel practices, policies, and any other efforts to ensure that the workplaces are free of systemic discrimination and provide equal opportunity for minorities and women in hiring, retention, and promotion, particularly to senior-management level positions; and,
 - b. report the results of these audits to Congress every four years.

Conclusion

The Agencies still have substantial work to do to ensure that they are in full compliance with all current applicable statutes, regulations, and Executive Orders addressing racial, ethnic or gender-based discrimination and promoting workforce diversity and equal employment opportunities for minorities and women. The Agencies' failure to meet, in certain circumstances, the letter and spirit of existing diversity guidance and laws demands greater efforts to achieve meaningful workforce diversity and may warrant additional scrutiny by Congress.

TABLE OF CONTENTS

<u>SECTION I – INTRODUCTION</u>	
BASIS FOR THIS REPORT	1
WHY DIVERSITY MATTERS	1
BACKGROUND	2
METHODOLOGY	4
<u>SECTION II – QUANTITATIVE ANALYSIS</u>	
WORKFORCE COMPOSITION	7
PERFORMANCE MANAGEMENT REVIEWS	11
<u>SECTION III – QUALITATIVE ANALYSIS</u>	
OFFICE OF THE COMPTROLLER OF THE CURRENCY	13
SECURITIES AND EXCHANGE COMMISSION	14
FEDERAL DEPOSIT INSURANCE CORPORATION	15
NATIONAL CREDIT UNION ADMINISTRATION	15
FEDERAL RESERVE BOARD OF GOVERNORS	16
CONSUMER FINANCIAL PROTECTION BUREAU	17
FEDERAL HOUSING FINANCE AGENCY	18
<u>SECTION IV – RECOMMENDATIONS</u>	
RECOMMENDATIONS FOR THE AGENCIES	20
CONCLUSION	27
<u>APPENDICIES</u>	
A- LETTERS FROM MEMBERS TO INSPECTORS GENERAL	29
B- HOUSING AND ECONOMIC RECOVERY ACT §1116	33
C- DODD-FRANK ACT §342	35
D- EXECUTIVE ORDER 13583	38
E- FINAL INTERAGENCY POLICY STATEMENT DISSENT	41
F- LINKS TO OIGs’ AUDIT AND EVALUATION REPORTS	51

SECTION I – INTRODUCTION

BASIS FOR THIS REPORT

The increasing racial and ethnic diversity of the country’s population underscores the social and economic importance of heightening awareness about the need to improve and support our country’s workforce diversity across both the public and private sectors. The persistent lack of diversity in the financial services industry led the Democratic Members of the House Financial Services Committee (the “Committee”) to author Section 1116 of the *Housing and Economic Recovery Act of 2008*¹ (“HERA”) and Section 342 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*² (“the Dodd-Frank Act”).

This issue has also been investigated by the Government Accountability Office (“GAO”) which has, over the years, produced several reports on the topic – most recently in April 2013.³ That report, which looked at senior-management level representation of minorities and women in the financial services industry and among the federal financial services agencies after the 2008 financial crisis, found continued evidence of racial and ethnic homogeneity in the workforces and barriers to recruitment, retention, and promotion. More recently, allegations of discriminatory conduct at the Consumer Financial Protection Bureau (“CFPB”) intensified longstanding Congressional concerns regarding the financial services industry’s commitment to workforce diversity.

This Committee staff report is a response to concerns expressed by Democratic Members of the Committee, and provides a comprehensive analysis of audits completed by the Offices of Inspectors General (“OIGs”) at the federal financial regulatory agencies. This Committee staff report seeks to review and evaluate the findings of the audits, and offers recommendations to support regulators’ efforts to promote and sustain racial, ethnic, and gender diversity within their workforces.

WHY DIVERSITY MATTERS

In short, diversity matters because the American population is naturally diverse. Since our nation’s founding, the diversity of the American experience has been cited by numerous historians, authors, and economists as one of the country’s greatest assets. This principle of “diversity as an asset” was recognized nearly 75 years ago by former President Roosevelt who, in an Executive Order banning discrimination in the defense industry, asserted “the firm belief that the democratic way of life within the Nation can be defended successfully *only* with the help and support of all groups within its borders.”⁴

While President Roosevelt sought to ban discrimination in the defense industry as a means of bolstering national security, in the decades since, researchers and academics have recognized the economic

*** *The Democratic staff of the House Financial Services Committee wish to extend their deep and sincere gratitude to the Offices of the Inspectors General for their diligent attention to, and efforts in, undertaking substantive audits, and the staff of the Government Accountability Office for their insights into agency diversity and inclusion practices, without which this Committee staff report would not have been possible.* ***

¹ Pub. L. No. 110-289, §1116 (2008).

² Pub. L. No. 111-203, § 342 (2010).

³ U.S. Government Accountability Office, *DIVERSITY MANAGEMENT: TRENDS AND PRACTICES IN THE FINANCIAL SERVICES INDUSTRY AND AGENCIES AFTER THE RECENT FINANCIAL CRISIS* (GAO-13-238, Apr. 2013).

⁴ Exec. Order No. 8802, 6 Fed. Reg. 3109 (Jun. 26, 1941) (emphasis added).

contributions that diversity can also make to our country's economy. In 2011, for example, Forbes's primary research arm found that a diverse set of experiences, perspectives, and backgrounds is crucial to innovation and the development of new ideas.⁵ In 2014, the international management consultancy, McKinsey & Company, released its "Diversity Matters" report, which demonstrated a statistically significant positive correlation between racial and ethnic diversity and improved financial performance.⁶ Its analysis also found that companies in the top quartile of racial, ethnic, and gender diversity are 15 and 30 percent, respectively, more likely to earn financial returns above the national industry median. By comparison, companies in the bottom quartile of workforce diversity are statistically unlikely to achieve above-average financial returns.

Despite the early political understanding of, and current research supporting, the economic value of diversity, GAO found, from 2007 to 2011, a continued trend of low representation of minorities and women in the financial services industry and, particularly at the senior-management level among the Agencies and Federal Reserve Banks.⁷ As the current American population is becoming increasingly diverse, with the U.S. Census Bureau estimating that more than half of all Americans will belong to a minority group by 2044,⁸ the Agencies will need to attract, hire, and retain a diverse workforce in order to meet operational demands and effectively understand the communities, populations, and markets that they are charged with overseeing. Ultimately, workforce diversity matters to the federal financial services agencies because its maximization not only achieves a social good but also ensures a critical organizational objective.

BACKGROUND

Congress has enacted laws, federal agencies have issued regulations, and Administrations have issued Executive Orders to support the inclusion and professional advancement of minorities and women in the workplace.

In 1963, Congress passed the *Equal Pay Act of 1963*,⁹ which amended the *Fair Labor Standards Act*, in an effort to abolish the wage disparity between men and women doing the same jobs. The following year, Congress enacted the *Civil Rights Act of 1964*¹⁰ ("1964 Act"). Title VII of the 1964 Act prohibits discrimination against an employee or applicant on the basis of race, color, sex, or national origin and retaliation against employees because of an employee's filing of a discrimination claim. It also established the Equal Employment Opportunity Commission ("EEOC") to enforce the Title VII requirements.

The EEOC works on behalf of aggrieved employees to seek justice through mediation, counseling, and legal measures to promote equal opportunity and combat employment discrimination. The EEOC's reporting requirements – as stipulated in Section 717 of Title VII and Section 501 of the *Rehabilitation Act by Management Directive 715* ("MD-715") – mandate that each federal agency review annually, in a MD-715 Status Report, its progress in providing policy guidance and standards for equal employment opportunity so as to identify barriers that may work against this aim. In completing these self-assessments, federal agencies are directed to compare their workforce participation rates with that of the

⁵ Forbes Insights, "GLOBAL DIVERSITY AND INCLUSION: FOSTERING INNOVATION THROUGH A DIVERSE WORKFORCE" (July 2011).

⁶ Hunt, Layton and Prince, McKinsey & Company, "DIVERSITY MATTERS" (Nov. 24, 2014).

⁷ GAO Report, *supra* note 3, at 8, 34.

⁸ U.S. Census Bureau, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014-2060, 9 (Report: P25-1143, March 2015) ("minority" is defined as any group other than non-Hispanic White alone).

⁹ Pub. L. No. 88-38 (1963).

¹⁰ Pub. L. No. 88-352 (1964).

relevant Civilian Labor Force (“CLF”) participation rates.¹¹

In reaction to certain Supreme Court decisions that shifted the landscape of anti-discrimination laws,¹² Congress enacted the *Civil Rights Act of 1991*,¹³ which contained several procedural and substantive amendments to the laws enforced by EEOC. These amendments created avenues for successful litigants to recover compensatory and punitive damages under Title VII for intentional discrimination, but placed statutory caps on the amounts that could be awarded for future pecuniary losses and punitive damages, based on the employer’s size. The *Civil Rights Act of 1991* also added a subsection to Title VII that codified the disparate impact theory of discrimination in employment practices.¹⁴

In 2002, Congress passed additional legislation designed to deter discriminatory practices in the federal workplace. The *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002*¹⁵ (the “No-FEAR Act”) buttressed anti-discrimination laws by instructing each federal agency to provide training, every two years, to its employees about the rights and remedies available under the employment discrimination and whistleblower protection laws. Additionally, each federal agency must submit to Congress, the EEOC, the Department of Justice, and the Office Personnel Management, an annual report about the its efforts to improve compliance with the employment discrimination and whistleblower protection laws, as well as a status update regarding any complaints brought against the agency under these laws.

Two recent laws reforming the financial services industry have incorporated specific provisions directing federal financial services agencies to promote workforce and supplier diversity. In response to the housing crisis, Congress enacted the *Housing and Economic Recovery Act of 2008* (“HERA”).¹⁶ HERA amended the *Federal Housing Enterprises Financial Safety and Soundness Act of 1992* (“the Safety and Soundness Act”), to establish the Federal Housing Finance Agency (“FHFA”), as an independent agency. It also transferred to the FHFA, supervisory and oversight responsibilities from the Office of Federal Housing Enterprise Oversight over the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”), and of the Federal Housing Finance Board over the Federal Home Loan Banks and the Bank System’s fiscal agent, the Office of Finance, (hereafter collectively referred to as “GSEs”). Section 1116 of HERA (“Section 1116”) amended Section 1319A of the *Safety and Soundness Act* to require, that the FHFA engage in certain activities to promote a diverse workforce. It also requires each of the GSEs to establish an Office of Minority and Women Inclusion (“OMWI”), or designate an office, to be responsible for all matters relating to diversity in management, employment, and business activities; the development and implementation of standards and procedures to promote diversity in all business and activities of the GSE for minorities and women, and minority-owned and women-owned businesses; and the submission of an annual report to the FHFA providing detailed information about the actions taken to promote diversity and inclusion.

Additionally, in 2010, Section 342 of the Dodd-Frank Act (“Section 342”) directed nine federal financial services regulators—the Departmental Offices of the Treasury (“Treasury”), FHFA, the Office of the

¹¹ The OIGs based their data and analyses on the same comparison.

¹² See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (considering gender discrimination claims); and *Wards Cove Packing Co. v. Antonio*, 490 U.S. 642 (1989) (considering racial discrimination claims).

¹³ Pub. L. No. 102-166 (1991), *Civil Rights Act of 1991*.

¹⁴ Recently, the Supreme Court also upheld the use of the disparate impact theory of discrimination in housing practices; *Texas Dept. of Hous. and Comm. Affairs et al. v. Inclusive Comm. Project, Inc. et al.*, No 13-1371, slip op. (U.S. Jun. 25, 2015), *affirming and remanding* 747 F. 3d 275 (5th Cir. 2014).

¹⁵ Pub. L. No. 107-174 (2002), *Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002*.

¹⁶ Pub. L. No. 110-289 (2008), *Housing and Economic Recovery Act of 2008*.

Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the Board of Governors of the Federal Reserve System (“FRB”), each of the 12 Federal Reserve Banks, the Securities and Exchange Commission (“SEC” or “the Commission”), the National Credit Union Administration (“NCUA”), and the Consumer Financial Protection Bureau (“CFPB” or “the Bureau”) to establish OMWIs. Each OMWI Director must, among other activities, develop standards for: (1) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of each of the agencies; (2) increased participation of minority-owned and women-owned businesses in the programs and contracts of each of agencies, including standards for coordinating technical assistance to such businesses; and (3) assessing the diversity policies and practices of entities regulated by each agency. Each OMWI Director is also required to advise the heads of the agencies on the impact of policies and regulations of the agency on minority-owned and women-owned businesses. Finally, each OMWI is required to submit an annual report to Congress on their actions to achieve the purposes of Section 342, including on the successes achieved, and challenges faced by, the agency in operating minority and women outreach programs and any challenges experienced in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses. While Section 342 did not specify the date by which the report had to be issued, the OMWIs have generally issued these reports by the end of March. And though Section 1116 did not require the FHFA to establish its own OMWI, Section 342 did impose this requirement on the FHFA.

More recently, in 2011, President Obama issued *Executive Order 13583*¹⁷ directing federal agencies to make a more concerted effort to integrate diversity and inclusion into their human resources agenda.

These laws, regulations, and policies comprise only a portion of the body of law that dictates how federal agencies are expected to support equal employment opportunity as well as promote diversity and inclusion in the workplace. To adhere with these directives, the agencies have developed internal systems to ensure compliance with the letter and spirit of the laws. Responsibility for these systems often lies – in interrelated ways – with the OMWIs, Equal Employment Offices, the Human Resources or the Human Capital Offices, within each agency. Committee staff recognize that Section 342(a)(3) of the Dodd-Frank Act clarifies that the OMWI Directors are not charged with the enforcement of statutes, regulations, or Executive Orders pertaining to civil rights, except each Director is required to coordinate with the head of the Agency, or designee, about the design and implementation of any remedies resulting from violations of these statutes, regulations or Executive Orders. To the extent that such statutes, regulations, or Executive Orders are discussed here it is understood that these are within the purview of the Agencies’ administrators and/or other appropriate federal civil rights enforcement agencies.

It is against this backdrop, that the OIGs were tasked with assessing the workforce practices outlined by the Democratic Committee Members.

METHODOLOGY

OIGS’ AUDITS

On March 24, 2014, the Ranking Member of the Committee, and the Ranking Member and Democratic Members of the Subcommittee on Oversight and Investigations sent letters to the Inspectors General at seven financial regulatory agencies (collectively, “the Agencies”).¹⁸ The letters requested that the OIGs

¹⁷ Exec. Order No. 13,583, 76 Fed. Reg. 52,847 (Aug. 23, 2011).

¹⁸ The Board of Governors of the Federal Reserve System (“FRB”), Office of the Comptroller of the Currency (“OCC”), the Federal Deposit Insurance Corporation (“FDIC”), the National Credit Union Administration (“NCUA”), the United States Securities and Exchange

conduct an audit of each agency's internal operations to determine whether any personnel practices had created a discriminatory workplace or otherwise systemically disadvantaged minorities and women from obtaining senior management positions. The OIGs subsequently produced publically available audit reports that detailed the Agencies' workforce diversity and personnel practices.

The OIGs coordinated with each other to use similar approaches in conducting their reviews. Each OIG audit reported statistics related to diversity by comparing that agency's workforce composition between Fiscal Year ("FY") 2011 and FY 2013 with the CLF.¹⁹ Specifically, the OIGs:

- Examined personnel operations, policies, and procedures designed to ensure equality;
- Analyzed diversity in workforce composition;
- Assessed Agencies' efforts to increase diversity in the workforce and within senior-level management;
- Evaluated to what extent the Agencies' OMWIs have impacted diversity efforts; and
- Identified factors that influence an agency's ability to increase diversity, particularly in senior-level management.

To the extent that the OIGs identified that agency practices failed to support diversity in the workplace or created barriers to minorities' or women's ascension to senior-level management, they were instructed to make recommendations about potential corrective actions – which every OIG did in its report.

In order to conduct their analyses, the OIGs attempted to use substantially similar methodology. They collected information on diversity hiring and promotions and met with staff from the OMWIs, Human Resources Offices, Human Capital Offices, and Equal Employment Opportunity Offices. Additionally, the OIGs reviewed agency-specific and OMWI-related policies, procedures, and reports to gauge the OMWIs' internal controls, role, and involvement in, assessing agency personnel practices and diverse promotions. The OIGs contracted with private firms to perform statistical significance tests that analyzed the likelihood of a correlation between race/ethnicity, gender, age and performance management review ("PMR") scores. In evaluating the results, some OIGs also broke down the workforce composition by: entire agency, middle management, senior management, bargaining unit employees and non-bargaining unit employees.

Committee Staff

In evaluating the Agencies' efforts to achieve a diverse workforce, Committee staff reviewed the OIGs' audit reports, annual OMWI reports, and other publicly available research on diversity such as past GAO reports. In addition, Committee staff used the CLF as a baseline for comparison of the Agencies' workforces. CLF data is compiled annually by the EEOC and classified according to the North American Industry Classification System ("NAICS"). For the purposes of this report, data – from years corresponding to the OIGs' evaluations, 2011-2013 – was collected from the NAICS subset for Finance and Insurance.²⁰

Commission ("SEC"), the Federal Housing Finance Agency ("FHFA") and the Consumer Financial Protection Bureau ("CFPB").

¹⁹ The sum of civilian employment and civilian unemployment as collected by the U.S. Bureau of Labor Statistics.

²⁰ NAICS-2, Code 52, Finance and Insurance. Because both the private and federal financial services industries draw from the same applicant pool, with specialized skillsets, the data used for comparison and analysis was limited to the CLF subset on Finance and Insurance. The use of this subset of the CLF does not imply that Committee staff view the diversity in the finance and insurance private sector as a model for diverse workforces.

It should be noted that while the original request from Democratic Members of the Committee to the OIGs, as clarified through conversations between Committee and OIGs' staffs, was for an evaluation of the Agencies' employment statistics, existence or absence of barriers to promotion for minorities and women, and discrimination complaint activity, this staff report focuses on the employment and personnel practices within each of the Agencies, without a substantive analysis of personnel complaints.

SECTION II – QUANTITATIVE ANALYSIS

WORKFORCE COMPOSITION

As detailed in the 2013 GAO report, there are some substantive challenges to promoting and retaining a diverse workforce in the financial services sector.²¹ These obstacles have resulted in limited progress in the diversification of workforces in the private sector and among the Agencies.

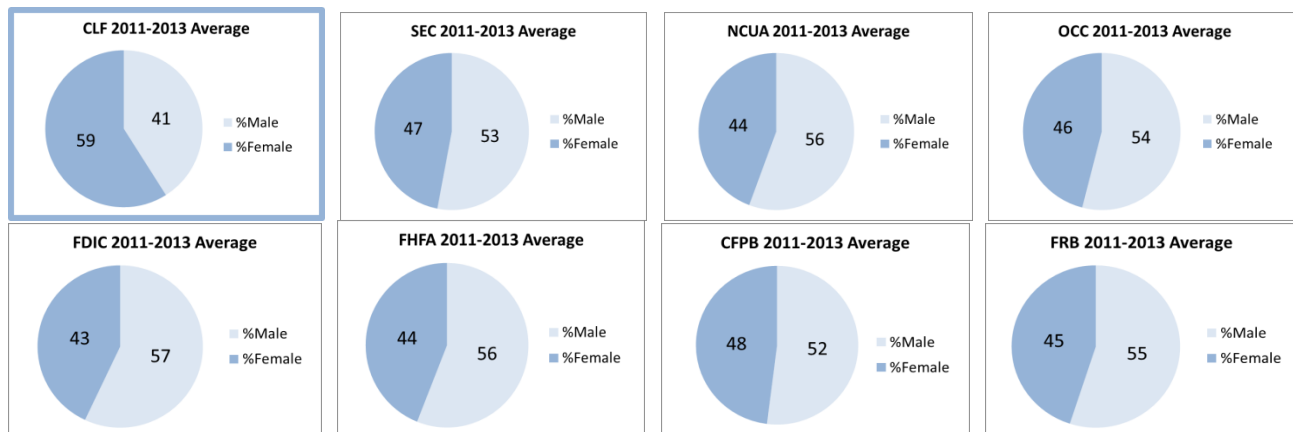
Although the OIGs’ audit reports cited the extent to which the Agencies are implementing internal controls to ensure diversity and inclusion within their respective workforces, they noted barriers persist that negatively impact the professional advancement of minorities and women. These obstacles were observed in nearly all of the Agencies. The trends and patterns noted in the OIGs’ audit reports reinforce concerns regarding the level of inclusion of minorities and women at the Agencies, particularly at the senior-management level. That is to say, despite some efforts by the Agencies to support and increase senior-management diversity, known – and potentially unknown – barriers exist that inhibit the achievement of that objective.

WORKFORCE, IN GENERAL: Women Remain Underrepresented at the Agencies; Minority Representation Generally Exceeds the CLF

Gender Diversity

During the three years under review, on average, roughly 3.19 million individuals were employed in the private financial services sector. Of the more than 3 million employees, the majority were women and only a minority were men: 59 percent female compared to 41 percent male.

However, this CLF pattern was reversed among all of the Agencies, with men, on average, accounting for 55 percent of the workforce and women accounting for only 45 percent of the workforce. Though the trend of underrepresentation of women in the workforce was more pronounced in particular agencies – such as the FDIC, NCUA, and the FHFA – it was certainly evident among all the Agencies. Moreover, this trend did not appear to improve over the years surveyed and, in specific instances, even worsened. For example, the NCUA OIG determined that, although it had increased the size of its workforce, the overall number of women employees actually decreased.²²



²¹ GAO Report, *supra* note 3.

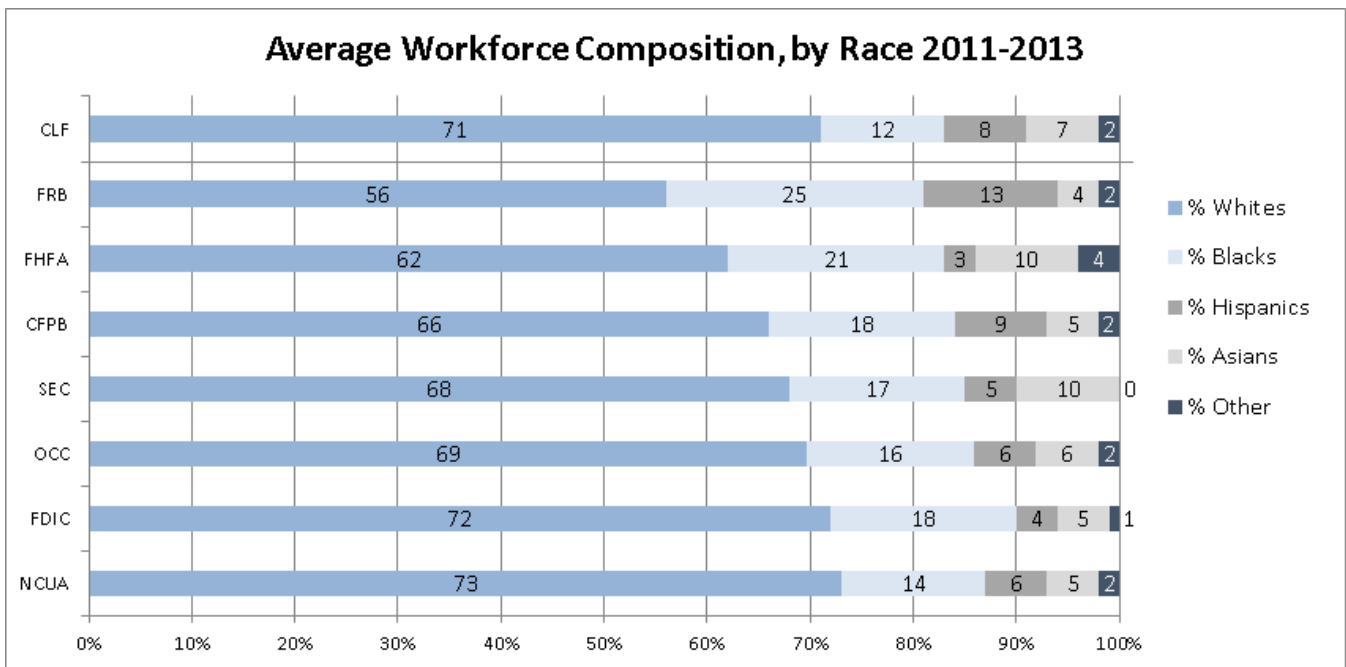
²² National Credit Union Administration, Office of Inspector General, REVIEW OF NCUA’S EFFORTS TO PROMOTE EQUAL OPPORTUNITY AND ACHIEVE DIVERSITY IN SENIOR MANAGEMENT, (OIG-14-09, Nov. 26, 2014), 7.

Racial and Ethnic Diversity

Achieving a proportional representation of racial and ethnic diversity within the financial services sector has historically been difficult and remains so today. In its 2013 Report, GAO found that “some industry representatives cited challenges to achieving a diverse workforce in general.”²³ This lack of private sector diversity is mirrored in the Agencies’ employment numbers as well, with White employees constituting at least two-thirds of the workforce in all but two of the Agencies surveyed. In fact, during the time period analyzed, Whites made up more than 70 percent of all employees at both the FDIC and the NCUA – percentages that underperform the already poor diversity numbers in the CLF.

To be fair, all of the Agencies, except for the NCUA and FDIC, exceeded the CLF with respect to minority representation. Nevertheless, several OIGs concluded that more could be done to support a more racially and ethnically diverse workforce. For instance, the FDIC OIG audit report determined Hispanic employees were underrepresented throughout the agency and, in particular, at the senior-management level.

The following bar graph illustrates the average racial and ethnic diversity in the financial services sector and across the Agencies from 2011-2013.



²³ GAO Report, *supra* note 3, at 20.

WORKFORCE, SENIOR-MANAGEMENT: Minorities and Women are Significantly Underrepresented at the Senior-management Level in Proportion to their Overall Participation Rates at the Agencies

As discussed previously, a 2014 study by McKinsey & Company “found a statistically significant relationship between a more diverse leadership and better financial performance.”²⁴

However, among the Agencies, diversity at the senior-management level remains stagnant, and well below the proportional composition found in the U.S. population. Across the Agencies, and in the private sector workforce, both minorities and women are significantly underrepresented as a proportion of their participation in the financial services sector overall.

Ideally, the proportion of minorities and women employed at the Agencies should reflect the demographic diversity of the American population. However, Committee staff believe that until the racial, ethnic, and gender diversity within the financial services sector more closely corresponds with the nation’s demographic diversity, the Agencies can take the lead in pushing aggressively for senior management diversity to at least reflect the broader – if not still low – diversity found within the Agencies as a whole. Unfortunately, when the diversity at the senior-management level at the Agencies is compared with the overall diversity picture of the Agencies, as a whole, it is clear that both minorities and women are underrepresented as compared with their overall workforce participation rates.

Because each agency has its own pay scale, this Committee staff report considers employees who are receiving compensation equivalent to the Senior Executive Service (“S.E.S.”) to be considered senior management.²⁵ Additionally, because certain agencies did not provide numbers for the senior management positions for all three calendar years – 2011, 2012, and 2013 – averages are taken where possible and noted where no data was provided.

Gender Diversity

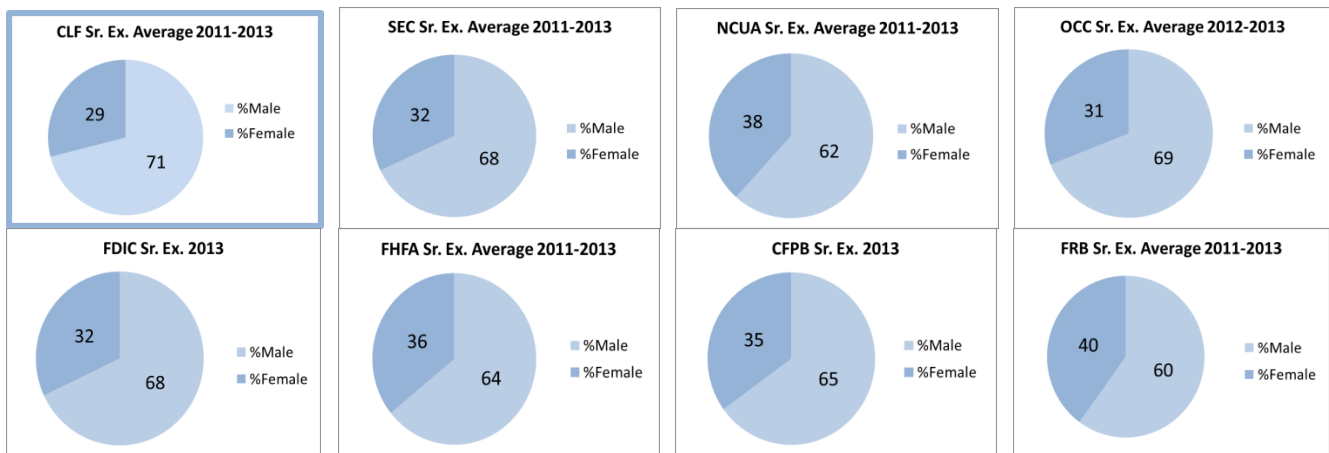
In the private sector, more than 70 percent of all senior-management level positions were held by men. Similarly, within the Agencies, at the senior-management level, women were substantially less likely to be employed at the senior-management level than their male counterparts. The FDIC cited the underrepresentation of women within internal candidate pools as a challenge to senior management diversity.²⁶ The SEC OIG audit report noted that women’s underrepresentation at the supervisor and Senior Officer levels is a potential indicator that women are not promoted to, or hired to, those positions at the same rate as their male colleagues.²⁷ The OCC OIG audit report reached similar conclusions with regard to the participation of women at the supervisory and senior-management levels. These findings illustrate the widespread obstacles to achieving senior-management level gender diversity across the Agencies and demonstrate areas where improvements should be made.

²⁴ McKinsey & Company, *supra* note 6, at 1.

²⁵ SEC – Senior Officers (above SK-17); NCUA – Senior Staff (above CU-16); OCC – Senior Executives (NB8-NB9); FDIC – Senior-Level Employees (CM-2 or above); FHFA – Senior Staff (LL-1 and EL-15); CFPB – Senior Executives (80-90 series); FRB – Senior Managers and Officers (FR-29 and OO).

²⁶ Federal Deposit Insurance Corporation, Office of Inspector General, THE FDIC’S EFFORTS TO PROVIDE EQUAL OPPORTUNITY AND ACHIEVE SENIOR MANAGEMENT DIVERSITY (EVAL-15-001, Nov. 28, 2014), 9.

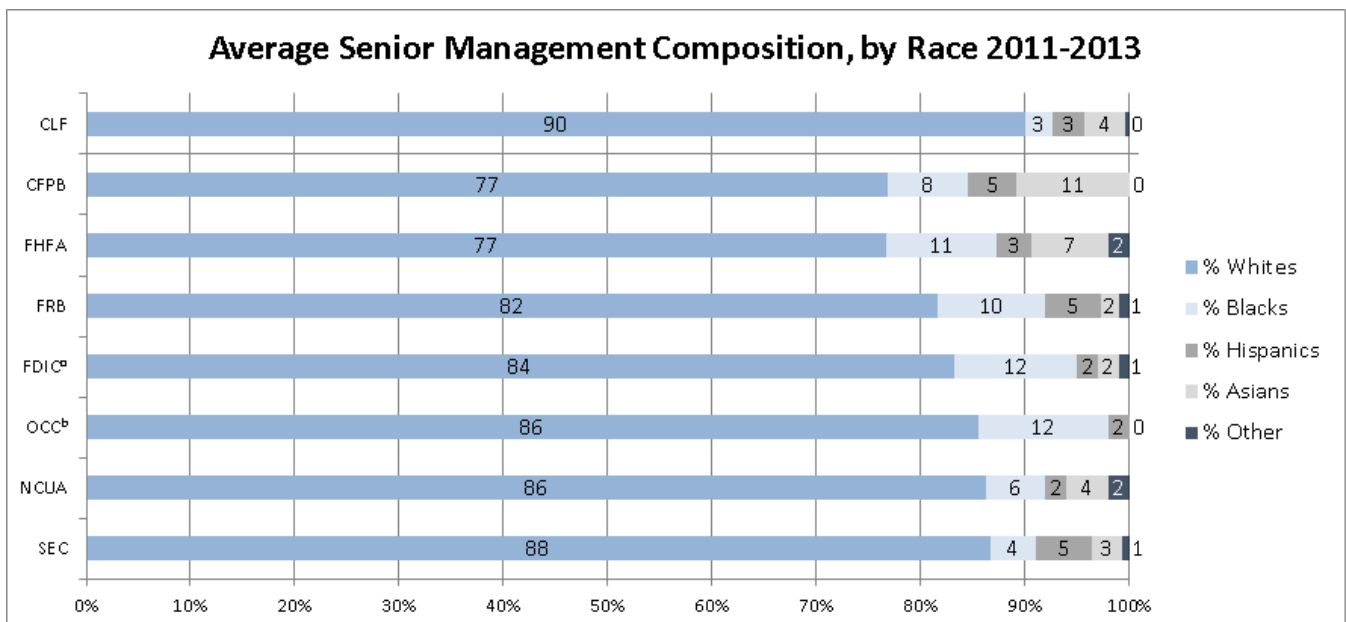
²⁷ U.S. Securities and Exchange Commission, Office of Inspector General, AUDIT OF THE REPRESENTATION OF MINORITIES AND WOMEN IN THE SEC’S WORKFORCE (Report No. 528, Nov. 20, 2014), 10.



Racial and Ethnic Diversity

The low level of racial and ethnic diversity generally found within the private and public sectors in financial services is significantly diminished at the senior-management level. During the relevant years, in the CLF, 90 percent of senior managers were White, leaving all other racial and ethnic groups combined to account for only 10 percent of available senior executive positions. This inverse correlation between diversity and seniority was also observable in every agency evaluated; however, the Agencies had a slightly higher level of diversity among senior management when compared to the private sector. Indeed, Whites comprised 80 percent or more of senior executive positions in five of the seven the agencies – and all of the Agencies had greater than 75 percent of senior executive positions filled with White employees. This extreme absence of senior management diversity did not appear to improve over the time period considered.

The following bar chart illustrates the average racial and ethnic composition and lack of diversity in the private sector and among the Agencies with respect to senior executive positions from 2011-2013.



^a Data only available for 2012 and 2013

^b Data only available for 2013

According to the OIGs' audit reports, the representation of minorities in mid-level management positions – the “internal pipeline” to senior management – is lacking and is a major contributing factor to the limited senior management diversity. And specifically at the NCUA, FDIC, and CFPB, mid-level management positions were explicitly described as being part of the internal pipeline to senior management.

It is also worth noting that even though this report focuses on the Agencies' workforce, it is troubling that private sector employment in the financial services industry of minorities and women, particularly at the senior-management level, remains weak. As several OIGs' reports indicated, the private sector serves as an external pipeline to mid-level and senior management positions. Poor private sector diversity may make it more difficult for the Agencies to successfully recruit and hire diverse employees and managers. The Agencies, however, could create their own pipeline by providing additional training and, where appropriate, funding for supplemental education, to fulfill vacancies. Also, to the extent that the Agencies are searching for personnel with very specific skill-sets such as economists with experience working in housing finance, the Agencies could consider whether their operational needs could also be achieved by considering candidates more broadly such as hiring economists that they then train in certain subject matters. In any case, the “internal pipeline” problem, along with the lack of private sector diversity, has been a longstanding obstacle pointed to by the Agencies to explain the lack of diversity at the senior-management levels.

PERFORMANCE MANAGEMENT REVIEW SCORES: African-Americans Employees Generally Receive Lower Performance Management Review Scores than White Employees at the Agencies

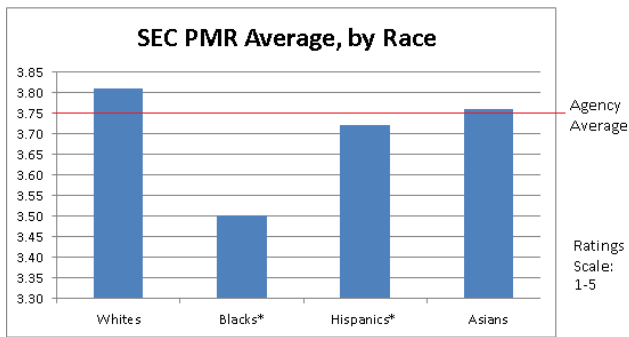
PMRs are – in essence – the federal government's equivalent of the private sector's performance evaluations. PMRs are mandatory and are directly related to an employee's monetary and non-monetary compensation (in the form of bonus awards, eligibility for promotion or salary increases, and receipt of paid time-off awards). They are also used as a basis for continued employment.

Across the Agencies, clear patterns emerged in which African-American employees consistently received lower PMR scores than their White colleagues. African-American employees also received scores below the Agencies' average PMR scores. In more than half of the Agencies, this difference was statistically significant. Lower scores were also observed with respect to Hispanic employees in four out of the seven of the Agencies.

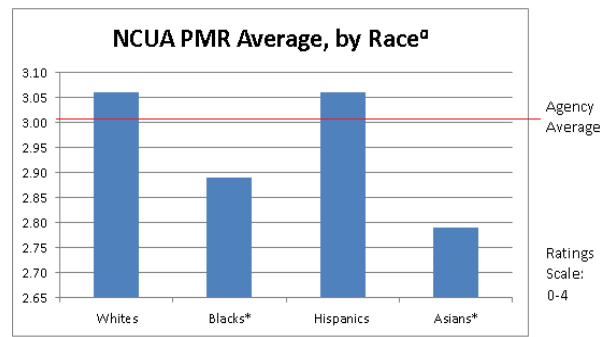
Interestingly, across the Agencies surveyed, women employees received higher PMR scores than their male counterparts regardless of level of employment.²⁸

The graphs below illustrate these differences by racial and ethnic category across agencies.

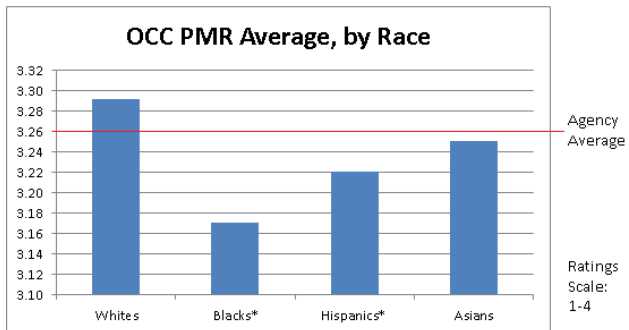
²⁸ Female employees were found to have a higher average PMR score than male employees at the SEC, OCC, FDIC, CFPB and FHFA. Female employees were found to have a lower average PMR score than male employees at the FRB. At the NCUA, where PMRs are rated differently depending on employee level, female employees had higher average PMR scores at the standard employment level, and lower average PMR scores at the S.E.S. level. At no agency, did the Committee staff discover statistically significant differences in average PMR scores by gender.



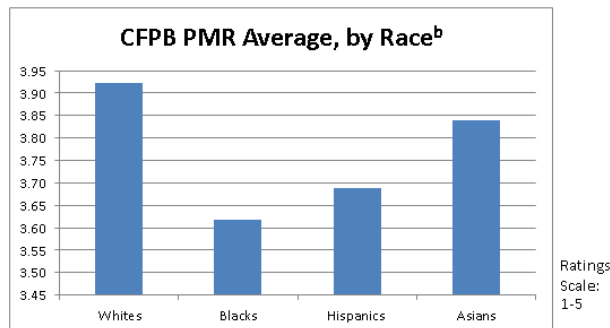
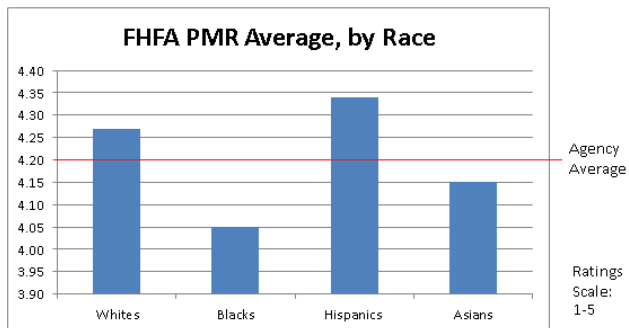
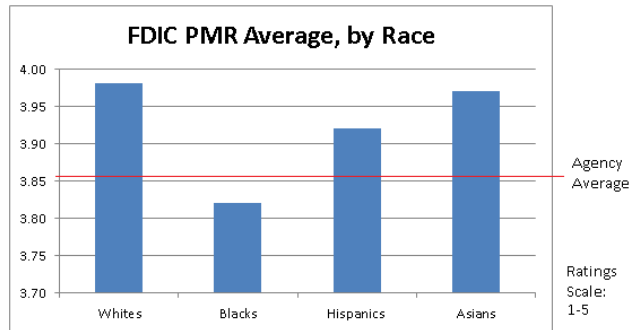
* Denotes a statistically-significant difference between the racial or ethnic group noted and Whites



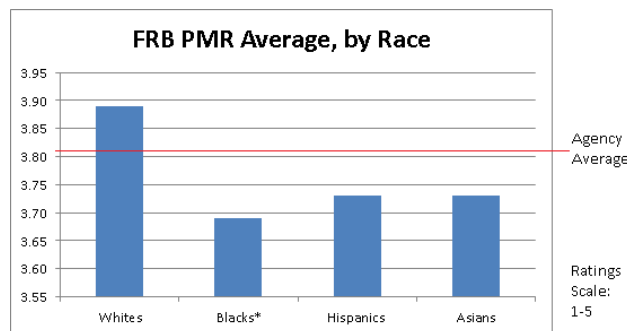
^a For non senior-executive level employees, because of senior-executives are evaluated on a different PMR rating scale, which contained insufficient diversity to achieve a meaningful statistical analysis



* Denotes a statistically-significant difference between the racial or ethnic group noted and Whites



^b CFPB PMR reviews presented “unique challenges” due to a change in rating scale and treatment in analysis which occurred between 2012 and 2013 – as such an average PMR rating across the agency is not included here



* Denotes a statistically-significant difference between the racial or ethnic group noted and Whites

SECTION III – QUALITATIVE ANALYSIS

Section III of this staff report provides a qualitative, narrative analysis, by agency, of some of the successes and shortcomings identified in diversity and inclusion efforts. These achievements and deficiencies were identified after Committee staff reviewed information from a number of different sources including the OIG reports, the Agencies' OMWI annual reports, the GAO reports on diversity in the financial sector, and studies conducted by private-sector consultancies. Any example of positive or negative conduct highlighted at a specific agency should not be interpreted to exist only at that agency.

Office of the Comptroller of the Currency (OCC)

The OCC's OIG explained that "the limited number of senior-level positions, the infrequency of position openings, and the internal hiring conducted to meet specialized skill requirements pose a challenge in resolving the low participation of minorities and women in senior-level positions."²⁹ Though these obstacles may present immediate challenges, if the OCC is drawing from its internal-workforce to fill senior-level positions, then the failure to establish a diverse pipeline of entry- and mid-level employees will certainly result in these challenges remaining long-term barriers to meaningful diversity at the senior-management levels. A push for enhanced career development for existing employees would be consistent with the findings from the OCC's 2013 Federal Employee Viewpoint Survey, which reported that "the OCC [should] consider focusing on providing career development opportunities to maintain high levels of engagement in the workforce and reduce the risk of turnover."³⁰

Positively, the OCC has sponsored the National Diversity Internship Program for three years.³¹ The program involves three student employment groups: the Hispanic Association of Colleges and Universities; Washington Internships for Native Students; and INROADS, a non-profit organization that trains and develops minority students for professional careers in business and industry. In 2013, the OCC contracted for 25 interns under this program and hired 29 students from the federal Pathways internship program. The OCC's internship efforts are consistent with the explicit mandate under Section 342 for OMWIs to proactively reach out to minority and women networks to ensure a strong pipeline of recruits. In particular, Section 342(f)(1) directs the OMWIs to recruit at minority and women colleges, which the OCC appears to have done with its outreach to the Hispanic Association of Colleges and Universities; and Section 342(f)(4) directs the OMWIs to partner with "organizations that are focused on developing opportunities for minorities and women in industry internships, summer employment, and full-time positions," which it has done with INROADS. However, while the OCC's internship efforts are a good first step, there are a number of other opportunities that can be leveraged to improve workforce diversity at the agency. For example, other existing minority professional development programs appear to be untapped resources and the OCC's field offices could also be involved in developing internships to give students across the country exposure to the agency.

Previous OCC OMWI annual reports to Congress have contained almost verbatim language in the discussion of achievements and challenges that the agency has faced in promoting workforce diversity.³²

²⁹ Office of the Comptroller of Currency, Office of the Inspector General, REVIEW OF THE OCC'S PERSONNEL PRACTICES (OIG-15-017, Dec. 1, 2014), 12.

³⁰ *Id.* at 16.

³¹ *Id.* at 11.

³² Compare, e.g., OCC OMWI, FISCAL YEAR 2014 ANNUAL REPORT TO CONGRESS, 11 (discussing workforce diversity: "In addition, the OCC continued to focus on the low participation rates of females and minorities in supervisor roles and senior-level positions"), with, OCC OMWI, FISCAL YEAR 2013 ANNUAL REPORT TO CONGRESS, 12 ("In addition, the OCC continues to focus on the low participation rates of

Despite awareness of its diversity deficiencies and a commitment to increase the recruitment, hiring, and retention of a diverse workforce, with concerted efforts on maximizing the participation of Hispanics, the reports contain substantially similar discussions of OCC's recruitment and hiring efforts of minority and women employees.

For three consecutive years, the OCC noted in its OMWI annual reports that all major EEO groups were at or near parity with the national civilian labor force ("NCLF"),³³ with the exception of Hispanics. Although the Hispanic workforce has seen small increases each year – 5.7 percent in FY 2011, 6.3 percent in FY 2012, and 6.6 percent in FY 2013 – the Hispanic workforce participation continues to remain below the NCLF of 10.0 percent. The Hispanic representation differs by occupation and, presumably, the OMWI's efforts should also be targeted to those fields. The OCC mission-critical occupations are: national bank examiners, attorneys, and economists. In FY 2011, Hispanics were participating at or near the occupational civilian labor force ("O-CLF")³⁴ levels in these mission critical occupations. And while the Hispanic participation rates continued to exceed their O-CLF for national bank examiners and attorneys in FY 2012 and FY 2013, the OMWI notes low participation rates persisted for the economist occupation (reported at 4.4 percent versus 5.1 percent in FY 2013).

Securities and Exchange Commission (SEC)

The SEC's OIG found that its OMWI office had "not established internal policies and procedures or required workforce diversity standards."³⁵ The OIG also explained that this "occurred because the OMWI Director determined that other requirements of Section 342 of the Dodd-Frank Act were a higher priority. [And a]s a result, [the] OMWI lacks the controls necessary to monitor, evaluate, and as necessary improve its operations and fully comply with the Dodd-Frank Act."³⁶

In its FY 2011 OMWI Annual Report to Congress, the OMWI indicated it was "developing an agency-wide diversity and inclusion strategic plan that incorporates the requirements of Section 342, the August 2011 White House Diversity and Inclusion Executive Order, and the Government-Wide Diversity and Inclusion Strategic Plan."³⁷ Moreover, this strategic plan was supposed to include standards that would have allowed the SEC to conduct self-assessments of its ongoing diversity and inclusion efforts. In that FY 2011 OMWI report, it stated that these standards were to have been finalized by May 1, 2012.³⁸ Despite repeated affirmations that it was planning to finalize internal policies and procedures for its diversity efforts and programmatic activities, in the 2014 OIG's audit report, the OMWI Director revealed "that she *hopes* to begin developing policies, procedures, and workforce diversity standards, and measuring the effectiveness of OMWI's programs *in the coming year*."³⁹ Because these standards are required by the plain text of the statute, and in order to meaningfully evaluate the efforts put forth by

women and minorities in supervisor roles and senior level positions."), *and*, OCC OMWI, FISCAL YEAR 2012 ANNUAL REPORT TO CONGRESS (Mar., 2013), 10 ("In addition, OCC remains focused on the low participation rates of female bank examiners and women and minorities in senior level positions.").

³³ The National Civilian Labor Force data is derived from the 2010 census reflecting persons 16 years of age or older who were employed or were actively seeking employment - adjusted for citizenship, excluding those in the Armed Services.

³⁴ The Occupational Civilian Labor Force term describes the use of civilian labor force data for specific occupational groups that are mission-related and heavily populated relative to other occupations within the agency.

³⁵ SEC OIG Report, *supra* note 27, at 25.

³⁶ *Id.*

³⁷ SEC OMWI, FISCAL YEAR 2011 ANNUAL REPORT TO CONGRESS (Apr. 10, 2012), 4.

³⁸ *Id.*; *see also*, GAO Report, *supra* note 3, at 46 (explaining that "SEC reported plans to develop standards for assessing its ongoing diversity and inclusion efforts and include them in a strategic plan.").

³⁹ SEC OIG Report, *supra* note 27, at 28 (emphasis added).

the OMWI, the SEC's OMWI must take affirmative steps to finalize and implement these standards as soon as practicable.

At the SEC, three offices retain specific responsibilities for ensuring equal employment and diversity in the agency's workforce. These offices include OMWI, Equal Employment Office, and the Human Resources Office.⁴⁰ Because Section 342 requires the OMWI Director to be responsible for all diversity matters at the agency, to the extent that diversity matters are handled outside of an agency's OMWI, these offices should also include the OMWI Director in their efforts and decisions.

Federal Deposit Insurance Corporation (FDIC)

The FDIC transferred the responsibilities and employees from the predecessor Equal Employment Opportunity Office and the Office of Diversity and Economic Opportunity to the OMWI, effective on January 21, 2011.⁴¹ Positively, the FDIC's OMWI was found to coordinate with the agency's divisions and monitor efforts to increase diversity, including through the development of a diversity dashboard for FDIC executives after a consultant review conducted in 2012. Further, the FDIC's Corporate University provides employees with a wide range of training and employee development opportunities – including a Master of Business Administration program, leadership and supervisor training, diversity training and career counseling services.

Although the FDIC's OMWI is taking affirmative steps to comply with Section 342, the OIG found that there were certain actions that could be taken to improve its effectiveness. Namely, it recommended that the FDIC formalize recruiting procedures to ensure “consistent and comprehensive outreach to diverse populations.”⁴² The FDIC does conduct some targeted recruitment for mid- and senior- level vacancies through e-mail notifications of vacancies to community and professional organizations; and, at the request of the hiring division, advertisements may be placed in newspapers, journals, or with professional and constituent organizations with diverse populations. However, the FDIC has failed to analyze the effectiveness of both its media outreach and its college and university recruitment efforts, meaning it lacks the data to effectively tailor its resources into initiatives that are actually producing desired outcomes.

Additionally, the OIG noted that the demographic data being recorded by the FDIC on its MD-715 report in FY 2011 through FY 2013 contained numerous mistakes and that only the data for FY 2013 were correct. The OIG warned that “[w]ithout sufficient controls to ensure the reliability of diversity data, the FDIC risks reporting incorrect information to the EEOC and the public. Further, the FDIC could be relying on inaccurate data when assessing its diversity levels and the utility of diversity initiatives.”⁴³

National Credit Union Administration (NCUA)

Similar to the FDIC, the NCUA established its OMWI office as a stand-alone office on January 21, 2011, and opted to merge the OMWI with the (former) Equal Opportunity Programs Office in order to

⁴⁰ SEC OIG Report, *supra* note 27, at 3-4.

⁴¹ FDIC OIG Report, *supra* note 26, at 10.

⁴² *Id.* at 21.

⁴³ *Id.* at 44.

improve organizational structure and gain efficiencies until January 1, 2014.⁴⁴ The OIG found that the NCUA is generally meeting the statutory requirements under Section 342, by developing standards for race, ethnicity, and gender diversity. Nevertheless, the OIG did indicate that the “NCUA still needs OMWI to focus its attention in several key workforce areas, specifically, the underrepresentation of Hispanics and females agency-wide, and the underrepresentation of African-American and Hispanic males, and Asian females within the Senior Staff Position ranks.”⁴⁵ Moreover, the OIG found that despite the “significant strides” made by the NCUA in its outreach and inclusion efforts, the “NCUA management must correct its applicant flow data issues”⁴⁶ so that it can analyze the data and determine if barriers exist for minorities and women applicants to obtain jobs or other opportunities at the NCUA.

More immediately, the NCUA’s OMWI office will have to quickly involve, in all diversity and inclusion activities within the agency, its newly appointed permanent OMWI Director, who was only just hired in July 2015,⁴⁷ after the position had been chronically vacant for the preceding 18 months. Notwithstanding the NCUA’s positive efforts, and the Diversity Policy Statement that establishes the agency’s commitment to empowering a “workforce that includes diversity of people, diversity of perspectives, and diversity of business practices,” the prolonged absence of an OMWI Director at the agency was problematic. Committee staff is hopeful that the NCUA will be able to quickly and successfully integrate the position into an office that had been without a permanent leader for a year-and-a-half.

Additionally, despite restructuring the OMWI Director’s chain of command during the pendency of the OIG’s review, the NCUA still fails to comply with the organizational structure mandated by Section 342. An explicit duty prescribed for the OMWI Director under Section 342(b)(3) is “to advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.” NCUA’s attempt to satisfy this requirement by instructing the OMWI Director to report to the Executive Director who, through a delegation of authority by the NCUA’s Board, reports to the NCUA Chairwoman, is in direct contradiction with the statutory requirement that the OMWI Director report to the head of the agency which, in this case, is the Chairwoman. This organizational reporting structure runs afoul of both the letter and spirit of Section 342. It also may create the appearance of a subordinated role for the OMWI Director, and of diversity matters, at the NCUA.

The Federal Reserve Board of Governors (FRB)

Empirically, the FRB workforce was among the most diverse of all the Agencies, both generally and with respect to the senior management. In racial, ethnic, and gender categories, its workforce diversity was found to exceed the CLF. However, the OIG found several areas where the FRB has failed to adhere to statutory requirements.

Procedurally, the FRB did not follow the statutory instructions to name the newly-established diversity office, “the Office of Minority and Women Inclusion,” and instead opted to call it the “Office of Diversity and Inclusion” (“OD&I”).

⁴⁴ NCUA OIG Report, *supra* note 22, at 4.

⁴⁵ *Id.* at 18.

⁴⁶ *Id.* at 22.

⁴⁷ Press Release, NCUA, NCUA Taps Davy as OMWI Director (July 13, 2015), *available at*: <http://www.ncua.gov/News/Pages/NW20150713Davy.aspx>.

Substantively, the OIG also recommended that the OD&I Director ensure that No-FEAR Act training is offered on a regular basis, is tailored to the FRB, and includes EEO and diversity and inclusion topics in accordance with the Board's No-FEAR Act Written Training Plan.⁴⁸ Further, the OIG suggested that such trainings be updated as necessary to address any deficiencies identified, and that attendance records be retained.⁴⁹ The OIG noted that the EEOC's MD-715 "guidance advocates that all employees receive information about the EEO program through training on the EEO process and the protections afforded to employees, related policy statements, and reasonable accommodation procedures."⁵⁰ Such diversity and inclusion training is critical to the proper functioning of the human resources office within the agency. Notably, the OIG found that the "data collected [for the OD&I's MD-715 processes] were not validated against the employee electronic records stored in HR" during the audit period from FY 2011 through FY 2013. The lack of controls for diversity data found at the FRB by the OIG undermines the integrity of the agency's diversity and inclusion programs, and may in fact be contrary to required EEOC reporting regulations.

Ultimately, the FRB's implementation of the Section 342 requirements suggests to the Committee staff a tendency toward maintaining the status-quo with respect to workforce diversity efforts. "Although the FRB established the OD&I to include an OMWI function in response to the Dodd-Frank Act requirements, according to the OD&I official, the OD&I has not significantly modified its approach because these activities were already being covered prior to the enactment of the Dodd-Frank Act."⁵¹ Also, like several other agencies, as of the date of the OIG's report, the OD&I had not finalized a formal set of diversity and inclusion standards, as required by Section 342.

Consumer Financial Protection Bureau (CFPB)

It was reports and allegations, which surfaced in early 2014, of racial, ethnic, and gender discrimination at the CFPB⁵² that reignited public interest in the Agencies' treatment of minorities and women, and that ultimately led to the Congressional request by Democratic Members of the Committee for the OIGs to investigate such treatment. And it was an internal report designed to evaluate the agency's PMR system that identified the disparate treatment and was, in part, the catalyst for a host of reforms undertaken by the CFPB.⁵³

Since 2014, the agency has instituted a number of changes to its workforce practices designed to remedy past shortcomings and prevent future instances of discriminatory conduct. Some of these changes have included: (1) redesigning the employee PMR system; (2) offering diversity and inclusion training to all employees; (3) reviewing and updating the hiring processes; and (4) conducting employee listening sessions organized by the OMWI Director. And, in addition to developing new performance objectives for diversity and inclusion for supervisors, the CFPB is also exploring how the expanded use of applicant flow data can assist the agency in tracking the experience of job applicants and in identifying areas for improvement. A process for providing restitution to employees, who had been aggrieved by

⁴⁸ Federal Reserve Board, Office of Inspector General, *THE BOARD CAN ENHANCE ITS DIVERSITY AND INCLUSION EFFORTS*, (2015-MO-B-006, Mar. 31, 2015), 54.

⁴⁹ *Id.*

⁵⁰ *Id.* at 53.

⁵¹ *Id.* at 55.

⁵² Rachel Witkowski, *CFPB Staff Evaluations Show Sharp Racial Disparities*, American Banker, Mar. 6, 2014, http://www.americanbanker.com/issues/179_44/cfpb-staff-evaluations-show-sharp-racial-disparities-1066045-1.html; *Investigation into Allegations of Discrimination and Retaliation within the Consumer Financial Protection Bureau Before the Subcomm. on Oversight and Investigation of the H. Comm. on Financial Services*, 113th Cong. (Apr. 2, 2014).

⁵³ Rob Blackwell, *CFPB Employee Rating Disparities Go Beyond Just Race, Agency Says*, American Banker, May 19, 2014, http://www.americanbanker.com/issues/179_96/cfpb-employee-rating-disparities-go-beyond-just-race-agency-says-1067575-1.html.

the previous PMR system, has already been developed, and CFPB is working to compensate those employees for lost income. This type of remedial action demonstrates a meaningful commitment to rectifying self-identified deficiencies.

With respect to the OIG's findings, as discovered with several other Agencies, the "Director of OMWI has not developed standards for equal employment opportunity and the racial, ethnic, and gender diversity of the workforce".⁵⁴ A clear set of guidelines for diversity and inclusion practices at an agency is integral to an effective implementation of diversity policies. Additionally, these guidelines should form the basis for developing meaningful metrics as to the efficacy or inefficacy of certain tools.

Further, although the CFPB has started offering diversity and inclusion trainings to all of its employees, the OIG recommended that training should be mandatory and provided to all employees and supervisors on a regular basis. The OIG also noted that the training should be evaluated for effectiveness using performance metrics and the results incorporated into the training as needed.⁵⁵ In response to this finding, the CFPB Director, in January 2015, signed a decision memo that requires mandatory diversity training for all employees.⁵⁶

Federal Housing Finance Agency (FHFA)

As discussed above in Section I, unlike the other federal financial services agencies discussed in this report that are subject only to Section 342 of the Dodd-Frank Act, the FHFA is also subject to Section 1116 of HERA.

In July 2015, the FHFA finally finalized its diversity strategic plan, covering FY 2016 through FY 2018, which reflects the agency's commitment to promoting diversity and inclusion.⁵⁷ However, though the plan was finally released this month, the agency was at a disadvantage when attempting to measure its diversity and inclusion efforts because, in addition to the benefits discussed above, a finalized strategic plan is vital for interested members of Congress and other FHFA stakeholders to understand the Agency's long-term plan for diversity and inclusion and to hold it accountable for the Agency's stated diversity and inclusion objectives.

The FHFA OMWI listed a number of accomplishments that were designed to "strengthen its compliance with diversity and inclusion requirements."⁵⁸ While there appears to be an extensive list of accomplishments, it is not entirely clear from the 2014 OMWI annual report to Congress how the agency measures or monitors the effectiveness of the listed accomplishments or how it uses such assessments to advance its diversity policies. For example, although the OMWI report states that the agency has participated in recruitment events for organizations that serve minorities and women, it fails to provide any additional insight into how effective such participation is in actually recruiting minorities and women or even identifying potential candidates.⁵⁹ Positively, the diversity strategic plan that was

⁵⁴ Consumer Financial Protection Bureau, Office of Inspector General, *THE CFPB CAN ENHANCE ITS DIVERSITY AND INCLUSION EFFORTS*, (2015-MO-C-002, Mar. 4, 2015), 56.

⁵⁵ *Id.* at 60.

⁵⁶ *Id.* at 61.

⁵⁷ FHFA, Office of Minority and Women Inclusion, *OMWI STRATEGIC PLAN FY 2016-FY 2018* (Jul. 14, 2015).

⁵⁸ FHFA OMWI, *CALENDAR YEAR 2014 ANNUAL REPORT TO CONGRESS*, (2015), 7-8.

⁵⁹ As another example, the FHFA lists as one of its diversity and inclusion accomplishments that the Agency "[c]ommemorated national heritage months to promote diversity and inclusion and foster cultural awareness." *Id.* at 7. While this is commendable, it is not clear how such events actually contribute to, or enhance, workforce diversity and inclusion, nor is it clear how such accomplishments lend themselves to actual performance metrics that would allow the OMWI, or other diversity stakeholders, to determine the effectiveness of such programs in employee retention or cultural awareness.

recently finalized discusses the use of specific performance metrics.⁶⁰ It is the Committee staff's expectation that such metrics will be established in a rapid and meaningful way that supports the agency's diversity and inclusion efforts.

More worrisome is the OIG audit report's findings that under the former, acting FHFA Director, the FHFA failed to act on finalizing either the strategic plan or certain key diversity and inclusion personnel policies and that further, senior officials "did not advocate for a more robust role for OMWI on diversity and inclusion within the Agency."⁶¹ Equally troubling was the OIG's finding that the Human Resource Management Office employed a team of contracted recruiters for mission-critical senior positions who developed a plan in August 2012 for recruitment that, as of the date of the OIG audit report's publication, FHFA still had not approved.⁶² The OIG also determined that the FHFA lacked a junior-level recruitment plan that could provide the pipeline for future internal candidates for mid-level and senior positions.

The current FHFA Director has recently changed the reporting structure so that the new OMWI Director on his management team reports directly to him. In establishing the criteria for the OMWI Director, the FHFA Director sought out a candidate that had both OMWI experience and a knowledge of housing finance policy to ensure its OMWI Director could effectively influence workforce and supplier diversity at the agency and its policies.

⁶⁰ FHFA OMWI Strategic Plan, *supra* note 57 at 3.

⁶¹ Federal Housing Finance Agency, Office of Inspector General, WOMEN AND MINORITIES IN FHFA'S WORKFORCE (EVL-2015-003, Jan. 13, 2015), 19.

⁶² *Id.* at 16.

SECTION IV – RECOMMENDATIONS

RECOMMENDATIONS FOR THE AGENCIES

All of the Agencies are subject to workforce and supplier diversity requirements through either Section 342 of the Dodd-Frank Act or under Section 1116 of HERA. The 2014 letter from Democratic Members requesting that the OIGs review the personnel practices at the Agencies did not include a review of the Federal Reserve Banks or of FHFA’s regulated entities. As such, the scope of this staff report, and the recommendations contained within, are limited to the specific Agencies discussed in Section I.

In order to identify and eliminate potential barriers to achieving a more diverse and inclusive workforce and also to ensure fair treatment and equal employment opportunities for minorities and women within the Agencies, Committee staff recommend:

- **Agencies must fully comply with the letter and spirit of all current laws, regulations, and policies that address racial, ethnic or gender-based discrimination and promote diversity and equal opportunities for minorities and women.**

As discussed in Section I, the federal government’s commitment to operating workplaces in a non-discriminatory manner is demonstrated through a number of statutes, regulations, and Executive Orders. Each of these authorities is intended to increase diversity and inclusion and address potential barriers and challenges to that goal. Yet, several of the Agencies still have not fully complied with these requirements.

Section 342, among other things, directs the Agencies to appoint OMWI Directors, who are responsible for developing standards for: equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency; increasing participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to these businesses; and assessing the diversity policies and practices of entities regulated by the agency.

A flawed implementation of one of the statutory requirements, discussed above, is the SEC OMWI’s lack of adequate controls to monitor and evaluate its own efforts. Without this data, the SEC OMWI lacks a valid basis upon which it can determine whether any of its practices have been successful or identify what challenges persist. Consequently, it cannot fully comply with Section 342 requirements to provide this information to Congress in its annual OMWI reports.

The Agencies (not including FHFA, and collectively hereafter, the “Joint Standards Agencies”) recently released the final interagency policy standards for assessing the diversity policies and practices of entities they regulate, entitled “Practices to Promote Transparency of Organizational Diversity and Inclusion.”⁶³ Although it was clear to the Joint Standards Agencies “that the statute contemplates that assessments will take place, they interpret[ed] the statutory language as ambiguous with respect to who should conduct the assessments or the form the assessments should take.”⁶⁴ The Joint Standards

⁶³ Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, 80 Fed. Reg. 33,016 (June 10, 2015).

⁶⁴ *Id.* at 18.

Agencies' decision to adopt a voluntary scheme for the collection and public reporting of entities' diversity data serves as an unambiguous example of where the Joint Standards Agencies have failed to exercise the full authority granted to them under Section 342 and, instead, have opted to continue with status quo policies and actions.

In a dissenting statement excoriating the weak final interagency standards, SEC Commissioner Aguilar pointed out that the Joint Standard Agencies “are required to implement Section 342 in a way that advances the Congressional goal of improving diversity and inclusion” and that the “SEC *can, and must, do better.*”⁶⁵ Moreover, Commissioner Aguilar noted that Members of Congress, including eight who were involved in the drafting of Section 342, had provided strong arguments that the provision *requires* mandatory assessments and disclosures; noting that “even if one accepts the existence of the ‘ambiguity,’ it is disappointing that it was used as an excuse to do as little as possible.”⁶⁶ Voluntary assessment and disclosure of diversity data by the private sector falls short of the spirit and goals of Section 342 and the Joint Standards Agencies, as Commissioner Aguilar sadly noted, truly “missed an opportunity to advance the cause of diversity and inclusion.”⁶⁷ It is worth noting that, to date, no other Commissioners, Board Members, or Governors filed a dissent from the interagency standards. That all, except for one, of the executive members of the Joint Standards Agencies agreed to such weak standards, evidences the ongoing challenges to creating significant, long-term changes in attitudes with respect to supporting and evaluating diversity in the financial services sector.

Section 342 also requires OMWIs to submit annual reports to Congress regarding the actions taken by the agency and the OMWI pursuant to the provision, including their successes achieved and challenges faced. And while, as noted by the 2013 GAO report, Section 342 does not specifically require the OMWIs to provide information on their effectiveness, it does give the Agencies' discretion to include, in the their reports, “any other information, findings, conclusions, and recommendations for legislative or agency action, [that] the OMWI Director determines appropriate.”⁶⁸

The OIGs' reports show that the Agencies have largely failed to adopt the quantitative and qualitative measures, recommended by GAO, that are necessary for them, and each OMWI, to evaluate the effectiveness of their efforts to “translate their diversity aspirations into tangible practice.”⁶⁹ For example, both the NCUA and the SEC were unable to collect, evaluate, or submit all required information and data necessary to complete the MD-715 self-assessments, as they have been required to do under Title VII.⁷⁰

The CFPB OMWI has not developed standards for equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency.⁷¹ And, the CFPB has also failed to implement a diversity strategic plan, as required under Executive Order 13583.⁷²

Furthermore, Section 342 requires that each OMWI maintain responsibility for *all* matters within its

⁶⁵ Public Statement, Luis A. Aguilar, S.E.C. Commissioner, “Dissenting Statement on the Final Interagency Policy Statement: Failing to Advance Diversity and Inclusion” (Jun. 9, 2015) (explaining that “the Agencies largely ignored these concerns, failed to explain the rationale for the policy choices they made in the Final Policy Statement, and left too many questions unanswered... Obviously, the SEC *can, and must, do better.*”)(emphasis in the original), *available at*: http://www.sec.gov/news/statement/dissent-interagency-policy-statement-diversity.html#_ednref6.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ GAO Report, *supra* note 3, at 8.

⁶⁹ *See id.* at 46.

⁷⁰ SEC OIG Report, *supra* note 27, at 7; NCUA OIG Report, *supra* note 22, at 14.

⁷¹ CFPB OIG Report, *supra* note 54, at 56.

⁷² Exec. Order No. 13,583, *supra* note 17, at § 3(b).

agency relating to diversity, including the agency's business activities.⁷³ The intent behind this language was to ensure that in addition to hiring, retention, and compensation, OMWI Directors are also included in policy-related discussions and decisions that are related to diversity issues and concerns. Section 342 makes clear that the OMWI Directors are still responsible, and are to be held accountable for, the Agencies' diversity practices and policies. For example, if an Agency has tasked a separate office, or staff outside of the OMWI, to handle procurement, the procurement office or staff must still consult with, and involve, the OMWI Director about these matters.

In April 2014, the CFPB elevated the OMWI from the Operations Division to the Office of the Director.⁷⁴ Similarly, FHFA Director Watt announced, at the Greenlining Institute's 22nd Annual Economic Summit, in May of this year that he had hired a permanent OMWI Director, who reports directly to him, and whom he been placed on the FHFA's executive management team.⁷⁵ To the extent that the other Agencies have not incorporated their OMWI Directors into their senior or executive management teams,⁷⁶ Committee staff view the restructuring and influential role given to the OMWI Directors by CFPB and the FHFA as a "best practice" that the other Agencies should follow.

Moreover, it is noteworthy that in the 2013 GAO report on diversity, as well as several OIGs' audit reports, a number of the Agencies identified a variety of challenges to either complying with diversity requirements or improving their diversity efforts due to external factors. Such challenges included: low turnover, competition from the private sector, and smaller numbers of qualified minorities and women for specialized positions.⁷⁷ If Agencies fail to adhere to established requirements, it will be very difficult to overcome the identified challenges, and consequently, diversity within the Agencies is likely to remain deficient.

Therefore, Committee staff recommend that the Agencies fully comply with laws, regulations, and policies already in place. Because the Agencies have failed to implement all of the statutory requirements imposed under Section 342 and Section 1116, as well as the requirements under Executive Order 13583, and also because they lack measurable outcomes of the efforts they have made to date, Committee staff, at this time, cannot evaluate the actual impact of these provisions in effectuating positive changes in workforce and supplier diversity at the Agencies. A complete analysis of the effectiveness of the diversity policies and practices at the Agencies can only be completed when the Agencies are, in fact, compliant with existing laws, regulations, and policies.

- **Agencies should investigate and determine whether discrimination is the root cause of the: (1) underrepresentation of minorities and women at the senior-management level at the Agencies; and (2) statistically significant differences in PMRs for minority and women employees. Pending this investigation, consider strategies for addressing potential root causes, such as unconscious bias by those who are responsible for making those decisions.**

The OIGs' analyses found that at every Agency, minorities and women were underrepresented in the

⁷³ Pub. L. No. 111-203, §342(a)(1)(A)(emphasis added).

⁷⁴ CFPB OIG Report, *supra* note 54, at 55.

⁷⁵ Melvin L. Watt, Director, Fed. Hous. Fin. Agency, Prepared Remarks for the Greenlining Institute 22nd Annual Economic Summit (May 8, 2015) (transcript available at: <http://www.fhfa.gov/Media/PublicAffairs/Pages/Prepared-Remarks-FHFA-Director-at-Greenlining-Institute-22nd-Annual-Economic-Summit.aspx>).

⁷⁶ Troublingly, even after a recent structural elevation, the NCUA's OMWI Director still does not report directly to the NCUA Chair.

⁷⁷ GAO Report, *supra* note 3, at 8, 18-24, 35, 43; FDIC OIG Report, *supra* note 26, at ii, iii, 8-9; FHFA OIG Report, *supra* note 61, at 16; OCC OIG Report, *supra* note 29 at 9, 12.

senior workforce.⁷⁸ Additionally, there were statistically significant disparities for minorities and women at many of the Agencies in their respective general workforce demographics and PMRs. Further analysis is needed to determine the causes of these disparities.

Specifically, to ensure employment discrimination in hiring, retention, and promotion is not occurring within the Agencies, Committee staff recommend that each Agency conduct a robust and extended review of the workforce patterns and trends; in particular examining whether unconscious bias in the application of any subjective PMR has resulted in discrimination of certain classifications of employees. If it is determined that discrimination has caused the underrepresentation of minorities and women at the senior-management level or of the disparities in any PMR ratings, Committee staff also urge the Agencies to immediately take steps to remediate any problems discovered.

While each of the Agencies has implemented some form of diversity and inclusion practices, few have developed and executed strategies to address unintentional obstacles such as employees' unconscious bias or cultural prejudices that hinder the development of a diverse and inclusive workplace. For example, most, if not all, of the Agencies have begun targeted recruitment efforts for minority candidates by developing partnerships with outside minority organizations or diverse internship programs. However, in addition to these practices, the Agencies should search for new and innovative measures and channels to further enhance their workforce and supplier diversity. For instance, where appropriate, the Agencies should work to reduce unconscious barriers to hiring and promotion, such as by removing applicants' demographic information (i.e., name, address, etc.) before hiring evaluations occur, and/or reducing the value of self-evaluations in an employee's PMR – which has been demonstrated to inaccurately reflect the performance of women employees.⁷⁹

Additionally, Committee staff recommend that the Agencies require mandatory annual diversity and inclusion training, as well as unconscious bias training, for both new and existing employees, with a particular focus on ensuring employees who make hiring, performance evaluation, and promotion decisions receive this training frequently and consistently.⁸⁰ Addressing these types of conscious and unconscious prejudices should not only help ensure any current negative attitudes towards diversity are minimized, but should also help prevent intended or unintended discriminatory biases from impeding the agencies' processes in the future.

- **While investigating their PMR systems, consider modification or alternatives to the current PMR systems.**

PMR scores are of critical importance for employees as they seek promotions, raises and bonuses, and constitute part of an employee's permanent record. At each of the Agencies, White employees received higher PMR scores than African-American employees. While this does not definitively prove that the Agencies have exhibited racial or ethnic discrimination, it does raise a red flag about the potential for racial and ethnic disparities in the employee evaluation process. Furthermore, the consistency with which these disparities persist across all Agencies suggests that there may be an inherent racial and ethnic bias in the Agencies' PMR process. Given both the significance of the PMR employee evaluation

⁷⁸ This is consistent with GAO's findings, see GAO Report, *supra* note 3, at 4.

⁷⁹ See Sylvia Beyer, *Gender Differences in Self-Perceptions: Convergent Evidence from Three Measures of Accuracy and Bias*, 23 Pers. Soc. Psychol. Bull. 157, no. 2 (1997) (finding that for certain types of self-evaluations females' self-evaluations of performance were inaccurately low, their confidence statements for individual questions were less well calibrated than males, and their response bias was more conservative than males').

⁸⁰ Currently, the FDIC, and CFPB have implemented an unconscious bias training program, although the extent of the programs is unknown by Committee staff at this time.

and the pattern of racial and ethnic disparity within the process, Committee staff suggest that each Agency evaluate their current PMR processes and, where appropriate, modify or adjust their systems, or their training about how to use these systems, to reduce the potential for disparate treatment of employees.

As mentioned above in Section III, prior to the completion of this report, it was revealed that the CFPB's PMR system, similar to that of the other Agencies, resulted in statistically significant disparities based on race.⁸¹ In response, the CFPB replaced its previous five tier performance rating system with a two-tier system that rates an employee as either "unacceptable" or a "solid performer".⁸² Additionally, any CFPB employee that received a "three" or "four" ranking under the previous performance system was retroactively given a top score of five and will receive compensation.⁸³ In what Committee staff consider an agency best practice, by evaluating the patterns and trends of the effect and use of its PMR over an extended period of time, the CFPB showed a willingness to hold itself accountable for achieving a non-discriminatory work environment.

- **Agencies should ensure accountability of managers, at all levels, by evaluating them on their progress toward achieving the Agencies' diversity objectives and their ability to manage a diverse group of employees.**

The success of any diversity program is heavily dependent on buy-in from senior leadership and management. As such, one way for an organization to maximize the effectiveness of its diversity efforts is to hold its management accountable for the successful achievement of diversity and inclusion goals. Put another way, in order for senior level employees to be successful at an agency that values diversity and inclusion, employees – particularly those in supervisory and management positions – should be required to demonstrate a commitment to enhancing diversity and reducing the underrepresentation of minorities and women within their organization.⁸⁴

Accordingly, GAO has cited management accountability for diversity initiatives as one of the leading practices for developing and implementing diversity and has recommended that one of the ways to ensure that leaders are responsible for diversity is by linking their performance assessment and compensation to the progress of diversity initiatives.⁸⁵ Only three of the Agencies reviewed – NCUA, FDIC and CFPB – appear to link the successful achievement of specific diversity objectives to supervisors' performance reviews.⁸⁶ Committee staff recommend that the other Agencies adopt similar

⁸¹ See Witkowski, *supra* note 52.

⁸² See CFPB OIG Report, *supra*, note 54 at 24; see also Rachel Witkowski, *CFPB to Drop Contentious Employee Evaluation Program*, American Banker, Mar. 10, 2014, http://www.americanbanker.com/issues/179_47/cfpb-to-drop-contentious-employee-evaluation-program-1066130-1.html.

⁸³ *Id.*

⁸⁴ NCUA OIG Report, *supra* note 22, at 24 (explaining that, among other factors, the NCUA expressly evaluates its senior staff on: (1) building and reinforcing an organizational culture committed to recruiting a high quality, diverse workforce while maintaining a high level of employee satisfaction; (2) establishing diverse rating and ranking panels, as well as diverse interview panels; and (3) taking proactive steps to improve underrepresentation within the agency).

⁸⁵ U.S. Government Accountability Office, *DIVERSITY MANAGEMENT: EXPERT-IDENTIFIED LEADING PRACTICES AND AGENCY EXAMPLES*, 4 (GAO-05-90, Jan. 2005).

⁸⁶ NCUA OIG Report, *supra* note 22, at 24; FDIC OIG Report, *supra* note 26, at 17; CFPB OIG Report, *supra* note 54, at 33 (though, despite the fact that diversity and inclusion are mentioned in supervisors' and senior managers' performance measures, these measures do not sufficiently connect the supervisors' and senior managers' performance assessments to the progress of the CFPB's diversity and inclusion efforts). Additionally, the FHFA's OWMI, in its newly finalized Diversity Strategic Plan for FY 2016 - FY 2018, noted that it intends to partner with the Office of Human Resource Management to align diversity and inclusion and EEO competencies with all staff, manager, and leadership performance plans – though it is not clear to Committee staff that this will link managers' PMR scores with the achievement of diversity and inclusion objectives. See FHFA OWMI Strategic Plan, *supra* note 57 at 15.

accountability measures.

- **Agencies should enhance the interactions between the Office of Minority and Women Inclusion (“OMWI”) Directors and the Agencies’ heads, by ensuring that the OMWI Directors report directly to the Agencies’ heads and increasing the meetings between them. This dialogue will enable the OMWI Directors to influence policymaking decisions at the Agencies and ensure the Agencies’ heads are closely monitoring the effectiveness of diversity practices and policies and are prepared to testify about these efforts and outcomes when appearing before Congress.**

As previously mentioned, GAO has identified a set of nine leading diversity management practices that should be considered when an organization is developing and implementing diversity policies and practices. The first practice identified is “a commitment to diversity as demonstrated and communicated by an organization’s top leadership.”⁸⁷ GAO also determined that top leadership commitment drives the implementation of the remaining eight practices.⁸⁸ Committee staff believe, that as part of their efforts to demonstrate their commitments to diversity, the Agencies should include in their annual reports to Congress a discussion of the diversity policies and practices over the course of the previous year.

Moreover, in order to facilitate the ability of both the OMWI Directors and the administrators of the Agencies’ commitment to diversity and inclusion, Committee staff suggest that OMWI Directors on a frequent and consistent basis report directly to, and advise, the heads of these Agencies, as required under Section 342. Incorporating the OMWI Director into the senior or executive management teams at each of the Agencies allows them to participate in decision-making activities. In doing so, it ensures, and demonstrates, that heads of each agency are wholly invested in the organization’s diversity efforts, which Committee staff believe will also institutionalize the importance of these matters throughout all levels of these Agencies. Because workforce and supplier diversity matters influence the Agencies’ ability to understand the needs of emerging and underserved markets, it is vital that the Agencies’ heads be equipped to meet these unique needs, and should be prepared to discuss diversity activities when testifying before the relevant Congressional committees about their efforts to meet their duties and achieve their missions.

- **Agencies should re-evaluate the purpose and content of their OMWI’s annual reports to, among other things:**
 - a. **include information on OMWI’s efforts to measure and evaluate their progress on achieving diversity and inclusion goals, as recommended by the GAO in 2013;**
 - b. **consult with other Agencies’ OMWIs, in an interagency manner, to adopt uniform standards to track and report diversity data to enable meaningful cross-agency comparison; and,**
 - c. **provide racial, ethnic, and gender data by specific occupational classifications and supplier industry classifications.**

As discussed in Section III above, in general, the analyses contained in the Agencies’ annual OMWI

⁸⁷ GAO Report, *supra* note 3, at 5.

⁸⁸ *Id.* at 18.

reports fail to provide an in-depth evaluation of the progress of their efforts to achieve the diversity and inclusion letter and spirit of Section 342. In 2013, GAO noted this deficiency and explained that “[i]ncluding more information on the outcomes and progress of [the OMWIs’] diversity practices could enhance the usefulness of these annual reports”⁸⁹ for Congress, agency officials, and other stakeholders.

While Committee staff recognize that Section 342 does not mandate that Agencies provide information on measurable outcomes in their OMWI annual reports, we believe that the Agencies can demonstrate commitment to the principles and goals of diversity and inclusion by evaluating the effectiveness of their diversity activities and policies and including this information in their annual OMWI reports. Rather than producing a perfunctory narrative that, in some instances, reiterates the same challenges and diversity activities year after year⁹⁰ the Agencies, Congress and the public, would be better served by the release of annual OMWI reports that contain data that actually enable stakeholders to monitor Agencies’ progress on diversity matters.

Given that the Agencies were able to work together to propose and finalize joint standards assessing the diversity policies and practices of their regulated entities, they should also be able to coordinate adoption of uniform standards to track and disaggregate their diversity data and report this data consistently across the Agencies within the annual OMWI reports. In its 2013 report on diversity, GAO even noted that “[w]hile many OMWIs have implemented or are planning efforts to measure and evaluate the progress of their diversity and inclusion activities, information on such efforts is not yet reported consistently across the OMWI annual reports. [And s]uch information could enhance their efforts to report on measuring outcomes and the progress of their diversity practices.”⁹¹

Even where Section 342 prescribes specific data that the Agencies should include in their annual OMWI reports, the Agencies have interpreted these requirements differently. For example, Section 342(e)(1) requires the annual OMWI reports to contain a statement of the total amounts paid by the agency to contractors since the previous report, and Section 342(e)(2) mandates that they provide information on the percentage of those amounts that were paid to minority-owned and women-owned contractors. The Agencies, however, have measured and reported the contracting data in their annual OMWI reports in different ways. Some agencies have reported the dollar amounts and percentages for contracts awarded to minority-owned or women-owned businesses, while others have correctly provided more detailed racial, ethnic, and gender breakdown of the data. Some agencies have reported “amounts awarded” or “amounts obligated” while others have correctly reported the “amounts paid” to contractors.⁹² As a result, it has been almost impossible to use the annual OMWI reports to compare the Agencies’ progress toward expanding contracting opportunities for minority-owned and women-owned businesses.

Additionally, although not required, Committee staff believe that the Agencies could also make their annual OMWI reports more impactful by providing more detailed racial, ethnic, and gender breakdown of specific occupations and classifications of suppliers in these reports. Given that several Agencies identified specific mission-critical occupations as being particularly difficult to fill with diverse employees,⁹³ it would facilitate a better appreciation of the challenges to, and success of, diversity

⁸⁹ *Id.* at 45.

⁹⁰ See discussion of OCC OMWI Reports to Congress, *supra* note 32.

⁹¹ GAO Report, *supra* note 3, at 36.

⁹² According to the Congressional Research Service, in their 2013 OMWI annual reports, the FRB, CFPB, OCC, SEC, and Treasury Departmental Offices reported “amounts awarded” or “amounts obligated” to contractors, whereas the FDIC, FHFA, and NCUA stated that the data provided were “amounts paid” to contractors. Memorandum from Michelle D. Christensen, Cong. Research Serv. to House. Comm. on Fin. Svcs. 2 (Aug. 7, 2013) (on file with recipient).

⁹³ See e.g., FDIC OIG Report, *supra* note 26, at iii (explaining that some of the challenges to achieving a diverse workforce “are socioeconomic and difficult for the FDIC to control, such as... underrepresentation of women and minorities in internal candidate pools; competition from the private sector for diverse candidates; and limited representation of minorities and/or women in certain areas of the

efforts in recruiting for such positions if the annual reports included an analysis of diversity data by occupational classification.

An illustrative – but certainly not exhaustive – list of examples of the types of data that should be presented uniformly across the Agencies includes: (1) a breakdown – to the greatest extent possible – by race, ethnicity, and gender, of job applicants, employee hires, and employee promotions; (2) a detailed accounting of supplier diversity data discussed by amount actually paid out; and (3) the number of unique count minority-owned and women-owned businesses and professional lines competing for, and receiving, contract awards.

– **Agencies’ should direct their OIGs to:**

- a. periodically study the representation of minorities and women in their respective agency workforces, as well as personnel practices and other efforts to increase agency diversity, create a workplace free of systemic discrimination and provide equal opportunity for minorities and women to obtain senior-management positions; and,**
- b. report results of these audits to Congress every four years.**

Meaningful and effective oversight requires continuous review of each of the Agencies’ efforts to address internal deficiencies and resolve any outstanding recommendations made in previous OIG or GAO reports on diversity matters. Mandating this oversight should encourage the Agencies to remain vigilant in their diversity and inclusion efforts, and will also facilitate Congress’ ability to review, monitor, and evaluate the Agencies’ implementation of diversity programs.

CONCLUSION

It is clear from the findings by the OIGs, and from the Committee staff’s analysis, that the Agencies still have much work to do with respect to not only coming into full compliance with the law, but also with respect to the creation of a substantially diverse and inclusive workplace. From failing to finalize diversity standards as required by Section 342, Section 1116 and Executive Order 13583, to submitting incomplete MD-715 reports, to neglecting data collection practices and more, the Agencies, and their OMWIs, have failed to meet the letter and spirit of the laws designed for the unambiguous purpose of supporting federal workforce diversity. And further, the significant shortcomings with regard to senior-management diversity, as well as the clear disparities with respect to PMR ratings also allude to the existence of some level of biases within the Agencies.

Five years ago, Representative Maxine Waters, the sponsor of the amendment which ultimately became Section 342, opined “many industries lack the inclusion and participation of people of color and women, perhaps none more egregiously than the financial services sector.”⁹⁴ Section 342, and the OMWIs, were

United States, or within certain job occupational series, such as examiners and attorneys, which are dominated by males and non-minorities.”); *see also*, OCC OIG Report, *supra* note 29, at 12 (finding that “the internal hiring conducted to meet specialized skill requirements pose a challenge in resolving the low participation of women and minorities in senior-level positions.”).

⁹⁴ Press Release, Congresswoman Maxine Waters, Waters Wins Big for Minorities, Women in Wall St Reform and Consumer Protection Bill (Jul. 1, 2010), *available at*: <http://waters.house.gov/news/documentsingle.aspx?DocumentID=193428>.

designed to make sure that the Agencies achieve diversity in both their workforce, and their contracting, so that competent and qualified minorities and women, and minority-owned and women-owned businesses are able to fairly compete for positions and contracts. To date, the Agencies have begun implementing the requirements under the statute, but there is still significant progress to be made with respect to achieving full compliance. As a result, it is impossible to effectively evaluate the full effect of the groundbreaking statute.

When he signed into law the landmark Civil Rights Act of 1964, President Lyndon B. Johnson declared:

“[O]ur generation of Americans has been called to continue the unending search for justice within our own borders. We believe that all men are created equal. Yet many are denied equal treatment. We believe that all men have certain unalienable rights. Yet many Americans do not enjoy those rights. We believe that all men are entitled to the blessings of liberty. Yet millions are deprived of those blessings – not because of their own failures, but because of the color of their skin... But it cannot continue. Our Constitution, the foundation of our Republic, forbids it. The principles of our freedom forbid it[, and m]orality forbids it.”⁹⁵

The OMWIs have the opportunity to have a transformative effect of the federal workforce. Through their proactive efforts throughout the Agencies, the OMWIs have the real opportunity to overcome longstanding obstacles to achieving meaningful diversity at the Agencies – which could, in turn, serve as a model for other agencies in the federal government. The enactment of Section 1116 and Section 342 was a significant step toward that goal, but the enthusiasm of regulatory implementation must equal the urgency of legislative passage if the benefits of the statute are to be fully realized.

⁹⁵ Government Printing Office, *Public Papers of the Presidents of the United States: Lyndon B. Johnson, 1963-64*, Vol. II, entry 446, pp. 842-44 (1965).

APPENDICES

A. Letters from Democratic Members of the Oversight and Investigations Subcommittee to OIGs

JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING
MEMBER

March 24, 2014

Acting Inspector General Michael P. Stephens
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, S.W.
Washington, DC 20024

Dear Acting Inspector General Stephens:

We write to request that the Office of the Inspector General (OIG) for the Federal Housing Finance Agency (FHFA) review the agency's internal operations to determine whether any personnel practices have created a discriminatory workplace or otherwise systematically disadvantaged minorities from obtaining senior management positions.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act established an Office of Minority and Women Inclusion (OMWI) at most of the federal financial regulatory agencies, responsible for matters relating to diversity in management, employment, and business activities. Despite this statutory mandate, the Government Accountability Office (GAO) concluded in a report released last year that management-level representation of minorities and women among federal financial agencies and Federal Reserve Banks has not changed substantially from 2007 through 2011. In fact, across all federal financial regulators, agency representation of minorities was as low as 6 percent and dropped as low as zero percent at one of the Reserve Banks. In light of these findings and the concerns raised by employee performance evaluations at the Consumer Financial Protection Bureau (CFPB), we believe the OIG should work in cooperation with Federal Housing Finance Agency's OMWI Director to assess current personnel practices and make recommendations necessary to ensure full compliance with the law.

The 2013 GAO report, entitled "Trends and Practices in the Financial Industry and Agencies after the Recent Financial Crisis," documented the extremely poor representation of women and minorities in leadership positions within the financial services industry and among federal financial regulators. According to GAO, industry representation of minorities in 2011 was higher in lower-level management positions – approximately 20 percent – as compared to about 11 percent of senior-level manager positions.

While public attention is currently and justifiably focused on the CFPB, the most recent OMWI reports suggest the disparities impeding internal upward mobility for minorities may be endemic throughout all the agencies regulating the financial services industry. According to the Treasury Department's 2013 OMWI report, among its senior executive management, 86 percent are white men, compared to 7 percent Black men, 4 percent Hispanic men, and 3 percent Asian men. Among the agency's GS-15 employees, which serves as a pipeline to senior level management, white men are once again overrepresented at 86 percent, compared to 6 percent Black men, 2 percent Hispanic men, and 6 percent Asian men.

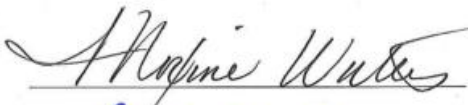
Acting Inspector General Michael P. Stephens
Page Two
March 24, 2014


At the Federal Reserve, white men represent 50 percent of executive senior level managers, compared to just 28.7 percent represented by white women. Along ethnic categories, black and Hispanic men represent, respectively, roughly 5 percent and 1 percent of executive senior level managers. Black women represent roughly 6 percent and Hispanic women represent nearly 2 percent of senior managers.


According to the most recent information from the GAO, at the National Credit Union Administration (NCUA), whites represent 88 percent of senior level management positions, compared to 4 percent represented by blacks and 4 percent by Hispanics. At the Office of the Comptroller of the Currency (OCC), whites represent 82 percent of senior level managers, compared to 9 percent black and 5 percent Hispanic. Whites represent 89 percent of senior level management positions at the Securities and Exchange Commission, compared to 2 percent black and 5 percent Hispanic. Minorities appear to fair best at the Federal Housing Finance Agency, where whites represent 76 percent of senior level management positions, compared to 16 percent black and 8 percent Hispanic. However, more comprehensive analysis is still needed from the agency to fully assess the racial and gender employment of minorities in senior positions beyond the GAO's limited information.


Accordingly, we request that the OIG examine any employee complaints, formal or informal, related to personnel practices, workplace policies and the findings from any employee satisfaction surveys, whether conducted by the Federal Housing Finance Agency or an outside entity. If the OIG identifies any individuals or groups of individuals who have exhibited discriminatory behaviors or patterns of unfair or unequal treatment, we ask that the OIG provide recommendations about appropriate actions, including remedial training or removal from employment with the agency. Furthermore, we request that the OIG assess the agency's OMWI operations, and ensure corrective actions are taken within the agency with regard to employee compensation, rating systems, retention, and promotion of women and minorities.


Sincerely,







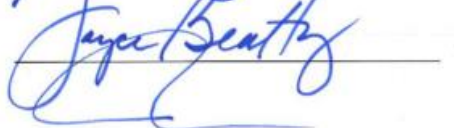












A substantially similar letter was sent to the OIGs at the OCC, NCUA, FRB, SEC, and FDIC.

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

March 24, 2014

Inspector General Mark Bialek
Board of Governors of the Federal Reserve System
Office of Inspector General
20th and C Streets N.W.
Mail Stop 300
Washington, D.C. 20551

Dear Inspector General Bialek:

We are concerned about recent allegations that managers at the Consumer Financial Protection Bureau (CFPB) have shown a pattern of ranking white employees distinctly better than minority employees in performance reviews, as reported in a recent *American Banker* article entitled, "CFPB Staff Evaluations Show Sharp Racial Disparities," on March 6, 2014.

We request that the Office of Inspector General (OIG) immediately exercise its independent oversight authority over the Bureau's operations, to detect whether any personnel practices and policies have created an unfair or discriminatory workplace for minorities and women employed at the CFPB. In doing so, we request that the OIG examine CFPB's performance appraisal process, specifically answering the following questions:

- (1) Does the Bureau have procedures in its appraisal process to ensure management is identifying potential bias?
- (2) Is the Bureau taking appropriate action to address those biases before finalizing appraisals?
- (3) How does the Bureau handle employee complaints related to personnel practices and policies, either made through informal or formal channels, regardless of whether they are from employees with bargaining or non-bargaining status?
- (4) What actions has the Bureau taken to address the results of this or any other employee satisfaction survey, whether conducted by the Bureau or an outside entity?

We also request more detailed information about the role of the Bureau's Office of Minority and Women Inclusion (OMWI) in dealing with these matters. In particular, we request a review of whether the OMWI has been involved in the CFPB's appraisal process, complaint handling process and employee satisfaction surveys – as well as information about how the OMWI could help address these issues going forward.

If the OIG identifies any individuals or groups of individuals who have exhibited discriminatory behaviors or patterns of unfair or unequal treatment, we ask that the OIG provide recommendations about appropriate actions, including remedial training or removal from employment with the Bureau.

We also request that the OIG monitor the Bureau's responses and corrective actions with regard to employee compensation packages, rating systems, and hiring and retention activities, to ensure that the CFPB exhibits workforce diversity and inclusivity both in its senior management level and in each of its six divisions of responsibility.

As noted in the GAO 2013 GAO ("Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis" GAO-13-238) report that listed nine leading diversity practices, top leadership commitment was the critically important factor to fostering diversity and inclusion. Any Federal agency that does not embrace the principles of fairness and equality internally cannot credibly pursue those principles externally. The Bureau's statutory mission is to implement and enforce federal consumer financial laws, to ensure that all consumers have access to fair, transparent, and competitive markets for consumer products and services. Given the mission of the CFPB, its workplace should serve as a model by which both regulated entities and other financial regulatory agencies are measured. Allegations of discriminatory behavior at the Bureau, in perception or practice, must be investigated thoroughly to ensure that no individual, coalition or group of individuals undermines the agency's vital mission of ensuring the fair and equitable treatment of consumers from all backgrounds.

Sincerely,

Melanie Water



Calvin B. Yee

Emanuel Quinn

Kyle S.

Joyce Beatty

Denny Hoch



Ed Palatka

B. Section 1116 of Housing and Economic Recovery Act of 2008

OFFICE OF MINORITY AND WOMEN INCLUSION

(a) **OFFICE OF MINORITY AND WOMEN INCLUSION.**—Each regulated entity shall establish an Office of Minority and Women Inclusion, or designate an office of the entity, that shall be responsible for carrying out this section and all matters of the entity relating to diversity in management, employment, and business activities in accordance with such standards and requirements as the Director shall establish.

(b) **INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.**—Each regulated entity shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, 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.

(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.

(d) **INCLUSION IN ANNUAL REPORTS.**—Each regulated entity shall include, in the annual report submitted by the entity to the Director pursuant to section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440), as applicable, 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 subsection (b) of this section.; and

(5) by adding at the end the following new subsection:

(f) **DIVERSITY IN AGENCY WORKFORCE.**—The Agency shall take affirmative steps to seek diversity in its workforce at all levels of the agency consistent with the demographic diversity of the United States, which shall include—

- (1) heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women’s colleges, and colleges that typically serve majority minority populations;
- (2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;
- (3) partnering with organizations that are focused on developing opportunities for minorities and women

to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

C. Section 342 of Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

OFFICE OF MINORITY AND WOMEN INCLUSION

(a) OFFICE OF MINORITY AND WOMEN INCLUSION

(1) ESTABLISHMENT.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), not later than 6 months after the date of enactment of this Act, each agency shall establish an Office of Minority and Women Inclusion that shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities.

(B) **BUREAU.**—The Bureau shall establish an Office of Minority and Women Inclusion not later than 6 months after the designated transfer date established under section 1062.

(2) **TRANSFER OF RESPONSIBILITIES.**—Each agency that, on the day before the date of enactment of this Act, assigned the responsibilities described in paragraph (1) (or comparable responsibilities) to another office of the agency shall ensure that such responsibilities are transferred to the Office.

(3) **DUTIES WITH RESPECT TO CIVIL RIGHTS LAWS.**—The responsibilities described in paragraph (1) do not include enforcement of statutes, regulations, or Executive Orders pertaining to civil rights, except each Director shall coordinate with the agency administrator, or the designee of the agency administrator, regarding the design and implementation of any remedies resulting from violations of such statutes, regulations, or Executive Orders.

(b) DIRECTOR.—

(1) **IN GENERAL.**—The Director of each Office shall be appointed by, and shall report to, the agency administrator. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined in section 3132 of title 5, United States Code, or an equivalent designation.

(2) **DUTIES.**—Each Director shall develop 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; and (C) assessing the diversity policies and practices of entities regulated by the agency.

(3) **OTHER DUTIES.**—Each Director shall advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses.

(4) **RULE OF CONSTRUCTION.**—Nothing in paragraph (2)(C) may be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) **IN GENERAL.**—The Director of each Office shall develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts.

(2) **CONTRACTS.**—The procedures established by each agency for review and evaluation of contract proposals and for hiring service providers shall include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedure shall include a written statement, in a form and with such content as the Director shall prescribe, that a contractor shall ensure, to the maximum extent possible, the fair inclusion of in the workforce of the contractor and, as applicable, subcontractors.

(3) **TERMINATION.**—

(A) DETERMINATION.—The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make 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.

(B) EFFECT OF DETERMINATION.—

(i) RECOMMENDATION TO AGENCY ADMINISTRATOR.— Upon a determination described in subparagraph (A), the Director shall make a recommendation to the agency administrator that the contract be terminated.

(ii) ACTION BY AGENCY ADMINISTRATOR.—Upon receipt of a recommendation under clause (i), the agency administrator may— (I) terminate the contract; (II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or (III) take other appropriate action.

(d) APPLICABILITY.—This section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

(e) REPORTS.—Each Office shall submit to Congress an annual report regarding the actions taken by the agency and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid by the agency to contractors since the previous report;

(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);

(3) the successes 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 businesses; and

(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) DIVERSITY IN AGENCY WORKFORCE.—Each agency shall take affirmative steps to seek diversity in the workforce of the agency at all levels of the agency in a manner consistent with applicable law. Such steps shall include—

(1) recruiting at historically black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities;

(3) placing employment advertisements in newspapers and magazines oriented toward minorities and women;

(4) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions;

(5) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring; and

(6) any other mass media communications that the Office determines necessary.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AGENCY.—The term “agency” means— (A) the Departmental Offices of the Department of the Treasury; (B) the Corporation; (C) the Federal Housing Finance Agency;(D) each of the Federal reserve banks; (E) the Board; (F) the National Credit Union Administration; (G) the Office of the Comptroller of the Currency; (H) the Commission; and (I) the Bureau.

(2) AGENCY ADMINISTRATOR.—The term “agency administrator” means the head of an agency.

(3) MINORITY.—The term “minority” has the same meaning as in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note).

(4) MINORITY-OWNED BUSINESS.—The term “minority-owned business” has the same meaning as in section 21A(r)(4)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(A)), as in effect on the day before the transfer date.

(5) OFFICE.—The term “Office” means the Office of Minority and Women Inclusion established by an agency under subsection (a).

(6) WOMEN-OWNED BUSINESS.—The term “women-owned business” has the meaning given the term “women’s business” in section 21A(r)(4)(B) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)(B)), as in effect on the day before the transfer date.

D. Executive Order No. 13583

ESTABLISHING A COORDINATED GOVERNMENT-WIDE INITIATIVE TO PROMOTE DIVERSITY AND INCLUSION IN THE FEDERAL WORKFORCE

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the Federal workplace as a model of equal opportunity, diversity, and inclusion, it is hereby ordered as follows:

Section 1. Policy. Our Nation derives strength from the diversity of its population and from its commitment to equal opportunity for all. We are at our best when we draw on the talents of all parts of our society, and our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges.

A commitment to equal opportunity, diversity, and inclusion is critical for the Federal Government as an employer. By law, the Federal Government's recruitment policies should "endeavor to achieve a work force from all segments of society." (5 U.S.C. 2301(b)(1)). As the Nation's largest employer, the Federal Government has a special obligation to lead by example. Attaining a diverse, qualified workforce is one of the cornerstones of the merit-based civil service.

Prior Executive Orders, including but not limited to those listed below, have taken a number of steps to address the leadership role and obligations of the Federal Government as an employer. For example, Executive Order 13171 of October 12, 2000 (Hispanic Employment in the Federal Government), directed executive departments and agencies to implement programs for recruitment and career development of Hispanic employees and established a mechanism for identifying best practices in doing so. Executive Order 13518 of November 9, 2009 (Employment of Veterans in the Federal Government), required the establishment of a Veterans Employment Initiative. Executive Order 13548 of July 26, 2010 (Increasing Federal Employment of Individuals with Disabilities), and its related predecessors, Executive Order 13163 of July 26, 2000 (Increasing the Opportunity for Individuals With Disabilities to be Employed in the Federal Government), and Executive Order 13078 of March 13, 1998 (Increasing Employment of Adults With Disabilities), sought to tap the skills of the millions of Americans living with disabilities.

To realize more fully the goal of using the talents of all segments of society, the Federal Government must continue to challenge itself to enhance its ability to recruit, hire, promote, and retain a more diverse workforce. Further, the Federal Government must create a culture that encourages collaboration, flexibility, and fairness to enable individuals to participate to their full potential.

Wherever possible, the Federal Government must also seek to consolidate compliance efforts established through related or overlapping statutory mandates, directions from Executive Orders, and regulatory requirements. By this order, I am directing executive departments and agencies (agencies) to develop and implement a more comprehensive, integrated, and strategic focus on diversity and inclusion as a key component of their human resources strategies. This approach should include a continuing effort to identify and adopt best practices, implemented in an integrated manner, to promote diversity and remove barriers to equal employment opportunity, consistent with merit system principles and applicable law.

Sec. 2. Government-Wide Diversity and Inclusion Initiative and Strategic Plan. The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of

Management and Budget (OMB), in coordination with the President's Management Council (PMC) and the Chair of the Equal Employment Opportunity Commission (EEOC), shall:

- (a) establish a coordinated Government-wide initiative to promote diversity and inclusion in the Federal workforce;
- (b) within 90 days of the date of this order:
 - (i) develop and issue a Government-wide Diversity and Inclusion Strategic Plan (Government-wide Plan), to be updated as appropriate and at a minimum every 4 years, focusing on workforce diversity, workplace inclusion, and agency accountability and leadership. The Government-wide Plan shall highlight comprehensive strategies for agencies to identify and remove barriers to equal employment opportunity that may exist in the Federal Government's recruitment, hiring, promotion, retention, professional development, and training policies and practices;
 - (ii) review applicable directives to agencies related to the development or submission of agency human capital and other workforce plans and reports in connection with recruitment, hiring, promotion, retention, professional development, and training policies and practices, and develop a strategy for consolidating such agency plans and reports where appropriate and permitted by law; and
 - (iii) provide guidance to agencies concerning formulation of agency-specific Diversity and Inclusion Strategic Plans prepared pursuant to section 3(b) of this order;
- (c) identify appropriate practices to improve the effectiveness of each agency's efforts to recruit, hire, promote, retain, develop, and train a diverse and inclusive workforce, consistent with merit system principles and applicable law; and
- (d) establish a system for reporting regularly on agencies' progress in implementing their agency-specific Diversity and Inclusion Strategic Plans and in meeting the objectives of this order.

Sec. 3. Responsibilities of Executive Departments and Agencies. All agencies shall implement the Government-wide Plan prepared pursuant to section 2 of this order, and such other related guidance as issued from time to time by the Director of OPM and Deputy Director for Management of OMB. In addition, the head of each executive department and agency referred to under subsections (1) and (2) of section 901(b) of title 31, United States Code, shall:

- (a) designate the agency's Chief Human Capital Officer to be responsible for enhancing employment and promotion opportunities within the agency, in collaboration with the agency's Director of Equal Employment Opportunity and Director of Diversity and Inclusion, if any, and consistent with law and merit system principles, including development and implementation of the agency-specific Diversity and Inclusion Strategic Plan;
- (b) within 120 days of the issuance of the Government-wide Plan or its update under section 2(b)(i) of this order, develop and submit for review to the Director of OPM and the Deputy Director for Management of OMB an agency-specific Diversity and Inclusion Strategic Plan for recruiting, hiring, training, developing, advancing, promoting, and retaining a diverse workforce consistent with applicable law, the Government-wide Plan, merit system principles, the agency's overall strategic plan, its human capital plan prepared pursuant to Part 250 of title 5 of the Code of Federal Regulations, and other applicable workforce planning strategies and initiatives;

(c) implement the agency-specific Diversity and Inclusion Strategic Plan after incorporating it into the agency's human capital plan; and

(d) provide information as specified in the reporting requirements developed under section 2(d).

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted to a department or agency or the head thereof, including the authority granted to EEOC by other Executive Orders (including Executive Order 12067) or any agency's authority to establish an independent Diversity and Inclusion Office; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

/BARACK OBAMA/

THE WHITE HOUSE,
August 18, 2011.

E. Dissenting Statement on the Final Interagency Policy Statement

FAILING TO ADVANCE DIVERSITY AND INCLUSION

Commissioner Luis A. Aguilar
U.S. Securities and Exchange Commission[*]
June 9, 2015

Today, the Securities and Exchange Commission failed to take meaningful steps to advance diversity and inclusion in the financial services industry, as required by Section 342 of the Dodd-Frank Act.[1] Accordingly, I have no choice but to dissent from the Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (the “Final Policy Statement”) that was issued today by the SEC and a number of other financial regulators.[2]

The financial services industry has a long history of failing to promote diversity in its workforce.[3] The industry has consistently failed to recruit and retain a diverse workforce over the years, and the need is particularly acute at the executive and senior management levels.[4] This lack of diversity has persisted despite the mounting evidence that diversity makes the American workforce more creative, more diligent, and more productive—and, thus, makes U.S. companies more profitable.[5]

The persistent lack of diversity prompted Congress to mandate that the federal government play a more active role in advancing the goals of diversity in the financial services industry. Specifically, Congress included Section 342 in the Dodd-Frank Act of 2010 to establish an Office of Minority and Women Inclusion (“OMWI”) at various federal financial regulators (the “Agencies”)[6] and, among other things, required them to develop standards to assess the diversity policies and practices of entities that they regulate.[7] As Members of Congress have made clear, the Agencies are required to implement Section 342 in a way that advances the Congressional goal of improving diversity and inclusion.[8]

Let’s look at the facts. The most recent data from the U.S. Equal Employment Opportunity Commission (“EEOC”) shows a severe underrepresentation of minorities and women at the executive and senior level positions in the financial services industry.[9] For example, although white men constitute only 31% of the total workforce, they account for 64% of the executive and senior level positions.[10] In contrast, minorities and women constitute 30% and 59% of the total workforce, respectively, but account for only 10% and 29% of the executive and senior level positions, respectively.[11] Significantly, African-Americans constitute 12% of the total workforce, but account for only 2.5% of the executive and senior level positions.[12] Similarly, Hispanics constitute 8% of the total workforce, but account for only 3% of the executive and senior level positions.[13] Moreover, while there is limited data on LGBT[14] representation in executive and senior level positions, or even representation in the workforce generally,[15] at least one report found that 74% of LGBT women that could potentially rise to executive leadership positions in many companies, including companies in the financial services industry, seemed to have experienced more discrimination because of the “double jeopardy” of gender and sexual orientation.[16]

Clearly, there is much room for improvement, to say the least. Improving diversity in the financial services industry requires board members and senior corporate executives to demonstrate a strong commitment to diversity,[17] something that the statistics show is not occurring.[18]

Diversity and inclusion provide enormous benefits to the American workforce.[19] Various studies show that businesses that promote diversity also realize significant increases in workforce productivity and job performance, which drives economic growth.[20] In addition, promoting diversity enables businesses to tap into a growing workforce that is becoming more diverse.[21]

Despite known benefits, however, we are still nowhere near where we need to be on diversity and inclusion. For example, let's consider gender diversity.[22] One research paper shows that the representation of women in top management led to an average increase of \$42 million in firm value.[23] Moreover, companies with women on their boards tend to deliver higher returns on equity ("ROE") than all-male boards.[24] Yet, we are still seeing obstacles to greater gender diversity persist, such as cultural biases, workplace-related biases, and structural or policy issues.[25]

This brings us back to Section 342 of the Dodd-Frank Act. In 2013, in seeking comments on the implementation of Section 342, the Commission and the other Agencies issued a Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment (the "Proposed Policy Statement").[26] The Proposed Policy Statement asked a number of questions concerning the establishment of certain standards in the areas of organizational commitment to diversity, workforce profile, employment practices, procurement, business practices, and organizational transparency.[27] The Proposed Policy Statement, however, proposed a purely volitional approach to assessing diversity policies and practices at regulated entities. At the time, I issued a public statement voicing my concerns about this approach.[28] In particular, I was concerned that, under the proposed approach, the goal of increasing workforce diversity would rely solely on voluntary self-assessments and disclosures by regulated entities, and that, without a requirement to actually do anything, companies would not be incentivized to conduct assessments or otherwise address diversity-related issues.[29]

During the two-year comment period, the Agencies received more than 200 comment letters from a wide variety of groups—including Members of Congress, civil rights organizations, community-based organizations, professional associations, consumer advocacy groups, banking organizations, employer associations, financial services trade organizations, banks, credit unions, and individuals.[30] Many provided detailed comments and information on all aspects of the Proposed Policy Statement, including whether self-assessments are effective; whether self-assessments should be voluntary; whether assessments should be conducted by the Agencies; whether the standards would be effective; whether disclosure of data should be mandatory; whether data should be reported; and whether "diversity" should be defined.[31]

The comments received reflect the complexity and importance of diversity and inclusion in the financial services industry, and it is telling that a large number of commenters, including Members of Congress

who drafted Section 342, supported mandatory assessments and public disclosure.[32]

Today, in issuing the Final Policy Statement,[33] the Commission and the Agencies disregard and dismiss the vast majority of comments received from Members of Congress, civil rights organizations, community-based organizations, professional associations, and consumer advocacy groups.[34] These groups included the Americans for Financial Reform, the National Urban League, the U.S. Hispanic Chamber of Commerce, the Martin Luther King Jr. Civic Council, The Greenlining Institute, Howard University School of Law, and, notably, Members of Congress, several of whom were the architects of Section 342 of the Dodd-Frank Act. For example, the Final Policy Statement fails to address the following concerns raised by commenters:

- First, that allowing the voluntary disclosure of information by regulated entities is prohibited under Section 342 of the Dodd-Frank Act because it renders the statute ineffective and fails to achieve the Congressional intent of advancing diversity in the financial services industry.
- Second, that voluntary self-assessments are ineffective because, without specific obligations and requirements, few regulated entities will conduct assessments or share assessment information.
- Third, that failing to include standard criteria and uniform metrics for assessing the diversity and inclusion practices at regulated entities will make it very difficult, if not impossible, to assess diversity at different firms.
- Fourth, that a purely voluntary requirement, and one without a reporting timeline, lacks transparency and accountability. Firms can therefore decide not to conduct any assessment and treat any OMWI oversight as optional or irrelevant.
- Fifth, that OMWI would fail to satisfy its Congressional mandate under Section 342 by simply monitoring voluntary reports that may or may not be filed by regulated entities.
- Finally, that a definition of “diversity” that is too narrow would fail to accomplish the goals of Section 342. In fact, the Final Policy Statement’s definition of “diversity” excludes people with disabilities and excludes the entire LGBT community.

These are all important concerns that should have been addressed. However, the Agencies largely ignored these concerns, failed to explain the rationale for the policy choices they made in the Final Policy Statement, and left too many questions unanswered.

In addition, the Final Policy Statement described statements made by certain commenters—presumably in an effort to justify its policy choices—but failed to identify those commenters. As such, the public is unable to ascertain the credibility of the commenters, the rationale of the policy choices being advanced, and the justification for the Agencies’ policy choices. This calls into question the reasons for soliciting public comments in the first place (i.e., what is the purpose of soliciting comments when they are not going to be acknowledged and addressed publicly?) and how the Agencies considered those comments.

The public demands more accountability and transparency. Importantly, as a federal administrative agency that promotes “full and fair disclosure” in the capital market, the SEC has to uphold its public responsibility of making policy choices that are transparent, well-reasoned, fact-based, and not arbitrary.

Obviously, the SEC can, and must, do better.[35] Nothing in Section 342 requires the SEC to act in tandem with other Agencies in adopting a weak Final Policy Statement.[36] And nothing in Section 342 requires voluntary self-assessments. Simply issuing guidance that relies on a purely voluntary process and hoping that it will work over time will only cause further delay in advancing diversity and inclusion in the financial services industry.

Many financial service companies, as well as many publicly-owned companies, have long known about the lack of diversity in their companies, yet have not been proactive in addressing the obvious deficiency. For example, it’s long been acknowledged that women and minorities have been vastly underrepresented in corporate leadership and corporate boards, yet there has been little progress in increasing their numbers.[37] Again, let’s look at the facts. While the representation of Caucasian men in corporate boardrooms remained unchanged at around 70% between 2004 and 2012, the number of women and minority board members increased only 3.3% during the same period—from 28.8% to 32.1%.[38] Likewise, diversity and inclusion remains an issue at the senior executive levels.[39] According to one research paper, for example, only 1% of our nation’s Fortune 500 CEOs were African-Americans and only 4% were women.[40]

For these reasons, the “voluntary, and let’s hope for the best” approach taken by the Final Policy Statement is woefully inadequate and fails to meet Congressional mandate. Thus, a good opportunity to have real positive impact on diversity and inclusion has been squandered. As implemented, Section 342 will be reduced to a mere exhortation to regulated entities, many of which have not shown a commitment to achieve diversity in their companies.

While there are some who believe that Section 342 did not provide the Agencies with authority to require mandatory assessments by regulated entities,[41] there are other more compelling arguments supporting those who take the opposite view. In fact, many commenters—including eight Members of Congress who drafted Section 342—have provided strong arguments that Section 342 requires mandatory assessments and disclosures.[42] Commenters have argued that nothing in Section 342 precludes the Agencies from adopting robust and mandatory standards that require assessments and disclosures.[43] Unfortunately, the Final Policy Statement does not shed light on why these views were dismissed, except to say that the Agencies “interpret the statutory language as ambiguous with respect to who should conduct the assessments or the form that assessments should take.”[44] In this instance, even if one accepts the existence of the “ambiguity,” it is disappointing that it was used as an excuse to do as little as possible.

Clearly, the Agencies could have taken a different approach.[45] For example, even if voluntary self-assessments were used, a mechanism could have been included in the standards that would provide for the identification of regulated entities that failed to conduct self-assessments. In this regard, the companies might have an incentive to actually undertake self-assessments, and the failure to do so could

be viewed by the OMWI Directors and the public as a measure of the entities' commitment to diversity and inclusion. In addition, the SEC could have gone its own way by engaging in rulemaking using its powers under the federal securities laws—in conjunction with Section 342—and issuing standards requiring assessments by regulated entities, requiring that the results of these assessments be disclosed to the SEC, and requiring that the results also be made public (either individually or as part of an aggregated report).

Given the approach taken by the Final Policy Statement in implementing Section 342, future policy change to the demographics in the financial services industry now relies on the mere hope that companies will act in good faith to use the standards outlined in the Final Policy Statement and conduct effective self-assessments, and to use the information derived from these self-assessments to promote diversity and inclusion. I hope that they do, but the track record of many companies in the financial services industry belies that hope.[46]

In the end, the Agencies have chosen to do what is convenient for the companies, rather than doing the right thing for the long-term benefit of our country. When faced with a choice between doing what is convenient and doing what is right, we must choose to do what is right. As Dr. Martin Luther King, Jr., once said, “There comes a time when one must take the position that is neither safe nor politic nor popular, but he must do it because conscience tells him it is right.”[47]

Unfortunately—and regrettably—the Final Policy Statement failed to meet the goals of Section 342, and, thus, missed an opportunity to advance the cause of diversity and inclusion.

Accordingly, I must respectfully dissent.

[*] The views expressed by Commissioner Luis A. Aguilar are his own and do not necessarily reflect the views of the U.S. Securities and Exchange Commission (“Commission” or “SEC”), his fellow Commissioners, or members of the staff.

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (2010).

[2] Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, Release No. 34-75050 (May 27, 2015), available at <http://www.sec.gov/rules/policy/2015/34-75050.pdf> (hereinafter “Final Policy Statement”); see also, SEC Press Release, Agencies Issue Final Standards for Assessing Diversity Policies and Practices of Regulated Entities (June 9, 2015), available at <http://www.sec.gov/news/pressrelease/2015-114.html>.

[3] See Comment Letter from Members of Congress to the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 4 (Apr. 11, 2014), available at http://www.federalreserve.gov/SECRS/2014/May/20140509/OP-1465/OP-1465_041514_126311_475617696392_1.pdf (“[General Accountability Office] found that while industry and trade associations had initiated programs to increase workforce diversity, these efforts failed to significantly increase the representation of diversity within the industry”); Alliance for Board Diversity, Fact Sheet, Missing Pieces: Women and Minorities on Fortune 500 Boards, p. 1 (Aug. 15, 2013), available at http://theabd.org/ABD_Fact_Sheet_Final.pdf.

[4] See U.S. Government Accountability Office, Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis, Highlights (Apr. 2013), available at <http://www.gao.gov/assets/660/653814.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008, Highlights (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004, Highlights (June 2006),

available at <http://www.gao.gov/assets/260/250328.pdf>.

[5] See Katherine W. Phillips, *Scientific American*, *How Diversity Makes Us Smarter* (Sept. 16, 2014), available at <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>; Cristian L. Dezso" and David Gaddis Ross, *Does Female Representation In Top Management Improve Firm Performance? A Panel Data Investigation*, *Strat. Mgmt. J.*, 33:1072-1089, at 1080 (2012), available at <http://onlinelibrary.wiley.com/doi/10.1002/smj.1955/epdf>. In addition, and as with many publicly-owned corporations, women and persons of color continue to be significantly underrepresented on corporate leadership and in corporate boards. See, e.g., Russell Reynolds Associates, *Global Leadership: Minority & Female Representation on Fortune 250 Boards & Executive Teams* (June 2013), available at <http://www.russellreynolds.com/content/diversity-in-leadership> (last visited May 4, 2015) (“Minority and female executives are significantly underrepresented across all C-suite roles and particularly are underrepresented among CEOs and CFOs, the two positions most likely to lead to an invitation to join a board.”); Calvert Investments, *Examining the Cracks in the Ceiling: A Survey of Corporate Diversity Practices of the S&P 100*, (Mar. 2013), available at <http://www.calvert.com/nrc/literature/documents/BR10063.pdf> (the study show that, since 2010, the overall percentage of women serving on S&P 100 boards rose just 1%, from 18% to 19%); Kenji Yoshino and Christie Smith, *Deloitte University*, *Uncovering talent: A new model of inclusion*, p. 3 (Dec. 6, 2013), available at <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclusion-uncovering-talent-paper.pdf>; U.S. Government Accountability Office, *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008*, Highlights (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf> (“EEOC data indicate that overall diversity at the management level in the financial services industry did not change substantially from 1993 through 2008, and diversity in senior positions remains limited.”); Michelle Daisley and Nick Studer, *Oliver Wyman*, *Women in Financial Services*, p. 6 (Dec. 2014), available at http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2014/dec/OW-Women-in-Financial-Services-04_12_14_FINAL-v3.pdf (“Our analysis of US data reveals that women’s probability of progression from middle to senior levels of management relative to their male counterparts is worse in financial services than in any other sector”).

[6] Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Office of Comptroller of the Currency, and the Securities and Exchange Commission.

[7] Section 342(b)(2)(C) of the Dodd-Frank Act.

[8] See Comment Letter from Members of Congress to the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment*, p. 4 (Apr. 11, 2014), available at http://www.federalreserve.gov/SECRS/2014/May/20140509/OP-1465/OP-1465_041514_126311_475617696392_1.pdf; see also, Comment Letter from Cheryl C. Nichols and Ronald L. Crawford, *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment—SEC Release No. 34-70731; File No. S7-08-13*, p. 2 (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-21.pdf>.

[9] U.S. Equal Employment Opportunity Commission, *2013 Job Patterns for Minorities and Women in Private Industry (EEO-1)*, 2013 EEO-1 National Aggregate Report by NAICS-2 Code (Finance and Insurance) (2013), available at <http://www1.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/2013/index.cfm#centercol>.

[10] See id.

[11] See id.

[12] See id.

[13] See id.

[14] Lesbian, Gay, Bisexual, and Transgender (LGBT).

[15] See, e.g., Crosby Burns, Kimberly Barton, and Sophia Kerby, *Center for American Progress*, *The State of Diversity in Today’s Workforce: As Our Nation Becomes More Diverse So Too Does Our Workforce* (July 12, 2012), available at <https://www.americanprogress.org/issues/labor/report/2012/07/12/11938/the-state-of-diversity-in-todays-workforce/> (“It is worth noting that our understanding of the gay and transgender workforce is incomplete, given the lack of federal data on this population. Unlike race, ethnicity, gender, and other demographic characteristics, the Department of Labor does not collect information on workers’ sexual orientation and gender identity.”)

[16] See Sylvia Ann Hewlett, Todd Sears, Karen Sumberg, and Christian Fargnoli, *Center for Talent Innovation*, *The Power of “Out” 2.0: LGBT in the Workplace*, p. 1 (Feb. 1, 2013), available at http://www.talentinnovation.org/_private/assets/PowerOfOut-2-ExecSumm-CTI.pdf; Angela Kolter, *Edge Media Network*, *Shattering the Glass Cliff: Lesbians in Executive Roles* (Sept. 24, 2013), available at http://www.edgemedianetwork.com/business_finance/corporate/149695/shattering_the_glass_cliff:_lesbians_in_executive_roles/.

[17] Boris Groysberg and Katherine Connolly, *Harvard Business Review*, *Great Leaders Who Make the Mix Work* (Sept. 2013), available at <https://hbr.org/2013/09/great-leaders-who-make-the-mix-work> (last visited May 5, 2015). Corporate leaders like CEOs send a powerful message when they show their commitment to diversity and inclusion, especially when they approach inclusivity as a personal mission. See id. As described in a *Harvard Business Review* article, corporate leaders that support diversity view diversity as a business imperative in order for their companies to stay competitive. See id. A diverse workforce prevents a company from being too insular and out of touch with

a growing and diverse customer base. See *id.*

[18] See U.S. Government Accountability Office, *Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis, Highlights* (Apr. 2013), available at <http://www.gao.gov/assets/660/653814.pdf>; U.S. Government Accountability Office, *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008, Highlights* (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf>; U.S. Government Accountability Office, *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004, Highlights* (June 2006), available at <http://www.gao.gov/assets/260/250328.pdf>.

[19] According to one report, diversity promotes hard work and creativity by encouraging people to consider different ways of looking at problems. See Boris Groysberg and Katherine Connolly, *Harvard Business Review, Great Leaders Who Make the Mix Work* (Sept. 2013), available at <https://hbr.org/2013/09/great-leaders-who-make-the-mix-work> (last visited May 5, 2015); Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton, NJ: Princeton University Press, 2007). Studies have shown that a diverse workforce results in diversity in thinking, because when people hear from someone who is different from themselves, it provokes more thought than when it comes from someone who looks like they do. See Katherine W. Phillips, *Scientific American, How Diversity Makes Us Smarter*, (Sept. 16, 2014), available at <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>; Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton, NJ: Princeton University Press, 2007) (A study found that “there is a lot of evidence that people’s identity groups—ethnic, racial, sexual, age—matter when it comes to diversity in thinking.”). Likewise, when there are differences of opinion and perspective, people tend to assume that they need to work harder—both cognitively and socially—to get the job done. See Katherine W. Phillips, *Scientific American, How Diversity Makes Us Smarter* (Sept. 16, 2014), available at <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>.

[20] See Credit Suisse Research Institute, *The CS Gender 3000: Women in Senior Management*, p. 5 (Sept. 2014), available at http://30percentclub.org/wp-content/uploads/2014/10/2014-09-23_Research_Institute_Women_in_Business.pdf (last visited May 5, 2015); Katherine W. Phillips, *Scientific American, How Diversity Makes Us Smarter* (Sept. 16, 2014), available at <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>; Boris Groysberg and Katherine Connolly, *Harvard Business Review, Great Leaders Who Make the Mix Work* (Sept. 2013), available at <https://hbr.org/2013/09/great-leaders-who-make-the-mix-work> (last visited May 5, 2015); Crosby Burns, Kimberly Barton, and Sophia Kerby, *Center for American Progress, The State of Diversity in Today’s Workforce: As Our Nation Becomes More Diverse So Too Does Our Workforce*, p. 1 (July 2012), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/07/pdf/diversity_brief.pdf; Cristian L. Dezso" and David Gaddis Ross, *Does Female Representation In Top Management Improve Firm Performance? A Panel Data Investigation*, *Strat. Mgmt. J.*, 33:1072-1089, at 1080, (2012), available at <http://onlinelibrary.wiley.com/doi/10.1002/smj.1955/epdf>; Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies* (Princeton, NJ: Princeton University Press, 2007).

[21] Crosby Burns, Kimberly Barton, and Sophia Kerby, *Center for American Progress, The State of Diversity in Today’s Workforce: As Our Nation Becomes More Diverse So Too Does Our Workforce*, p. 1 (July 2012), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/07/pdf/diversity_brief.pdf.

[22] Commissioner Luis A. Aguilar, *Merely Cracking the Glass Ceiling is Not Enough: Corporate America Needs More than Just A Few Women in Leadership* (May 22, 2013), available at <http://www.sec.gov/News/Speech/Detail/Speech/1365171515760>.

[23] Cristian L. Dezso" and David Gaddis Ross, *Does Female Representation In Top Management Improve Firm Performance? A Panel Data Investigation*, *Strat. Mgmt. J.*, 33:1072-1089, at 1080 (2012), available at <http://onlinelibrary.wiley.com/doi/10.1002/smj.1955/epdf>.

[24] See Credit Suisse Research Institute, *The CS Gender 3000: Women in Senior Management*, p. 5 (Sept. 2014), available at http://30percentclub.org/wp-content/uploads/2014/10/2014-09-23_Research_Institute_Women_in_Business.pdf (last visited May 5, 2015).

[25] See *id.*

[26] Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, SEC Release No. 34-70731 (October 22, 2013), available at <http://www.sec.gov/rules/policy/2013/34-70731.pdf>.

[27] See *id.*

[28] See Commissioner Luis A. Aguilar, *Statement on the Proposed Interagency Policy Statement to Establish Standards to Assess the Diversity Policies and Practices of Regulated Entities* (Oct. 23, 2013), available at <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370542558306>.

[29] See *id.*

[30] The comment files are available at <http://www.sec.gov/comments/s7-08-13/s70813.shtml> (SEC), http://www.federalreserve.gov/apps/foia/ViewComments.aspx?doc_id=OP%2D1465&doc_ver=1 (Federal Reserve), <https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment.html> (FDIC), <http://www.ncua.gov/Legal/Regs/Pages/PR20131216Extension.aspx> (NCUA), <http://www.ncua.gov/Legal/Regs/Pages/PR20131001JointStandards.aspx> (NCUA), <http://www.regulations.gov/> (OCC; OCC-2013-0014), <http://www.regulations.gov/> (CFPB; CFPB-2013-0029).

[31] See *id.*

[32] See, e.g., *Comment Letter from American GI Forum City of Commerce Chapter, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement* (Feb. 4, 2014), available at

<http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0050>; Comment Letter from Americans for Financial Reform, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-38.pdf>; Comment Letter from The Greenlining Institute, Public Comment Regarding the Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2013), available at https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c_32.pdf; Comment Letter from Cheryl C. Nichols and Ronald L. Crawford, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment—SEC Release No. 34-70731; File No. S7-08-13 p. 2, (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-21.pdf>; Comment Letter from Members of Congress to the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 4 (Apr. 11, 2014), available at http://www.federalreserve.gov/SECRS/2014/May/20140509/OP-1465/OP-1465_041514_126311_475617696392_1.pdf; Comment Letter from the National Urban League, Request For Comment on the Proposed Interagency Policy Statement Establishing Joint Standards For Assessing the Diversity Policies and Practices of Entities Regulated By the Agencies (Feb. 7, 2014), available at <http://nulwb.iamempowered.com/sites/nulwb.iamempowered.com/files/National%20Urban%20League's%20Comment%20on%20the%20Agencies'%20Proposed%20Interagency%20Policy%20Statement%20Establishing%20Joint%20Standards%20for%20Assessing%20the%20Diversity.pdf>; Comment Letter from the Southeast Asian Community Center, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0023> (Jan. 22, 2014); Comment Letter from the United States Hispanic Chamber of Commerce, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0060> (Feb. 7, 2014); Comment Letter from the National Federation of Filipino American Associations Region 8, Northern California, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0012> (Dec. 9, 2013).

[33] See Final Policy Statement.

[34] See, e.g., Comment Letter from American GI Forum City of Commerce Chapter, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, (Feb. 4, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0050>; Comment Letter from Americans for Financial Reform, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-38.pdf>; Comment Letter from anewamerica Community Corporation, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0071> (Feb. 7, 2014); Comment Letter from the Asian Pacific Islander Small Business Program, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0024> (Jan. 29, 2014); Comment Letter from the California Reinvestment Coalition, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0020> (Dec. 30, 2013); Fresno Metro Black Chamber of Commerce, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement, available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0074> (Feb. 7, 2014); Comment Letter from The Greenlining Institute, Public Comment Regarding the Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2013), available at https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c_32.pdf; Comment Letter from Cheryl Nichols and Ronald L. Crawford, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment—SEC Release No. 34-70731; File No. S7-08-13, p. 2 (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-21.pdf>; Comment Letter from the Inland Empire Latino Coalition, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement (Jan. 24, 2014), available at <http://www.ncua.gov/Legal/CommentLetters/CLExtension20140124Figuroa.pdf>; Comment Letter from the Korean Churches for Community Development, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement (Jan. 9, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0029>; Comment Letter from the MLK Jr. Civic Council, Public Comment on the Offices of Minority and Women Inclusion's Proposed Interagency Policy Statement (Feb. 6, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0040>; Comment Letter from Members of Congress to the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 4 (Apr. 11, 2014), available at http://www.federalreserve.gov/SECRS/2014/May/20140509/OP-1465/OP-1465_041514_126311_475617696392_1.pdf; Comment Letter

from the National Association of Minority Companies, Docketed ID OCC-2013-0014 Request for Comments on the “Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Feb. 6, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0052>; Comment Letter from the National Association of Securities Professionals, Proposed Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2014), available at https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c_31.pdf; Comment Letter from the National Council of Asian American Business Associations, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement (Feb. 7, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0064>; Comment Letter from the National Fair Housing Alliance, Proposed Interagency Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0059>; Comment Letter from the National Federation of Filipino American Associations Region 8, Northern California, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement (Dec. 9, 2013), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0012>; Comment Letter from the National LGBT Bar Association, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment (Dec. 24, 2013), available at http://www.federalreserve.gov/SECRS/2014/March/20140307/OP-1465/OP-1465_122413_111760_329459540065_1.pdf; Comment Letter from the National Urban League, Request For Comment on the Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0070>; Comment Letter from the Southeast Asian Community Center, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement (Jan. 22, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0023>; Comment Letter from the Southern Cal Alumni Coalition, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement (Feb. 6, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0043>; Comment Letter from the United States Hispanic Chamber of Commerce, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2014), available at <http://www.regulations.gov/#!documentDetail;D=OCC-2013-0014-0060>.

[35] The SEC, in particular, should have done better. The SEC is charged with creating and implementing rules requiring public companies to provide information that investors need to make informed investment decisions. We know that investors the SEC is committed to protect care a great deal about diversity. Investors know that the ability to draw on a wide range of viewpoints, backgrounds, skills, and experiences is crucial to a company’s success. In particular, because of the important role that boards of directors play in determining how companies are operated, investors want to know about the directors’ backgrounds and how they are appointed. To that end, the diversity of boards of directors has been a growing concern and a problem that has persisted for a long time. See, e.g., Commissioner Luis A. Aguilar, *Moving Toward More Informed Shareholder Voting* (Dec. 16, 2009), available at <http://www.sec.gov/news/speech/2009/spch121609laa-1.htm> (“This rule resulted from the repeated efforts of investors. For example, in 2003, the Commission did a rulemaking regarding nominating committees that did not mention diversity, and nonetheless the Commission received a significant number of letters requesting that the Commission require this disclosure. This time around, in response to our request, we were deluged with letters. These letters were overwhelmingly supportive, with approximately 90% expressing support for disclosure of information related to race and gender diversity on the board.”); Commissioner Luis A. Aguilar, *Making Investors a Priority in Regulatory Reform* (Apr. 17, 2009), available at <http://www.sec.gov/news/speech/2009/spch041709laa.htm> (“For example, in 2004, the Alliance for Board Diversity compiled statistics about the composition of the boards of directors of Fortune 100 companies and found the majority of board members, 72% were white American men, and only 28% of the board seats were held by women and minorities. Unfortunately, these board statistics have stayed virtually unchanged for the last four years.”); U.S. Government Accountability Office, *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008, Highlights* (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf> (“EEOC data indicate that overall diversity at the management level in the financial services industry did not change substantially from 1993 through 2008, and diversity in senior positions remains limited.”). Just recently, a group of nine public pension funds wrote to ask the SEC to strengthen its rules regarding the disclosure of a company’s board diversity. See Comment Letter to the SEC from the California Public Employees’ Retirement System, California State Teachers’ Retirement System, Connecticut Retirement Plans and Trust Fund, Illinois State Board of Investment, Comptroller of New York City, New York State Common Retirement Fund, Ohio Public Employees Retirement System, North Carolina Department of State Treasurer, and Washington State Investment Board, *Petition For Amendment of Proxy Rule Regarding Board Nominee Disclosure — Chart / Matrix Approach* (Mar. 31, 2015), available at <https://www.nctreasurer.com/inv/Resources/ProxyRuleAmendmentPetition.pdf>. In particular, these funds asked that companies disclose their board nominees’ gender, race, and ethnicity in a chart or matrix form. *Id.* These public fund fiduciaries believed that this information is necessary “to evaluate the nominees’ gender, racial, and ethnic diversity, as well as their mix of skills, experiences, and attributes needed to fulfill the corporation’s mission.” *Id.*

[36] See, e.g., Comment Letter from Diversity in Finance, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 2 (Feb. 6, 2014), available at https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c_38.pdf (“We whole-heartedly endorse putting some ‘teeth’ into [Section 342], and providing the [Agencies] with enforcement power without further delay.”); Orson Aguilar and Tunua

Thrash-Ntuk, American Banker, Dodd-Frank Diversity Standards Need Real Teeth (Oct. 8, 2014), available at <http://www.americanbanker.com/bankthink/dodd-frank-diversity-standards-need-real-teeth-1070397-1.html> (last visited May 5, 2015).

[37] See Alliance for Board Diversity, Fact Sheet, Missing Pieces: Women and Minorities on Fortune 500 Boards, p. 1 (Aug. 15, 2013), available at http://theabd.org/ABD_Fact_Sheet_Final.pdf; U.S. Government Accountability Office, Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis, Highlights (Apr. 2013), available at <http://www.gao.gov/assets/660/653814.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008, Highlights (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004 Highlights, (June 2006), available at <http://www.gao.gov/assets/260/250328.pdf>.

[38] Alliance for Board Diversity, Fact Sheet, Missing Pieces: Women and Minorities on Fortune 500 Boards, p. 2. (Aug. 15, 2013), available at http://theabd.org/2012_ABD%20Missing_Pieces_Final_8_15_13.pdf.

[39] See Kenji Yoshino and Christie Smith, Deloitte University, Uncovering talent: A new model of inclusion, p. 3 (Dec. 6, 2013), available at <http://www2.deloitte.com/content/dam/Deloitte/us/Documents/about-deloitte/us-inclusion-uncovering-talent-paper.pdf>.

[40] See id.

[41] See, e.g., Comment Letter from the American Bankers Association, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, p. 3 (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-23.pdf>; Comment Letter from the Financial Services Roundtable, et al., Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 3 (Feb. 6, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-20.pdf>; Comment Letter from the Investment Company Institute, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment (File No. S7-08-13), p. 2 (Dec. 20, 2013), available at <http://www.sec.gov/comments/s7-08-13/s70813-10.pdf>; Comment Letter from the Securities Industry and Financial Markets Association (SIFMA), Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment (SEC Release No. 34-70731; File No. S7-08-13), p. 4 (Dec. 17, 2013), available at <http://www.sec.gov/comments/s7-08-13/s70813-7.pdf>.

[42] See Comment Letter from Members of Congress to the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC), Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment, p. 4 (Apr. 11, 2014), available at http://www.federalreserve.gov/SECRS/2014/May/20140509/OP-1465/OP-1465_041514_126311_475617696392_1.pdf; see also, Comment Letter from Cheryl C. Nichols and Ronald L. Crawford, Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment—SEC Release No. 34-70731; File No. S7-08-13, p. 2 (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-21.pdf>; Comment Letter from Americans for Financial Reform, Public Comment on the Offices of Minority and Women Inclusion’s Proposed Interagency Policy Statement (Feb. 7, 2014), available at <http://www.sec.gov/comments/s7-08-13/s70813-38.pdf>; Comment Letter from The Greenlining Institute, Public Comment Regarding the Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Policies and Practices of Entities Regulated by the Agencies (Feb. 7, 2013), available at https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c_32.pdf.

[43] See id.

[44] Final Policy Statement.

[45] In fact, according to the SEC’s OMWI, some Agencies advocated for the voluntary self-assessment approach because of “policy reasons.”

[46] See U.S. Government Accountability Office, Diversity Management: Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis, Highlights (Apr. 2013), available at <http://www.gao.gov/assets/660/653814.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008, Highlights (May 12, 2010), available at <http://www.gao.gov/assets/130/124630.pdf>; U.S. Government Accountability Office, Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004, Highlights (June 2006), available at <http://www.gao.gov/assets/260/250328.pdf>.

[47] Martin Luther King, Jr., Address at the National Cathedral, Washington, DC, Remaining Awake Through a Great Revolution, (Mar. 31, 1968), available at http://mlk-kpp01.stanford.edu/index.php/encyclopedia/documentsentry/doc_remaining_aware_through_a_great_revolution/ (last visited May 5, 2015).

F. Links to OIGs’ Audit and Evaluation Reports

AGENCY	TITLE	RELEASE DATE
 <p>Office of the Comptroller of the Currency</p>	<p><u>Review of the OCC's Personnel Practices</u></p>	<p>Dec. 1, 2014</p>
 <p>Securities and Exchange Commission</p>	<p><u>Representation of Minorities and Women in the SEC's Workforce</u></p>	<p>Nov. 20, 2014</p>
 <p>National Credit Union Administration</p>	<p><u>Review of NCUA's Efforts to Promote Equal Opportunity and Achieve Diversity in Senior Management</u></p>	<p>Nov. 26, 2014</p>
 <p>Federal Deposit Insurance Corporation</p>	<p><u>The FDIC's Efforts to Provide Equal Opportunity and Achieve Senior Management Diversity</u></p>	<p>Nov. 28, 2014</p>
 <p>Federal Housing Finance Agency</p>	<p><u>Women and Minorities in FHFA's Workforce</u></p>	<p>Jan. 13, 2015</p>
 <p>Consumer Financial Protection Bureau</p>	<p><u>The CFPB Can Enhance its Diversity and Inclusion Efforts</u></p>	<p>Mar. 4, 2015</p>
 <p>Federal Reserve Board of Governors</p>	<p><u>The Board Can Enhance its Diversity and Inclusion Efforts</u></p>	<p>Mar. 31, 2015</p>