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**Raising the Bar on  
Diversity and Inclusion:  
Dodd-Frank's Proposed  
Diversity Standards**

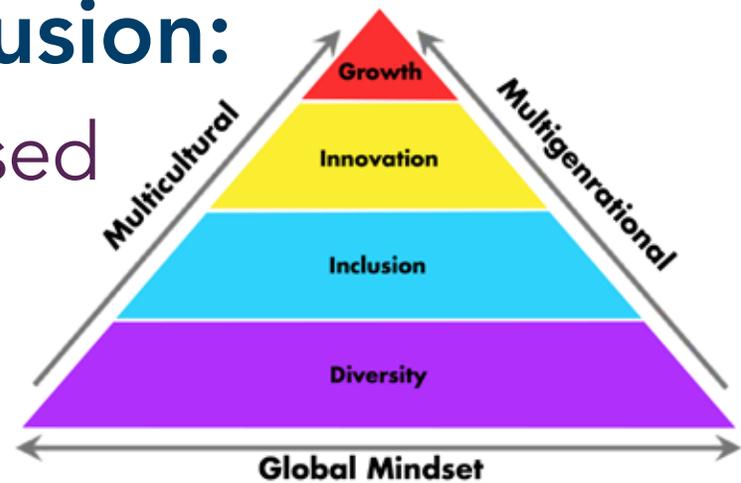
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# Raising the Bar on Diversity and Inclusion:

## Dodd-Frank's Proposed Diversity Standards

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The mortgage industry knows the compliance bar has been raised. Few, however, have focused on the new bar being set on the diversity and inclusion front. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank or Act) mandated the creation of the Office of Minority and Women Inclusion (OMWI) in all agencies covered by the Act and further mandated that each OMWI shall be responsible for all matters of the agency relating to diversity in management, employment, and business activities. Section 342 of the Act further directs each OMWI to develop standards for assessing the diversity policy and practices of entities regulated by those agencies.

On October 25, 2013, six agencies proposed an Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices. The joint standards remain in proposed form today, while the agencies review public comments on the proposal. The agencies accepted such comments through February 7, 2014, and have indicated that final standards will be issued before the end of the year. Stuart Ishimaru, Director of the CFPB's OMWI, at a recent Mortgage Bankers Association conference, declined to provide an exact date for issuance of

the final standards, but stated that regulated entities should "start now" to lay the groundwork for compliance.

This article offers a Q&A on Section 342 and the proposed diversity standards, discussing the scope of the standards, which entities are subject to the standards, the assessment factors proposed in the standards, and enforcement mechanisms. The article concludes with compliance recommendations.

### How were the standards developed?

In developing the diversity standards, the OMWI directors held roundtables to gather information to assist them in developing the standards and to learn about the challenges and successes of current diversity programs and policies. Guests at the roundtables included representatives from depository institutions, holding companies, credit unions, and industry trade groups. OMWI directors also held roundtables with financial professionals, consumer advocates, and community representatives to gain insight into issues facing minorities and women in employment and in the financial sector.

### To whom do the standards apply?

Section 342 applies to all "entities regulated by [an] agency." This means that

According to Stuart Ishimaru, OMWI Director for CFPB, regulated entities should "start now" with compliance measures.

all entities regulated by any one of the nine federal agencies subject to the Dodd-Frank Act are covered and must comply with the final standards.

The six agencies that issued the joint proposed standards are: Bureau of Consumer Financial Protection (CFPB), Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and Securities and Exchange Commission (SEC). In addition to these six, the Department of the Treasury, Federal Housing Finance Agency (FHFA), and the Federal Reserve Banks are among the agencies required to develop diversity standards. Any entity regulated by one or more of these agencies will be covered by the standards adopted by the respective OMWI.

The standards recognize that some regulated entities also are required to file EEO-1 reports with the Equal Employment Opportunity Commission (EEOC) and/or are federal contractors covered by affirmative action laws enforced by the Office of Federal Contract Compliance Programs (OFCCP). These requirements are triggered by the size of the employer and whether the employer has a federal contract or subcontract above the dollar thresholds. The diversity standards are broader and not limited in their application to only entities covered by these legal requirements.

### What compliance measures are expected under the diversity standards?

Recognizing that one size does not fit all, the diversity standards allow each entity to tailor its approach to compliance to fit the entity, taking into account its size, total assets, number of employees, governance structure, revenues, number of members and/or customers, contract volume, geographic location, and community characteristics. Thus, the standards anticipate a degree of flexibility when it comes to compliance.

The diversity standards envision that an entity will conduct a "self-assessment" of its diversity policies and practices in four areas: (1) organizational commitment to diversity and inclusion, (2) workforce profile and employment practices, (3) procurement and business practices and supplier diversity, and (4) practices to promote transparency of organizational diversity and inclusion). The diversity standards provide specific "assessment factors" for each of these areas, discussed below. The standards also propose

an entity's voluntary disclosure to the regulating agency of the results of the self-assessment and a public display on the entity's website and in its annual report of its efforts to comply with the diversity standards.

### What are the standards for organizational commitment to diversity and inclusion?

The diversity standards recognize the importance leadership's commitment to diversity and inclusion. As such, several of the assessment factors in this area focus on leadership's role in promoting and fostering a corporate culture that embraces diversity and inclusion. The proposed assessment factors are:

- A diversity and inclusion strategic plan that includes diversity and inclusion both for supplier diversity and employment practices (e.g., hiring, recruiting, retention, and promotion).
- A diversity and inclusion policy that is approved and supported by senior leadership.
- Regular progress reports to senior management and/or the board.
- Regular and periodic equal employment opportunity and diversity and inclusion education and training.
- A senior diversity and inclusion official who oversees and directs diversity efforts (e.g., a Chief Diversity Officer).
- Take proactive steps to promote a diverse pool of candidates for board and senior leadership.

### What are the standards for workforce profile and employment practices?

The diversity standards note that entities that regularly evaluate their diversity and inclusion programs and identify areas that can be improved are the most successful in promoting the fair inclusion of minorities and women in their workforce. Accordingly, the standards state that analytical tools, including metrics to track and measure inclusiveness, are most effective in this evaluation process.

The workforce proposed assessment factors are:

- Use data from an annual EEO-1 report, affirmative action plans, or other metrics to evaluate and assess workforce diversity and inclusion efforts.
- Utilize metrics to evaluate and assess workforce diversity and inclusion efforts (e.g., recruiting, hiring, promotions, separations, career development, coaching, seminars, retention) across all levels and occupations of the organization, in-

- cluding executive and managerial ranks.
- Hold management accountable for diversity and inclusion efforts.
- Develop diverse applicant pools through outreach to minority and women organizations and educational institutions and participate in conferences, workshops, and other events.

### What are the standards for procurement and business practices and supplier diversity?

Noting that public procurement information is limited, the diversity standards acknowledge that it may be difficult to compare entities in this regard. Notwithstanding that challenge, the diversity standards elaborate on the benefits of using a broader choice of available businesses. They stress of the importance of using outreach methods to inform minority- and women-owned businesses of the availability of opportunities and suggest the use of diverse subcontractors to fulfill the obligations of various contracts.

The proposed assessment factors for supplier diversity are:

- A supplier diversity policy that provides for a fair opportunity for minority- and women-owned businesses to compete for procurement opportunities (e.g., contracts for the issuance of debt, equity, or security, the sale of assets, the management of assets, and making equity investments).
- Utilize metrics to evaluate and assess supplier diversity with data on annual contract spending, percentage spend with diverse vendors, percentage of contracts with diverse subcontracts, and contractor workforce demographics.
- Develop diverse applicant pools through outreach to minority- and women-owned contractors and organizations; participate in conferences, workshops, and other events; and publicize supplier opportunities on an ongoing basis.

### What are the standards for practices to promote transparency of organization diversity and inclusion?

The diversity standards stress the importance of transparency to assessing diversity policies and practices and to promoting the objectives of Section 342. The diversity standards leave it to the entity as to

how it publishes the information, stating only that such information should be published through normal business methods.

The proposed assessment factors for transparency and publicity of the entity's diversity program are:

- Annual public reporting, tailored to the size and characteristics of the entity, using the entity's website or other communication method to make available the entity's diversity and inclusion strategic plan, its commitment to diversity and inclusion, and its progress toward workforce and procurement diversity.
- Public diversity and inclusion metrics, which "may" include current workforce and supplier demographic profiles, current employment and procurement opportunities, forecasts of potential opportunities, and the availability and use of mentorship and developmental programs for employees and contractors.

### What enforcement mechanisms exist under Section 342?

Section 342 does not address enforcement or penalties for failure to comply with the diversity standards. The agencies may view this gap as an invitation to develop their own enforcement mechanisms. Moreover, while Section 342 specifically provides that the OMWI's duties do not include enforcement of civil rights laws relating to discrimination, each OMWI Director is empowered to coordinate with the agency administrator regarding the design and implementation of any remedies resulting from violations of such laws. Such remedies could include, for example, referral of suspected violations to other agencies with authority to investigate, remediate and/or litigate such claims, including the EEOC and the OFCCP. For example, Section 342 mentions specifically referrals to the OFCCP when a contractor or subcontractor of the agency has failed to make a good faith effort to include minorities and women in their workforce.

In addition, Section 342 specifies that the diversity assessment required under the standards should not 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. It nonethe-

**The joint standards strongly support transparency and publicity ... "To promote the objectives of section 342, an entity's diversity and inclusion program should be transparent."**

less remains to be seen whether the assessments will play a part in the extent to which a regulated entity's lending practices become the subject of a fair lending examination or the scope and rigor of such an examination.

### What are the recommended next steps?

Given that it is uncertain whether regulated entities will be given a lead-in period to comply with the standards once finalized, or how much of a lead-in period might be afforded, entities should begin now to lay the groundwork for their diversity assessment and program, as recommended by Mr. Ishimaru. In order to effectively gauge an entity's compliance with the assessment factors and what additional measures are warranted, entities should start by assessing what diversity and inclusion measures already are in place and can be continued or built upon going forward.

Additionally, certain aspects of the diversity standards are highly likely to be part of the final standards. Those include the development of a strategic plan, diversity policies, metrics and progress reporting, and outreach. Thus, these areas would be good starting points for an entity's diversity and inclusion program. 

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