

Dodd-Frank Standards Proposed for Assessing Diversity Policies and Practices of Covered Entities in the Financial Services Industry

December 12, 2013

By Peter M. Stein, Lauri F. Rasnick, and Dean R. Singewald II

Six federal agencies (“Agencies”) subject to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Act”) issued much-anticipated [jointly proposed standards](#) in accordance with Section 342 of the Act for assessing the diversity policies and practices of the entities that they regulate in the financial services industry. The proposed standards were published in the *Federal Register* on October 25, 2013. In issuing the proposed standards, the Agencies stated that their goal is to “promote transparency and awareness of diversity policies and practices” of the covered entities (“Covered Entities”), given the Agencies’ recognition that greater diversity and inclusion “promotes stronger, more effective, and more innovative businesses, as well as opportunities to serve a wider range of customers.”

The Agencies include the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission.¹ Each of these Agencies was required, pursuant to Section 342 of the Act, to establish an Office of Minority and Women Inclusion (“OMWI Office”), headed by a Director responsible for all Agency matters concerning diversity in management, employment, and business. In turn, each Director was required to establish standards for assessing the diversity policies and practices of the entities regulated by the Agency. The Covered Entities include 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.

Proposed Standards

The proposed standards are divided into four assessment areas: (i) organizational commitment to diversity and inclusion, (ii) workforce profile and employment practices, (iii) procurement and business practices (or supplier diversity), and (iv) practices to

¹ Three other federal agencies that are also subject to the Act—the Federal Reserve Banks, the Department of Treasury, and the Federal Housing Finance Agency—were not participants in crafting the jointly proposed standards.

promote transparency of organizational diversity and inclusion. The standards for each assessment area are as follows:

Organizational Commitment to Diversity and Inclusion

Recognizing that the commitment to diversity and inclusion must come from a Covered Entity's leaders, including its board of directors, senior officials, and managers, the Agencies set the following standards to "inform how an entity promotes diversity and inclusion both in employment and contracting, and how an entity fosters a corporate culture that embraces diversity and inclusion":

- Include considerations of diversity in employment and contracting, including hiring, recruiting, retention, and promotion, as important elements of the Covered Entity's strategic plan.
- Establish a diversity and inclusion policy that is approved and supported by senior leadership.
- Provide regular progress reports to senior leadership.
- Conduct equal employment opportunity and diversity education and training on a regular and periodic basis.
- Designate a senior level official with dedicated resources to support strategies and initiatives and to oversee and direct the Covered Entity's diversity efforts.
- Take proactive steps to attract and/or promote a diverse pool of candidates, including women and minorities, in the Covered Entity's hiring, recruiting, retention, and promotion, as well as in its selection of board members, senior management, and other senior leadership positions.

Workforce Profile and Employment Practices

Finding that many Covered Entities promote the fair inclusion of minorities and women in their workforce by different means, including the use of various analytical tools, the Agencies set the following standards to evaluate and assess, on an annual basis, a Covered Entity's diversity and inclusion efforts:

- For Covered Entities that file an annual EEO-1 Report, use that data to evaluate workforce diversity and inclusion efforts.
- For Covered Entities that prepare annual affirmative action plans, as required by Executive Order 11246, use those plans to evaluate workforce diversity and inclusion efforts.
- Utilize metrics to track and analyze personnel activity, such as recruitment, applicants, hires, promotions, terminations, career development support, coaching, executive seminars, and retention.
- Hold management accountable for diversity and inclusion efforts.

- Establish action-oriented programs and practices to create a diverse pool of candidates for employment, including outreach to organizations and educational institutions serving minorities and women as well as participation in conferences, workshops, and other events attracting minorities and women participants.

Procurement and Business Practices – Supplier Diversity

Understanding that there is a competitive advantage to working with minority-owned and women-owned businesses, the Agencies set the following standards to evaluate and assess, on an annual basis, a Covered Entity's supplier diversity program:

- Establish a supplier diversity policy that provides a fair opportunity for minority-owned and women-owned businesses to compete in the procurement of goods and services.
- Utilize metrics and analytics to track and analyze supplier diversity activity, including tracking annual contract spending, the percentage of spending allocated to minority/ women-owned businesses, and the demographics of contractors' and subcontractors' workforces.
- Establish action-oriented programs and practices to create a diverse supplier pool, including outreach to minority/women-owned contractors and representative organizations; participation in conferences, workshops, and other events attracting minority/women owned businesses; and publicizing its procurement opportunities.

Practices to Promote Transparency of Organizational Diversity and Inclusion

Believing that transparency and publicity can be an important aspect of assessing diversity policies and practices, the Agencies set as a standard that a Covered Entity make available to the public annually, through its public website or other appropriate communication methods, the following information:

- the Covered Entity's diversity and inclusion strategic plan;
- the Covered Entity's commitment to diversity and inclusion; and
- the Covered Entity's progress toward achieving diversity and inclusion in its workforce and procurement activities, which may include workforce and supplier demographic profiles, employment and procurement opportunities, forecasts of potential employment and procurement opportunities, and the availability and use of mentorship and developmental programs for employees and contractors.

Proposed Model Assessment

Section 342 of the Act requires the Directors of the OMWI Offices to develop standards for assessing the diversity policies and practices of the Covered Entities but does not describe what an assessment should entail, nor does it require "any specific action based on the findings of the assessment." As a result, the assessment will not be one of

a “traditional examination or other supervisory assessment.” Pursuant to the proposed standards, the Agencies envision an assessment that will include a “self-assessment,” as well as an assessment by the Agencies and the public based on the information disclosed by the entities. According to the proposed standards, a model assessment would include:

- a self-assessment utilizing the proposed standards to conduct a quantitative and qualitative evaluation of the Covered Entity’s diversity and inclusion policies and practices;
- voluntary disclosure to the Agency regulating the Covered Entity of the self-assessment and other information deemed relevant by the entity; and
- the public display of information on a Covered Entity’s website and in its annual reports and other materials regarding its diversity and inclusion efforts.

Although there is no standard requiring that the Agencies conduct assessments, the proposed standards provide that the Agencies will monitor the information submitted by the Covered Entities over time for use “in carrying out the Agencies’ diversity and inclusion responsibilities.” In addition, the Agencies may periodically review the information displayed on Covered Entities’ websites to monitor diversity and inclusion practices. Interestingly, although Section 342 of the Act requires that the standards include procedures for terminating a contract where a contracting entity fails “to make good faith effort[s] to include minorities and women in [its] workforce,” no such procedures appear in the proposed standards for the Covered Entities.

What Employers Should Do Now

Covered Entities may file comments on any aspect of the proposed standards on or before December 24, 2013. As a guide, the Agencies have included with their proposal five requests for comments, four of which concern the proposed assessment approach. Comments may be submitted to any one of the Agencies.

Even though the proposed standards are not yet final and thus not binding, there are steps Covered Entities should take, now that they have the proposed standards as a guide for what Covered Entities can expect in the final regulations. Therefore, Covered Entities should do the following:

- Identify a person/committee responsible for diversity and inclusion.
- Create a diversity and inclusion policy.
- Incorporate diversity considerations into strategic plans for hiring, retention, and promotion.
- Establish action-oriented programs and practices to create both a diverse supplier pool and a diverse pool of candidates for employment.
- Determine a method to hold management accountable for diversity/inclusion efforts (through performance appraisals, compensation decisions, or otherwise).

- Identify and review accessible information to internally assess diversity of employment and suppliers.
- Consider what initiatives, efforts, or other information will be disclosed to the public.

Taking these steps now will not only put employers ahead of the curve when the final regulations are issued but also help employers reach their goals of expanding diversity within their workforces.

For more information about this Advisory, please contact:

Peter M. Stein
Stamford
203-326-7420
PStein@ebglaw.com

Lauri F. Rasnick
New York
212-351-4854
LRasnick@ebglaw.com

Dean R. Singewald II
Stamford
203-326-7410
DSingewald@ebglaw.com

This Advisory has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice.

About Epstein Becker Green

Epstein Becker & Green, P.C., founded in 1973, is a national law firm with approximately 275 lawyers practicing in nine offices, in Boston, Chicago, Houston, Los Angeles, New York, Newark, San Francisco, Stamford, and Washington, D.C. The firm is uncompromising in its pursuit of legal excellence and client service in its areas of practice: [Health Care and Life Sciences](#), [Labor and Employment](#), [Litigation](#), [Corporate Services](#), and [Employee Benefits](#). Epstein Becker Green was founded to serve the health care industry and has been at the forefront of health care legal developments since 1973. The firm is also proud to be a trusted advisor to clients in the financial services, retail, and hospitality industries, among others, representing entities from startups to Fortune 100 companies. Our commitment to these practices and industries reflects the founders' belief in focused proficiency paired with seasoned experience. For more information, visit www.ebglaw.com.

© 2013 Epstein Becker & Green, P.C.

Attorney Advertising