

## Employment Alert

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### **Dodd-Frank Wall Street Reform Act Requires Federal Financial Agencies to Address Diversity and Fair Inclusion of Minorities and Women**

The Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law on July 21, 2010, created some of the most sweeping changes to the financial industry since the Great Depression. Section 342 of the Dodd-Frank Act requires federal financial agencies to create an Office of Minority and Women Inclusion ("OMWI"), which is responsible for "all matters of the agency relating to diversity in management, employment, and business activities." This provision could significantly impact the diversity practices of federal financial agencies, agency contractors, and other entities that do business with these agencies.

#### **Duties of the OMWI**

Each agency must appoint a director for its OMWI, a Senior Executive Service position or equivalent, who is charged with developing standards for:

- The racial and gender diversity of the agency
- Increased participation of minority-owned and women-owned businesses in agency contracts and programs
- Assessing the diversity policies and practices of the entities regulated by the agency

The OMWI is not responsible for enforcing civil rights laws, but it must coordinate with agency administrators to implement any remedies resulting from the violation of these laws.

The agencies affected by section 342 include the Department of Treasury, Federal Deposit Insurance Corporation, Federal Housing Finance Agency, each of the Federal Reserve Banks, the Board of Governors of the Federal Reserve System, National Credit Union Administration, Office of the Comptroller of the Currency, Securities and Exchange Commission, and Bureau of Consumer Financial Protection. The covered agencies are required to establish their OMWIs no later than January 21, 2011, with the exception of the Bureau of Consumer Financial Protection, which has until July 21, 2012 to comply.

#### **Contracts with the Covered Agencies**

With respect to agency contracts, the director of each OMWI must develop standards and procedures to ensure the "fair inclusion and utilization" of minorities, women, and minority-owned and women-owned businesses in the contracts of the agency. Furthermore, the procedures by which covered agencies evaluate contract proposals must now include a component that gives consideration to the diversity of the applicant.

The Act also requires the OMWI to develop standards by which the director can determine whether an agency contractor or subcontractor has made a "good faith effort" to include minorities or women in their workforce. The penalties for failing to make a good faith effort at inclusion are significant. Upon finding that a contractor failed to make a good faith effort, the director of the OMWI must recommend to the agency administrator that the contract be terminated. The agency administrator may then terminate the contract, make a referral to the Office of Federal Contract Compliance Programs ("OFCCP"), or take other appropriate action.

These provisions apply to all types of service contracts with the agency, 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 law firms.

## Reporting Requirements

Each OMWI is required to make an annual report to Congress detailing the agency's actions to comply with section 342. The reports must include, among other things, the amounts paid to minority-owned and women-owned businesses, the successes of the agency's diversity outreach programs, and the challenges the agency faced in hiring qualified minority and women employees and contracting with minority-owned and women-owned businesses.

## Diversity Within the Agencies

Each agency must also take specific steps to promote diversity within its workforce. These actions include recruiting at colleges or universities that historically serve minorities and women, recruiting at job fairs in urban communities, and placing advertisements in publications that are oriented to minorities and women.

## Impact of the Dodd-Frank Act

Section 342 will likely have a significant impact on the diversity and recruiting practices of the affected agencies and the businesses that contract with these agencies, because of the broad range of agencies and types of contracts that fall within its scope.

Several questions about section 342 remain unclear. For instance, the Act itself provides little guidance on the meaning of "fair inclusion and utilization" of minorities and women or how to determine whether an entity has made a "good faith effort" at inclusion. It also is unclear whether section 342 will be applied to entities that are merely subject to regulation by the covered agencies, but have no contractual relationship with the covered agencies. In this regard, the provision on "Applicability" seems to suggest that the Act only applies when a contract for services with the covered agency exists. See section 342(d). However, in another provision, the Act expressly states that the OMWI director's duties include "assessing the diversity policies and practices of the entities regulated by the agency." See section 342(b)(2).

Many of these questions may not be fully answered until the OMWIs are created, and the standards and procedures mandated by section 342 are developed. Reed Smith will closely monitor developments and advise clients of any clarifying pronouncements made by Congress or the agencies on these issues.

A full copy of the Dodd-Frank Wall Street Reform and Consumer Protection Act may be obtained by clicking [here](#).

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