
**PROPOSED INTERAGENCY POLICY
STATEMENT ESTABLISHING JOINT
STANDARDS FOR ASSESSING THE
DIVERSITY POLICIES AND PRACTICES
OF ENTITIES REGULATED BY THE
AGENCIES AND REQUEST FOR
COMMENT**

Department of the Treasury
Office of the Comptroller of the Currency
Docket ID OCC-2013-0014

Board of Governors of the Federal Reserve
System
Docket No. OP-1465

Federal Deposit Insurance Corporation

National Credit Union Association

Bureau of Consumer Financial Protection
Docket No. CFPB-2013-0029

Securities and Exchange Commission
Release No. 34-70731; File No. S7-08-13

**PERSPECTIVE OF BLACK, LATINO AND ASIAN COMMUNITY, CHURCH AND BUSINESS
ORGANIZATIONS ON CONGRESSWOMAN MAXINE WATERS' SECTION 342 DIVERSITY
PROVISION OF THE DODD-FRANK ACT**

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"Congresswoman Waters' Section 342 was intended to implement Dr. King's dream of 1963, the Civil Rights Act of 1964 and the Community Reinvestment Act of 1977. Unfortunately, the six agencies involved have sought to roll back Dr. King's dream and inadvertently prevent effective implementation of Section 342," Pastor Mark Whitlock, International Director for Corporate Partnerships for 8,000 AME Churches Worldwide.¹

Participating Organizations

These comments are filed by the leadership of Black and Latino churches in California, many of whom represent national Black and Latino church communities. The comments are also filed by a broad range of consumer advocacy groups deeply involved in the Community Reinvestment Act (CRA) and the Dodd-Frank Act, as well as California's most prominent Hispanic business association.

The groups filing herein are the Ecumenical Center for Black Church Studies, Christ Our Redeemer Church, the leadership of the 5,000 Black AME Churches in the United States, the Orange County Interdenominational Ecumenical Council, the Jesse Miranda Center for Hispanic Leadership, the San Diego County Interdenominational Ministerial Alliance, the Los Angeles Latino Chamber of Commerce, the King-Chavez Charter Schools, the Chinese American Institute for Empowerment and the National Asian American Coalition.

Introduction

Section 342 was intended to bring the same clarity and transparency to all facets of banking and financial institutions generally that has existed for home lending (HMDA data). It was intended to cover previously non-transparent business lending data, contract data and employment data for all of our nation's 7,000 banks subject to regulatory supervision by the Federal Deposit Insurance Corporation, the Federal Reserve and the Office of the Comptroller of the Currency. It was also intended to provide the same form of transparency for the institutions generally covered by, supervised by or affected by the Securities & Exchange Commission and the Consumer Financial Protection Bureau, as well as the National Credit Union Administration.

¹ Pastor Whitlock is also the Executive Director of the Ecumenical Center for Black Church Studies, founder of the COR Community Development Corporation and senior minister of COR AME Church in Irvine, CA

During the week of November 12, 2013, some of the participants herein met with the Department of Treasury, the Office of the Comptroller of the Currency, the Federal Reserve² and the Securities & Exchange Commission relating to our concerns that the joint standards opposed for assessing diversity policies and practices would be a setback for Dr. King's dream, the Civil Rights Act of 1964 and the Community Reinvestment Act of 1977.

Further, we expressed our concerns that although virtually every financial institution and other institutions covered by Section 342 had data available, the joint standards of the six agencies could permanently keep such data secret. In contrast, HMDA data relating to home loans must be filed annually by financial institutions and such data must be broken down specifically by race, ethnicity and gender. The federal government has also required similar specific data for contracts awarded by race, ethnicity and gender.

In its present form, the joint standards proposal will allow financial institutions to keep secret on a permanent basis any data by race, ethnicity and gender. This includes even the annual EEO-1 reports that have been required to be filed for 40 years.

Instead of seeking transparency and permitting the regulators and advocacy groups to assist in encouraging and enforcing equal opportunities, the interagency policy statement establishing joint standards merely requires an institution to express its sincere commitment to equal opportunity.

Given the civil rights struggles of the past, it would be a surprise if even 1% of institutions failed to develop the highest possible standards in all areas covered by Section 342, at least on paper. Our concern, which undoubtedly is shared by the author, Congresswoman Maxine Waters, the Congressional Black Caucus and the other minority caucuses, is that the interagency standards can be and will be "gamed" by all institutions covered.

Further, institutions that are seeking to establish a laudable record and have been transparent with community groups on their achievements, such as Wells Fargo, will reconsider the need to be transparent. (In fact, most large financial institutions operating in California prior to Section 342 made specific information available by race, ethnicity and gender to community groups, such as the Greenlining Institute.³)

We have respect for each of the Office of Minority Women Inclusion (OMWI) directors. However, they are not members of Congress and they are not in direct line of authority to implement the vision of Section 342. We therefore propose that full transparency be required as to all institutions relating to race, ethnicity and gender for employment, small

² The group had meetings with Undersecretary of Treasury Mary Miller, Comptroller of the Currency Thomas Curry, and Federal Reserve Chairman Ben Bernanke and Governor Sarah Raskin, as well as senior staff at the Securities & Exchange Commission.

³ Based on discussions with the former General Counsel of the Greenlining Institute, Robert Gnaizda, who is presently counsel for the groups herein.

business lending and business contracts awarded. They should be consistent with the transparency underlying HMDA data and EEO-1 reports.

This form of transparency will enable the regulators and community groups to compare data and create competition among institutions that, for example, seek “Outstanding” CRA ratings and/or being recognized as a Top 25 company by the media and trade associations.

In Section II, the participants set forth examples of the type of simple transparency that could and should be required.

Although the agencies do not require proposed transparency, we do note that they do support transparency. “The Agencies believe that a goal of Section 342 is to promote transparency...the standards will provide the public a greater ability to assess diversity policies and practices of regulated entities.”

We also support the agencies’ position on the value of greater transparency. “The Agencies recognize that greater diversity and inclusion promote stronger, more effective, and more innovative business, as well as opportunities to serve a wider range of customers.” (Both quotes from page 10 of proposed interagency policy statement.)

Section II: Diversity Data by Race, Ethnicity and Gender

Set forth below, based on our 35 years of experience in promoting diversity under the Community Reinvestment Act, 25 years of experience under HMDA and more than 40 years of reviewing EEO-1 employment data, the parties herein urge the following:

1. All institutions be required to put on their website, as well as submit to the agencies, their full EEO-1 reports by race, ethnicity and gender.
2. Since the EEO-1 reports are a bare snapshot of employment practices, all reports on employment must be supplemented by separate breakdowns by race, ethnicity and gender for (a) board of directors; (b) officers; (c) top 1% of employees based on compensation;⁴ (d) top 20% by compensation of all executives, managers and professionals; (e) all managers and professionals; and (f) overall personnel. This should also be made available on a public website.
3. Comprehensive race, ethnicity and gender data for all business loans by race, ethnicity and gender. The SBA requirements, which allow the SBA to summarize data by dollar amount, volume and size of loan, would be a good start. We would urge that separate categories by race, ethnicity and gender be established for loans

⁴ No names or compensation is to be provided.

below \$50,000, \$100,000, \$250,000, \$1 million and \$2 million, \$5 million and \$10 million. This should also be made available on a public website.

4. All institutions be required to provide breakdowns by race, ethnicity and gender of all outside contracts awarded by race, ethnicity and gender. This should include categories based on the size of the business. For example, separate breakdown for contracts awarded to businesses with less than \$1 million in revenue, less than \$5 million in revenue and less than \$10 million in revenue. This should also be made available on a public website.

Since the unemployment rate for our nation's returning veterans is higher than the average unemployment rate and since business opportunities for returning veterans are far lower than for the population as a whole, we would urge that for all of the above transparency reports a separate category be set forth for returning veterans defined as any veteran who has served since the Iraqi War began. We would also support a breakdown separately for disabled veterans, a requirement that presently exists in California for utilities and telecommunications companies.

Section III: Platitudes on Equal Opportunity Are Not Enough

The interagency standard set forth on page 14 of their proposed interagency policy statement are, in general, meaningless standards.⁵ For example, what is the significance of an entity having a diversity and inclusion policy that is supported by senior leadership when no data is required and the supervising regulatory body and community have no access to data?

Further, how can one compare one institution with another, a key element in the federal banking regulatory body's ability to distinguish between "Need to Improve," "Satisfactory" and "Outstanding"?

Similarly, how can one judge whether an entity takes proactive steps to promote a diverse pool of employees when no data is required and no comparisons are allowed among institutions?

⁵ For example, the Department of Treasury's annual report to Congress, "Taking Stock and Making Change," fails to develop any efforts to secure individual data by race, ethnicity or gender, although it does contain some internal aggregate data by race and ethnicity. It is only strong and transparent as to its internal data, such as showing that 3% of its workforce consists of Hispanic males and only 6% consists of Black males, including, for example, only 1% of Hispanic males in Treasury departmental offices. It also provides a breakdown for GS15 and above showing only 2% Hispanic and 6% Black. It also provides data on new hires. The standards set for breaking down data relating to internal government work forces should be the standard for gathering data for institutions covered by the regulatory bodies. Similar transparency, although not to the same degree, exists as to the Security & Exchange Commission's annual report dated April 14, 2013. It shows, for example, that only 2% of its internal workforce are Latinos (male and female) and only 5% are Black males.

Section IV: Voluntary vs. Mandatory Compliance

Some may interpret Section 342 as only requiring that the regulatory bodies voluntarily request data on diversity in employment, small business lending and contracts. We do not concur, but it is unnecessary to have such a debate. Specifically, voluntary requests for such data will produce a broad range of voluntary compliance, particularly if the leadership of the agencies, such as Comptroller of the Currency Thomas Curry, Federal Reserve Chair Janet Yellen, Federal Deposit Insurance Corporation Chairman Martin Gruenberg, Consumer Financial Protection Bureau Director Richard Cordray, Secretary of Treasury Jack Lew and Security & Exchange Commission Chair Mary Jo White, personally use their bully pulpits to encourage voluntary compliance.

It should be noted that the nonprofit organizations herein presently have no power to require any data from any financial institution. Yet, the vast majority of financial institutions have provided such data to, for example, the Greenlining Institute and its members and, in many cases, other advocacy groups, such as National Community Reinvestment Coalition and the California Reinvestment Coalition.

Conclusion: Key Role of Minority Congressional Caucuses

As the Chair of the Congressional Black Caucus, Congresswoman Marcia Fudge, stated in her 113th Congressional Outlook, the Congressional Black Caucus has “felt a responsibility to be a voice for the Black community...Black members of Congress have relied on a combination of legislative tactics and grassroots, community-based initiatives to bring attention and positive change to issues of social and economic injustice...the CBC will continue to lead this charge.”

We are committed to working with the Congressional Black Caucus in leading this charge and achieving Dr. King’s dream of 50 years ago, the Civil Rights Act of 1964, the underlying purpose of the Community Reinvestment Act of 1977 and Congresswoman Maxine Waters’ Section 342.⁶

⁶ We, in particular, commend the Congressional Black Caucus and its original founders, such as Shirley Chisholm, William Clay, Sr., John Conyers, Ron Dellums, Gus Hawkins, Charles Rangel and others. We also thank all the California members of the Congressional Black Caucus, such as congresswomen Maxine Waters, Barbara Lee and Karen Bass. We also thank other California distinguished congresswomen who have led the charge, such as the Chair of the Asian Pacific Congressional Caucus, Judy Chu, and congresswomen Lucille Roybal-Allard, Linda Sánchez and Loretta Sanchez and Congressman Joe Baca.

Respectfully submitted,

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