



# Financial Services Employment Arbitration Q&A

## Federal Agencies Issue Final Diversity & Inclusion Standards Under Dodd-Frank

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Under new guidelines issued by six federal agencies, financial firms are being asked to voluntarily publicize sensitive diversity and inclusion information such as company policies, strategic planning, senior management participation in diversity initiatives, and workforce and procurement metrics.

On June 10, 2015, pursuant to Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), the six federal regulatory agencies under Dodd Frank<sup>1</sup> jointly issued a *final interagency policy statement* (“Policy Statement”) establishing shared standards for assessing the diversity policies and practices of their regulated entities.<sup>2</sup> Dodd-Frank’s Section 342, among other things, required that these six agencies establish Offices of Minority and Women Inclusion (“OMWI”) to report on agency diversity efforts and develop standards for assessing the diversity policies and practices of the firms they regulate. The Policy Statement affects companies regulated by one of the six agencies and encourages firms to voluntarily disclose a self-assessment of their diversity and inclusion policies and practices to their regulators and the public at large on an annual basis.

The Policy Statement sets forth standards for examining diversity and inclusion policies and practices among regulated entities. These standards include: organizational commitment; workforce profile and employment practices; procurement and supplier diversity; and overall transparency. Generally, the Policy Statement asks financial institutions to examine and disclose:

- (1) diversity and inclusion policies and strategic planning;
- (2) senior management commitment and involvement in diversity and inclusion efforts;
- (3) qualitative and quantitative metrics of workforce diversity initiatives such as annual EEO-1 Reports or Affirmative Action Plans filed with the Office of Federal Contract Compliance Programs (“OFCCP”); and
- (4) supplier and procurement diversity policies.

<sup>1</sup> These federal agencies are the Consumer Financial Protection Bureau, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency and the Securities and Exchange Commission.

<sup>2</sup> The Policy Statement is published at 80 Fed. Reg. 33, 016 (June 10, 2015)

In addition, the Policy Statement asks regulated entities to disclose to the public their diversity and inclusion policies and strategic planning as well as progress towards their diversity and inclusion goals.

The Policy Statement does not create new legal obligations, and compliance is voluntary. However, SEC Commissioner Luis A. Aguilar issued a dissent objecting to the voluntary nature of the self-assessments called for by the Policy Statement, indicating the desire among some regulators for stricter enforcement of diversity standards. Nevertheless, financial institutions, and particularly government contractors, must thoughtfully consider whether they should voluntarily comply. OMWI Directors have the power to recommend that an agency terminate a government contractor or refer it to the OFCCP if the OMWI Director decides that a contractor has not made a good-faith effort to include minorities and women in their workforce or procurement process.

Firms assessing whether to comply with the Policy Statement will have to assess whether the data called for is difficult to collect and analyze. For example, the Policy Statement suggests an assessment of procurement processes through metrics related to contract dollars allocated to minority and women-owned businesses. Collecting such data may require changes to internal procurement processes and policies to identify such contractors and collect and analyze the resulting data. In addition, compliance may bear reputational and litigation risk. While regulated entities may designate their self-assessments and the information they contain as confidential under the Freedom of Information Act ("FOIA"), FOIA may not entirely protect sensitive diversity information from being disseminated to the public, other federal agencies, and potential litigants. Nonetheless, the Policy Statement reflects increased interest by financial regulators in the diversity practices and policies of regulated entities.

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