JEB HENSARLING, TX, CHAIRMAN

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

MAXINE WATERS, CA, RANKING MEMBER

April 11, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

The Honorable Janet L. Yellen
Chair
Board of Governors, Federal Reserve Board
Constitution Avenue & 20th Street, N.W.
Washington, D.C. 20551

The Honorable Debbie Matz
Chair
National Credit Union Administration
1775 Duke Street
Washington, D.C. 22314-3428

The Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
Independence Square, 250 E Street, SW
Washington, D.C. 20219

The Honorable Mary Jo White
Chair
U.S. Securities & Exchange Commission
100 F Street, N.E., Room 10700
Washington, D.C. 20549

Dear Director Cordray, Chairman Gruenberg, Chair Yellen, Chair Matz, Comptroller Curry, and Chair White:

We write to express support for, and some concerns about, the comments submitted in response to the joint statement issued by the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), the National Credit Union Administration (NCUA), the Office of Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC) (hereafter referred to as "the Agencies") proposing standards for assessing the diversity and practices of the regulated entities as required under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act.

**Introduction**

Section 342 was the culmination of extensive legislative history established by the House Financial Services Committee (Committee) about the lack of workforce and supplier diversity among the Agencies and in the financial services industry and the need for a new, federal initiative to monitor and assess these activities. Given that many of the Democratic Members on the Committee, who have signed on to this letter are among the architects of Section 342, we are uniquely qualified to express the congressional intent which led to the establishment of this statutory provision. We believe it is necessary to achieve both the spirit and plain letter of Section 342, that the final standards include: (1) mandatory diversity assessments and disclosures from all regulated entities; (2) information on both workforce and supplier diversity practices and policies of the regulated entities; and (3) that the diversity data be made available to the public.

We are sensitive to the Agencies' concerns about the possibility of increasing the regulatory burden on institutions due to these new diversity requirements. However, we share the view expressed by the African-American Credit Union Coalition (AACUC) that "diversity should not be considered a burden; it is an effective business strategy that provides value added resources and also serves to mitigate workforce concentration risk." Like AACUC, we maintain that diversity matters are just as important as other operational and institutional goals and should be considered an integral component of all regulated entities' strategic plans.

**Mandatory Assessments and Reporting of Workforce and Supplier Diversity Data Required**

We reject claims that Section 342 does not (1) allow the Agencies to conduct diversity assessments themselves, or (2) compel a regulated entity to either conduct, or produce, a self-assessment to the Agencies. Further, we strongly disagree with comments that the provision is intended, as some maintain, to merely allow the Agencies to establish guidance.

We also disagree with the position that voluntary, self-assessments would establish more effective and appropriate methodology for evaluating diversity than would traditional examination or supervisory assessment. If Congress had been satisfied with the financial services industry's efforts on diversity matters, it would not have enacted Section 342 requiring the Agencies, not the regulated entities, to create standards to assess the private sector's activities. The Committee's extensive legislative history demonstrates Members' longstanding concerns about the lack of workforce and supplier diversity within the Agencies and the financial services industry. The Members' increasing awareness about the need for, and commitment to, improved transparency with respect to these matters is a high priority.

The Subcommittee on Oversight and Investigations (Oversight Subcommittee) of the Committee held a hearing on July 15, 2004 entitled, "Diversity in the Financial Services Industry and Access to Capital for Minority-Owned Businesses: Challenges and Opportunities," in which some Members and witnesses expressed concern about the industry's lack of workforce diversity. In particular, Members expressed concern that financial institutions had failed to make sufficient progress in recruiting minority and women candidates for management-level positions. As a result of these findings, some Members[1] requested that the Government Accountability Office (GAO) conduct a comprehensive review of workforce diversity in the private sector. The GAO was tasked, among other things, with identifying the available data about diversity at the management level in the industry from 1993 through 2003, along with the types of initiatives that the industry and related organizations had taken to promote workforce diversity, and the challenges they faced in doing so.

[1] These Members included Representative Michael Oxley, then Chairman of the Committee; Representative Barney Frank, then Ranking Minority Member; Representative Sue Kelly, then Chairwoman of the Oversight Subcommittee; Representative Louis Gutierrez, then Ranking Minority Member of the Oversight Subcommittee and Representative David Scott.

In June 2006, GAO published the report entitled, "FINANCIAL SERVICES INDUSTRY: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004" (GAO-06-617). In response, the Oversight Subcommittee held a hearing on July 12, 2006 entitled, "Diversity: The GAO Perspective," to review the findings in the report. In its analysis, GAO found that, from 1993 through 2004, overall diversity at the management level in the industry had not changed substantially despite increasing diversity in the racial and ethnic composition of U.S. population. GAO relied on the Equal Employment Opportunity Commission (EEOC) Employer Information Report (EEO-1) data for financial services industry for employees with 100 or more employees for the years 1993, 1998, 2000, and 2004 in crafting the report. However, GAO noted that EEO-1 data could be slightly misleading as an accurate representation of women and minorities in senior management and board positions within the industry because of the overly broad categories used to capture certain positions. GAO found that while industry and trade associations had initiated programs to increase workforce diversity, these efforts failed to significantly increase the representation of diversity within the industry. Some industry officials noted that gaining employees' "buy-in" to diversity programs was one challenge to achieving workforce diversity, particularly among middle managers who were often responsible for implementing key aspects of these programs.

Representative Gregory Meeks introduced House Concurrent Resolution 140, the "Financial Services Diversity Initiative," on May 5, 2007, which provided several of the findings from the GAO 2006 report on the low representation of minorities and women in the industry. The resolution expressed the sense of Congress that: active measures should be taken to increase the demographic diversity of the financial services industry and that diversity within this industry is vitally important, not only to promoting innovation and creativity in the industry, but to developing a more inclusive workforce for a fair and just economy. This resolution passed the full House by voice vote on September 24, 2007.

On February 7, 2008, GAO testified before the Oversight Subcommittee about the, "FINANCIAL SERVICES INDUSTRY: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993 – 2006," (GAO-08-445T). Once again, GAO found that the overall workforce diversity at the management level in the industry had not changed substantially. GAO concluded that, without a sustained commitment to overcoming challenges such as recruiting and retaining minority candidates, diversity at the management level in the industry could remain generally unchanged over time.

On May 12, 2010, GAO testified before the Oversight and Housing and Community Opportunity Subcommittees about the "FINANCIAL SERVICES INDUSTRY: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993 – 2008" (GAO-10-736T). GAO found that diversity in senior management positions remained limited. The revised EEOC data, reported in 2008 for senior-level positions only, showed that minorities held 10 percent of such positions compared with 17.4 percent of all management positions. While white males held 64

percent of senior positions in 2008, African-Americans held just 2.8 percent, Hispanics held 3 percent, and Asians held 3.5 percent.

The financial services industry has been unsuccessful in its attempts to substantially improve workforce diversity at the senior management level, in particular, for more than a ten year period. Extensive data compiled by the Committee, through both hearings and on-going reviews requested from the GAO to track the industry's overall trend in workforce diversity dating back to 2004, resulted in a recognition among Committee Members that more federal oversight of, and involvement with, these efforts was appropriate. The subsequent enactment of Section 342 was designed to empower the OMWI Directors at the Agencies to develop standards to assess the diversity practices and policies of regulated entities.

Furthermore, we reject any view that Section 342 only provides the Agencies' authority to obtain the employment data of regulated entities. Both legislative history and a plain reading of the statute demonstrate that Congress sought information on both workforce and supplier diversity within the financial services industry.

House Concurrent Resolution 140, which was discussed above, extensively addresses employment and supplier diversity matters. Under Section 2(a)(6) of House Concurrent Resolution 140, for example, Congress encourages financial institutions, as well as public and private pension funds, to seek qualified minority- and women-owned firms as investment managers, underwriters, and in *other business relationships*.

If Congress had solely wanted information on regulated entities' employment diversity, the statute's text would only have tasked the Agencies' OMWI Directors to develop standards to collect workforce diversity. However, under Section 342, the OMWI Directors are instructed to develop standards to assess "*diversity policies and practices*" of regulated entities. Diversity policies and practices are broad terms that obviously incorporate both workforce and supplier diversity data.

**Disclosure of Assessment Findings is required under the Rule of Construction and Legislative History**

When the legislative history of Section 342 is considered in conjunction with the plain reading of Sections 342(b)(2)(C) and 342(b)(4), it becomes evident that disclosure of the diversity assessment findings is required.

The legislative history establishing the need for Section 342 – discussed above – clearly demonstrates a congressional desire for improved diversity within the financial services industry.[2] The text of the statute, however, requires only that the Agencies' OMWI Directors

[2] *See*, H. Con. Res. 140 [110th Congress], expressing the sense of Congress that "active measures should be taken by employers and educational institutions to increase the demographic diversity of the financial services industry".

develop standards for assessing the diversity policies and practices of regulated entities. Further, the rule of construction under Section 342(b)(4), specifically prohibits the OMWI Directors from using the findings of the assessments under Section 342(b)(2)(C) to mandate any requirement on or otherwise affect the lending policies and practices of, or require any specific action by the regulated entities. Given the intent of Section 342, there would be no benefit to including the language mandating standards for assessments under Section 342(b)(2)(C), if such assessments were not expected to drive the regulated entities toward the congressional goal of improving workforce and supplier diversity within the industry. In consideration that the Agencies are specifically prohibited from taking action as a result of the assessments, the public disclosure of the assessment findings is, in effect, the only way to achieve the congressional objective of Section 342.

In short, the disclosure of the assessment findings are designed to motivate the regulated entities to take pro-active, good-faith measures to recruit, hire, and promote more women and minorities and to conduct business with diverse suppliers by increasing transparency on regulated entities' efforts with these matters. Through enhanced public disclosure about the diversity practices and policies of regulated entities, the public is provided essential insights of which entities effectively seek to employ diverse and inclusive workforces and conduct business with minority- and women-owned firms and by extension which entities fail in this respect. Consequently, we believe that, when read in conjunction with the legislative intent behind Section 342, the plain language of the statute mandates that the findings of the diversity assessments be made publicly available.

Notwithstanding the legislative history establishing congressional intent for the mandatory disclosure of diversity assessments under Section 342, even a plain reading of the statute's text, clearly demonstrates that the Agencies must require regulated entities to collect and submit information, in a manner prescribed by the Agencies, in order for the Agencies to be able to achieve *their statutory obligation* to develop standards to assess diversity policies and practices.

Section 342(b)(2)(C) provides that the OMWI Directors of the Agencies "*shall* develop *standards* for *assessing* the diversity practices and policies of entities regulated by the agency." The term "standard" is defined in the Merriam-Webster Dictionary (Dictionary) as "a level of quality, achievement . . . that is considered acceptable or desirable." This contrasts with the term "guidance", which is defined in the Dictionary as "the act or process of guiding someone or something."

It is important to note the statutory difference between requiring Agencies to obtain information and prescribing specific enforcement actions that Agencies must take based on the results of these disclosures. The rule of construction under Section 342(b)(4) provides that no specific action must be taken based on the *"findings of the assessment"* alone. In this case, the definition of the noun "findings" from the Dictionary means the "results of an investigation" and

an "investigation" is defined as "to try to get information about something." The definition of the noun "assessment" means "the act of making judgment about something: an idea or opinion about something." Taken together, the phrase "findings of the assessment" under Section 342(b)(4), read in conjunction with the mandatory requirement to develop standards imposed under Section 342(b)(2)(C), suggests that the Agencies will obtain information about the diversity policies and practices of regulated entities. As such, a plain reading of the statute's text demonstrates that the Agencies are required to develop standards about what type of information is considered acceptable for entities to collect and report and to establish how and when the data must be submitted, in order for the Agencies to comply with their statutory obligation under Section 342(b)(2)(C).

Some comments argued that the Agencies do not have authority to develop mandatory disclosures by pointing to the differences in the statutory language in the requirements for Agencies to promote their own workforce and supplier diversity efforts under Section 342 and the less expansive provision, viewed in conjunction with the rule of construction, for the Agencies to develop standards for assessing the diversity practices and policies of regulated entities.

Section 342(b)(2) mandates three specific duties for the Agencies' OMWI Directors. The fact that only one of the three specific duties addresses the Agencies' authority to assess the diversity practices and policies of regulated entities, does not diminish its importance. The differences in the statute's text under Section 342 for the Agencies' internal and external duties should not be viewed as restricting the scope of the Agencies' authority to compel regulated entities to submit information, in a manner that the Agencies deem desirable. The narrower, prescriptive text about the Agencies' internal activities, if anything, should be viewed as a congressional signal giving the Agencies even *broader regulatory authority* to implement mandatory disclosures.

**Meaningful, Consistent, Specific, and Public Data Critically Important**

The Agencies propose that the information should be compiled on a periodic basis. We believe that the diversity disclosures should, at a minimum, be provided on an annual basis.

We agree with comments that it is critically important that the Agencies require regulated entities to collect and report diversity data in a way that is consistent, specific, uniform and public to ensure meaningful information is obtained to be able to assess the diversity practices and policies of entities, as required under Section 342.

While some comments argued vigorously that the diversity data should not be publicly available, one of the main tenets behind Section 342 is the congressional desire for more transparency about diversity policies and practices within the financial services industry. Although some cited potential privacy concerns with releasing diversity data, we are not persuaded by these arguments. A good analogy to the value of making personal characteristic

data publicly available can be seen through the success of the disclosures required under the Home Mortgage Disclosure Act (HMDA).

Under HMDA, certain financial institutions are required to collect and report loan and personal characteristic data on mortgage loans. The increased transparency of mortgage lending patterns and trends has facilitated enhanced scrutiny and enabled Congress, the Agencies, and the public to conduct independent analysis of racial, ethnic, and gender barriers to obtaining mortgage loans. Section 342 should enable interested stakeholders to perform the same independent analysis with respect to employment and supplier diversity data within the financial services sector, as can be done through HMDA data.

**No Exemptions for Reporting**

While we are sympathetic to the concerns of smaller institutions, we believe that the purpose of Section 342 can only be achieved by requiring all regulated entities to comply with the assessment requirements. However, we recognize that there may be geographic differences among the regulated entities and, therefore, we support the inclusion of a narrative, along with diversity assessments, describing successes and challenges to identifying diverse employees and clients.

**Conclusion**

In 1960, when he accepted the Democratic Party Nomination for President, then-Senator John F. Kennedy said, "We are not here to curse the darkness, but to light a candle that can guide us through the darkness." Interagency assessment standards that require mandatory workforce and supplier diversity statistics that are meaningful, specific, and publically-available provide the light that Congress is seeking. In doing so, we expect to bring transparency to a hiring and contracting process which has heretofore remained opaque and – to the extent that it has unjustly excluded women and minorities from opportunities to which they were entitled – fundamentally flawed.

We remain committed to the full implementation of Section 342, and applaud the efforts of the Agencies to develop standards for assessing the diversity policies and practices as required by the statute. We also recognize that in addition to the efforts of the Agencies, a complete implementation of Section 342 requires an active commitment to workplace and supplier diversity by the regulated entities. We, therefore, encourage firms to go beyond the minimum standards that are required in any final standards that are issued. We challenge the financial services industry to work closely with federal agencies, state and local governments, diversity experts and academia to develop a deep pool of diverse employees and contractors that can enhance the richness of our financial dialogue, and exploit the wealth of opportunities that are often overlooked right here at home. This is a genuine opportunity to make substantive change, and we are anxious to continue advocating for diversity and inclusion in all facets of our financial industry.

Sincerely,

The Honorable Maxine Waters

The Honorable Joyce Beatty

The Honorable Gregory W. Meeks

The Honorable Al Green

The Honorable Keith Ellison

The Honorable Terri A. Sewell

The Honorable Gwen Moore

The Honorable William Lacy Clay