

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 15, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: March 18, 2021, Subcommittee on Diversity and Inclusion Hearing entitled, “By the Numbers: How Diversity Data Can Measure Commitment to Diversity, Equity and Inclusion”

The Subcommittee on Diversity and Inclusion will hold a hearing entitled, “By the Numbers: How Diversity Data Can Measure Commitment to Diversity, Equity and Inclusion” on Thursday, March 18, 2021 at 10:00 AM via Cisco WebEx. There will be one panel with the following witnesses:

- **Thomas DiNapoli**, New York State Comptroller
- **Daniel Garcia-Diaz**, Managing Director, Financial Markets and Community Investment Team, U.S. Government Accountability Office (GAO)
- **Carolynn Johnson**, CEO, DiversityINC
- **Anne Simpson**, Managing Investment Director, Sustainable Investments, CalPERS
- **Rick Wade**, Senior Vice President of Strategic Alliances and Outreach, U.S. Chamber of Commerce

Overview

Disclosure of data on diversity and inclusion (D&I) provides accountability for D&I results, including workforce diversity, board diversity and spending on contracts for professional services. Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) requires financial regulators to create diversity standards for their regulated entities, including the collection of diversity data.¹ However, because the federal agencies implementing this section provided regulated entities with discretion regarding whether to submit diversity data, regulated entities have generally declined to participate in the annual diversity assessment requests. Similarly, many public companies generally have not shared metrics of diversity performance, which may leave shareholders uninformed about the risks associated with investing in a company. This hearing will discuss the impacts of a lack of data on D&I oversight and consider legislation to require mandatory disclosure of such data.

Reporting of Diversity Data to Financial Regulators and the Public is Voluntary

Section 342 of Dodd-Frank establishes Offices of Minority and Women Inclusion (OMWIs) at federal financial regulatory agencies.² Pursuant to Section 342(b)(2)(C), in June 2015, six financial

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act 12 U.S.C. § 5452 (2010).

² Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) established OMWIs in most of the federal financial regulatory agencies, specifically within Treasury, FDIC, the Federal Reserve, each of the 12 Federal Reserve banks

regulatory agencies published the Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, which focus on a regulated entity's D&I performance and data, including workforce and procurement spending, among other metrics.³ However, because of an amendment made before the passage of Dodd-Frank, financial regulators interpreted that the collection of diversity assessments from OMWI regulated entities, and any actions based off of those assessments, should be voluntary. As a result, regulated entities have generally declined to participate in the OMWIs' annual diversity assessment requests.⁴ As of October 2020, two agencies were only recently starting to request assessments or had reduced the frequency of their assessments.⁵

Because of the limited response by financial services firms to OMWI requests for diversity assessments, Chairwoman Waters and Subcommittee on Diversity and Inclusion Chair Joyce Beatty sent letters to America's largest bank holding companies—those with \$50 billion in assets or greater—requesting their diversity data and polices.⁶ In February 2020, they subsequently released a report and convened a hearing which further emphasized the importance of diversity data in “measuring the success of D&I outcomes. . . . and [that] without data, they will be unable to evaluate and effectively implement their D&I goals.”⁷ The report also found that only 23 of the nation's 44 largest banks publicly disclose their diversity data. A June 2017 Fortune magazine article similarly concluded that only three percent of Fortune 500 companies publicly share their full diversity.⁸

Although industry organizations have created opportunities for their member firms to share diversity data and benchmark their D&I results against others across the financial services industry, many of the specific results are not publicly released. For example, over the past 12 years, the Securities Industry and Financial Markets Association (SIFMA) has conducted a biannual survey where data is collected about their member firms' diversity data and their diversity, equity and inclusion initiatives.⁹ SIFMA uses a third-party to collect member data and participating firms sign a non-disclosure agreement that SIFMA will keep the data confidential. As noted in the 2020 bank diversity data report, SIFMA was still working on a plan to publicly disclose their survey results.¹⁰ DiversityINC similarly conducts an annual evaluation of corporate diversity management, which is voluntary, free, and open to companies with more than 1,000 employees.¹¹ Companies that participate in the assessment are ranked

(e.g. FRBNY), NCUA, OCC, SEC, CFPB and FHFA. Additionally, Section 1116 of the Housing and Economic Recovery Act of 2008 directed that FHFA's regulated entities establish an office for diversity and inclusion or its functional equivalent.

³ Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Federal Reserve); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (CFPB); and Securities and Exchange Commission (SEC). “Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies,” Federal Register (June 10, 2015)

<https://www.federalregister.gov/documents/2015/06/10/2015-14126/final-interagency-policy-statement-establishing-joint-standards-for-assessing-the-diversity-policies>.

⁴ U.S. Congress. House Committee on Financial Services. Hearing on Holding Financial Regulators Accountable for Diversity and Inclusion: Perspectives from the Offices of Minority and Women Inclusion, Committee Memorandum. 116th Cong., 2nd sess., September 8, 2020. <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406865>.

⁵ Ibid.

⁶ House Committee on Financial Services, “Waters and Beatty Continue Push for Diversity Data from Big Banks,” press release, June 6, 2019, <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=403860>.

⁷ Majority Staff of the House Financial Services Committee, “Diversity and Inclusion: Holding America's Large Banks Accountable.” February 2020, <https://financialservices.house.gov/issues/diversity-and-inclusion-holding-america-s-large-banks-accountable.htm#endnote1>.

⁸ Grace Donnelly, “Only 3% Of Fortune 500 Companies Share Full Diversity Data,” Fortune, June 7, 2017, <https://fortune.com/2017/06/07/fortune-500-diversity/>.

⁹ Majority Staff of the House Financial Services Committee, “Diversity and Inclusion: Holding America's Large Banks Accountable.” February 2020, <https://financialservices.house.gov/issues/diversity-and-inclusion-holding-america-s-large-banks-accountable.htm#endnote1>.

¹⁰ Ibid.

¹¹ Ibid.

overall on six D&I metrics, including: human capital, leadership accountability, talent programs, workplace practices, supplier diversity and philanthropy.¹² If a company does not rank among the top 50, its name is not publicly identified as an assessment participant.¹³

Federal financial agencies face similar challenges as private sector organizations in collecting and reporting diversity data, which could be used to inform and improve diversity strategies and results. In its 2015 report on Federal Home Loan Bank board diversity, GAO noted that since the banks started reporting on the diversity of their boards of directors, the overall share of diverse board directors increased.¹⁴ However, because directors voluntarily report their demographics, GAO found that 8 percent of board directors did not report their race or ethnicity in 2017.¹⁵ GAO also reported that the Federal Housing Finance Agency (FHFA)—the agency that oversees the Federal Home Loan Banks (FHLBs)—formed a Bank Presidents Conference Board Diversity Task Force to review board data and practices, and to develop recommendations to enhance board diversity. For example, the task force found that only some of the FHLBs reach out to trade organizations, industry groups, universities, and nonprofit organizations to identify diverse board candidates.¹⁶

Materiality of Diversity Data to Investors and the Public

Diversity and inclusion has been linked to more material financial benefits for businesses and to increased shareholder value. In its 2018 report “Delivering through Diversity,” McKinsey concluded that companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability.¹⁷ A 2020 review of gender equity concluded that “the appointment of a female CEO [led] to a 5.0% increase in the market value of Australian ASX-listed companies, worth the equivalent of AUD \$79.6 million (or USD \$53.3 million) on average.”¹⁸ In a May 2019 Subcommittee on Diversity & Inclusion hearing on the business case for diversity, a witness testified that in reviewing one of their client’s diversity data, a 5 percent increase of non-white team members led to an approximate 5 percent one-year growth in revenue.¹⁹

To the extent that companies do not take advantage of the potential profitability associated with having a diverse and inclusive workforce and culture, they may be subjecting themselves to financial, reputational, and in some cases, litigation risk. A September 2020 Business Reporter article noted that, “Boards with only a token attempt at diversity and inclusion, who practice ‘one and done’, are unlikely to convince stakeholders that they are really making an effort. They may well damage the company’s reputation, especially in the eyes of investors looking for exemplary corporate governance practice.”²⁰

¹² Ibid.

¹³ Ibid.

¹⁴ Government Accountability Office, “Federal Home Loan Banks: Steps Have Been Taken to Promote Board Diversity, but Challenges Remain”, GAO-19-252 (February 2019) <https://www.gao.gov/products/gao-19-252>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Vivian Hunt, et. al. “Delivering through Diversity,” McKinsey & Company (January 2018), <https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity>.

¹⁸ Rebecca Cassells and Alan Duncan, "Gender Equity Insights 2020: Delivering the Business Outcomes," BCEC|WGEA Gender Equity Series, Issue 5, March 2020, <https://bcec.edu.au/assets/2020/06/BCEC-WGEA-Gender-Equity-Insights-2020-Delivering-the-Business-Outcomes.pdf>.

¹⁹ U.S. Congress. House Committee on Financial Services. Hearing on Good for the Bottom Line: A Review of the Business Case for Diversity and Inclusion, Testimony of Rick Guzzo. 116th Cong., 1st sess., 2019, <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403648>.

²⁰ David Doughty, "Diversity and inclusion: what's the risk?" Business Reporter, September 18, 2020, <https://business-reporter.co.uk/fraud-prevention-and-risk-management/#slide5>.

A company that lacks diversity or does not make diversity, equity, and inclusion a priority may damage its reputation with potential employees, especially younger, more diverse candidates. In February 2021, the Washington Post reported that many younger job seekers—those born in the Millennial and Gen Z generations—see D&I as a workplace requirement and may choose not to work for companies that lack workforce diversity or that are not making commitments to address the issue of systemic racism.²¹ Glassdoor’s 2020 D&I workplace survey noted that underrepresented racial and ethnic job seekers and employees—about 4 in 5 Black (80%), Hispanic (80%), and LGBTQ (79%)—reported that “a diverse workforce is an important factor when evaluating companies and job offers.”²² According to McKinsey, both male and female employees are happier and plan to stay at their company for longer when they believe the company is “highly committed to gender diversity.”²³ Given the risk of future talent gaps, business risk professionals have advised that “diversity for investors is no longer simply just “nice to have, but a must have to manage the risks associated with their forecasted talent gap.”²⁴

Companies that are not inclusive may face greater litigation risk stemming from suits under state and federal anti-discrimination laws. For instance, in 2018, one risk management publication noted that, “If an employee feels his or her contributions are not as highly valued as those of the dominant demographic in the organization and is passed over for a promotion, the company could be sued for “disparate treatment,” a form of employment discrimination.”²⁵ Regulation S-K requires the disclosure of certain legal proceedings, including some discrimination suits, so that investors have material information regarding the legal risks associated with a company’s discriminatory practices.²⁶

Investors are often factoring D&I into their investment decisions and are expecting this information to be disclosed to them and to the public. One investment company noted that portfolio managers and analysts in their firm are using diversity statistics as a measure of their ability to contribute positive returns to their portfolio.²⁷ A June 2019 Industry Week article also noted that “the disclosure of workplace equity data is increasing in its importance to investors and they are letting companies know that this information is material to investment decisions.”²⁸ Particularly in the aftermath of George Floyd's death and widespread protests sparking consciousness on systemic racism, investors are assessing the extent to which companies are making real commitments to racial equity.²⁹ During a 2020 conference for the Council of Institutional Investors, Securities and Exchange Commission’s (SEC) Acting Chair Lee remarked that “companies understand... that [diversity and

²¹ Jennifer Miller, "For younger job seekers, diversity and inclusion in the workplace aren't a preference. They're a requirement," Washington Post, Feb. 18, 2021, <https://www.washingtonpost.com/business/2021/02/18/millennial-genz-workplace-diversity-equity-inclusion/>.

²² Glassdoor Team, "Glassdoor's Diversity and Inclusion Workplace Survey," Glassdoor, September 30, 2020, <https://www.glassdoor.com/blog/glassdoors-diversity-and-inclusion-workplace-survey/>.

²³ Sarah Coury et. al, "Women in the Workplace 2020," McKinsey & Company, September 30, 2020, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/women-in-the-workplace>.

²⁴ Sonya Sepahban, "Lack of Diversity is Risky Business according to Business Risk Professionals," OurOffice, September 10, 2019, <https://www.ouroffice.io/2019/09/10/lack-of-diversity-is-risky-business-according-to-business-risk-professionals/>.

²⁵ Russ Banham, "The Benefits of Diversity & Inclusion Initiatives," Risk Management Magazine, June 1, 2018, <http://www.rmmagazine.com/2018/06/01/the-benefits-of-diversity-inclusion-initiatives/>.

²⁶ Securities and Exchange Commission. "SEC Adopts Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K," press release, Aug. 26, 2020, <https://www.sec.gov/news/press-release/2020-192>.

²⁷ Maggie Sullivan, "Why Diversity Should Matter to Investors," Ellevest, accessed Mar. 7, 2021, <https://www.ellevestnetwork.com/articles/9994-why-diversity-should-matter-to-investors>.

²⁸ Industry Week Staff, "Investors Representing \$1.61 Trillion in Assets Tell Companies to Disclose Workplace Equity Data," Industry Week, June 19, 2019.

²⁹ Alan Fleischmann, "Turning 'ESG' into 'ESGD': How investors can support diversity with their dollars," Fortune, June 11, 2020, <https://fortune.com/2020/06/11/diversity-inclusion-investing-esg-esgd/>.

inclusion] may matter to [a company's] bottom line whether we as consumers perceive them to have a sincere commitment to racial justice."³⁰ Institutional investors like the New York State Common Retirement Fund are also advocating for shareholder proposals for racial equity audits to assess a company's consistency with its pledge in solidarity against racism.³¹ Those assessments are then used to weigh the risks of a company's products and services while ensuring that the overall company practices are not perceived to be discriminatory, racist, or increasing inequalities.³² Pension fund boards like CalPERS' have met to discuss systemic racism and have admitted that their fund faces "a moral imperative to confront racism and economic inequality."³³

Legislation

H.R. 1277, Improving Corporate Governance Through Diversity Act of 2019 (Meeks). This bill would require public companies to annually disclose the voluntarily, self-identified gender, race, ethnicity and veteran status of their board directors, nominees, and senior executive officers. Among other requirements, the SEC OMWI would publish best practices for compliance with diversity disclosures.

H.R. ____, Diverse Investment Advisers Act (Beatty). This bill would require companies that register and are registered with SEC to consider at least one diverse asset manager when contracting out for asset management services and report to the SEC on the extent to which they use diverse asset managers.

H.R. ____, Diversity Data Accountability Act. This bill makes reporting requirements under Section 342 of the Dodd-Frank Act mandatory. Under the bill, regulated entities, including banks, would be required to disclose their diversity policies and practices to their respective regulators.

H.R. ____, Diversity in Financial Regulatory Advisory Committees Act. This bill would require reporting of advisory committee demographics and the consideration of at least one individual reflective of gender diversity and one individual reflective of racial or ethnic diversity when filling advisory committee vacancies at the Department of Treasury (including the Financial Stability Oversight Council), Federal Reserve Board of Governors, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Federal Housing Finance Agency, National Credit Union Administration, SEC, and the Federal Deposit Insurance Corporation.

H.R. ____, Promoting Diversity and Inclusion in Banking Act (Green). This bill would require Federal banking regulators to include a diversity and inclusion component in the Uniform Financial Institutions Rating System and require mandatory reporting of diversity and inclusion assessments.

³⁰ Commissioner Allison Herren Lee, "Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference" Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference (speech, Washington, DC, Sept. 22, 2020), <https://www.sec.gov/news/speech/lee-cii-2020-conference-20200922>.

³¹ New York State Common Retirement Fund. "NYS Comptroller DiNapoli: Amazon Must Ensure Its Business Is Not Adding to Racial Inequality," press release, December 18, 2020, <https://www.osc.state.ny.us/press/releases/2020/12/nys-comptroller-dinapoli-amazon-must-ensure-its-business-not-adding-racial-inequality>.

³² Ibid.

³³ Arleen Jacobius, "CalPERS board discusses racism, approves new investment policy," Pensions & Investments, June 19, 2020, <https://www.pionline.com/pension-funds/calpers-board-discusses-racism-approves-new-investment-policy>.