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United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
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RANKING MEMBER

September 2, 2020

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: September 8, 2020, "Holding Financial Regulators Accountable for Diversity and Inclusion: Perspectives from the Offices of Minority and Women Inclusion."

The Subcommittee on Diversity and Inclusion will hold a hearing entitled, "Holding Financial Regulators Accountable for Diversity and Inclusion: Perspectives from the Offices of Minority and Women Inclusion," on Tuesday, September 8, 2020 at 12:00 p.m. EST on the virtual meeting platform Cisco WebEx. The witnesses for this two-panel hearing are:

Panel 1:
- **Joyce Cofield**, Executive Director, Office of Minority and Women Inclusion (OMWI), Office of the Comptroller of Currency (OCC)
- **Sheila Clark**, Director, OMWI, Board of Governors of the Federal Reserve System (Fed)
- **Lacey Dingman**, Director, OMWI, Federal Reserve Bank of New York (FRBNY)
- **Nikita Pearson**, Acting Director, OMWI, Federal Deposit Insurance Corporation (FDIC)
- **Monica Davy**, Director, OMWI, National Credit Union Administration (NCUA)

Panel 2:
- **Lorraine Cole**, Director, OMWI, U.S. Department of the Treasury (Treasury)
- **Pamela Gibbs**, Director, OMWI, U.S. Securities and Exchange Commission (SEC)
- **Sharron Levine**, Director, OMWI, Federal Housing Finance Agency (FHFA)
- **Lora McCray**, Director, OMWI, Consumer Financial Protection Bureau (CFPB)

Purpose

This hearing will examine the role of the OMWIs in tracking diversity and inclusion performance inside their respective agencies and among their regulated entities, and discuss legislation to improve the diversity and inclusion performance of the financial regulators and their regulated entities.

Background

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 (e.g. FRBNY), NCUA, OCC, SEC, CFPB and FHFA.[1] Section 1116 of the Housing and Economic Recovery Act of 2008 directed that

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

FHFA's regulated entities establish an office for diversity and inclusion or its functional equivalent.[2] OMWIs are responsible for all matters relating to diversity in management, employment, and business activities inside their respective organizations, as well as oversight of those efforts among their regulated entities. OMWIs are also required to report annually to Congress on the diversity and inclusion (D&I) efforts of their respective agencies and regulated entities. According to a 2020 review of annual OMWI reports by the Greenlining Institute, "These annual reports are the only public resource that benchmark how financial agencies proactively integrate diversity and inclusion into their workforce and supply chains."[3]

Financial Regulatory Agencies Lack Diversity at the Highest Levels, Including their Boards and Advisory Committees

Similar to diversity statistics across the financial services industry, federal financial regulatory agencies lack diversity at the highest levels, including their boards and advisory committees.[4] For example, the Government Accountability Office (GAO) reported that "racial [and] ethnic minorities have limited representation in board leadership positions" among Federal Home Loan Banks.[5] Although the Federal Reserve System was established in 1913,[6] it would be more than a century later before the first African American and openly gay man would be appointed as a Federal Reserve bank president and chief executive officer.[7] In September 2019, the House of Representatives passed legislation sponsored by Chair Beatty of the Subcommittee on Diversity and Inclusion requiring that future candidate slates for Federal Reserve Bank presidents include persons reflective of gender, racial, and ethnic diversity.[8]

Since the New Deal, Black people have been excluded from nominations and appointments at financial regulatory agencies, according to a July 2020 report on the historical lack of Black appointees at those agencies.[9] The report concludes that among the 327 individuals that have been appointed to financial regulatory agencies, only 10 have been Black.[10] Moreover, the report states that:

> [Financial regulators] are responsible for framing policies that determine how trillions of dollars in U.S. assets are regulated, how capital is allocated in society, and at what cost. The absence of African Americans deprives the community from having members present in decisions that not only impact them directly, but are often made in their name.[11]

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[2] Housing and Economic Recovery Act 12 U.S. Code § 1833e (2008). FHFA's regulated entities include the Federal Home Loan Banks, the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac).
[3] The Greenlining Institute, "Offices of Minority and Women Inclusion: 2019 Snapshot of Financial Regulators Diversity and Inclusion." August 2020
[4] Please note previous Financial Services Committee hearings U.S. Congress. House Committee on Financial Services. Hearing on An Overview of Diversity Trends in the Financial Services Industry 116th Cong., 1st sess., 2019. https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402346 and U.S. Congress. House Committee on Financial Services. Hearing on Diversity in the Boardroom: Examining Proposals to Increase the Diversity of America's Boards, Committee Memorandum 116th Cong., 1st sess., 2019.https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403834.
[5] Government Accountability Office, "FEDERAL RESERVE BANK GOVERNANCE: Opportunities Exist to Broaden Director Recruitment Efforts and Increase Transparency", GAO-12-18 (October 2011). https://www.gao.gov/new.items/d1218.pdf.
[6] Federal Reserve Act of 1913, Pub. L. No. 63-43, 38 Stat. 251 (1913).
[7] U.S Congresswoman Maxine Waters. "Chairwoman Waters Introduced by Dr. Raphael Bostic, President & CEO of the Federal Reserve Bank of Atlanta During Capitol Hill Reception News release. Jan. 4, 2019. https://waters.house.gov/media-center/press-releases/chairwoman-waters-introduced-dr-raphael-bostic-president-ceo-federal.
[8] House U.S Congresswoman Joyce Beatty. "Beatty Rule Passes House of Representatives." News release. Sept. 10, 2019. https://beatty.house.gov/media-center/press-releases/beatty-rule-passes-house-of-representatives.
[9] Brummer, Chris. "What do the Data Reveal about (the Absence of Black) Financial Regulators?" Working Paper, 2020. https://iielaw.org/wp-content/uploads/2020/08/Brummer-Data-Absense-of-Black-Financial-Regulators.pdf
[10] Ibid.
[11] Ibid.

In a January 2020 letter, Chairwoman Waters and Chair Beatty called out the lack of diversity on SEC's advisory committees and noted that the formation of SEC's Asset Management Advisory Committee was a missed opportunity to "approve a diverse slate of members."[12] Their letter notes that SEC's newest advisory committee included no Black members and that the one Latino member serves on two SEC advisory committees. Only three of SEC's 79 advisory committee members are Black; zero are Latina and only one is a Black woman, according to House Financial Services Committee staff assessments.[13]

OMWIs' 2020 annual reports reveal that financial regulators overall workforce diversity is representative of racial and ethnic minorities by an average of 37 percent.[14] According to the Greenling Institute, OMWI reports generally included data on diversity training, as well as hiring, separations and promotions by race and ethnicity.[15] Further, five of the eight financial regulators reported increased spending with diverse suppliers since the previous year.[16]

<u>OMWI Oversight of Regulated Entities' D&I Is Limited by Voluntary Diversity Data Disclosure</u>

In June 2015, six financial regulatory agencies issued the Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (Joint Standards) to fulfill their statutory obligations under Section 342(b)(2)(C).[17] The agencies determined that compliance with the Joint Standards by their regulated entities, including participation in annual diversity assessments, would be voluntary. Since the introduction of these voluntary standards, regulated entities have generally declined to participate in the OMWIs' annual diversity assessment requests. Four financial regulatory agencies—the Federal Reserve Board of Governors, FDIC, NCUA and OCC— reported their regulated entities' response totals to their respective diversity self-assessments. CFPB reported that it launched its first online diversity self-assessment in January 2020, and according to its previous OMWI reports, did not previously have tools in place to collect this data.[18] FHFA reported that it does not offer a diversity self-assessments because it reviews diversity and inclusion programs in the examinations of its regulated entities.[19] SEC reported that it will send diversity self-assessment requests to its regulated entities every other year, and

[12] U.S. House Financial Services Committee, "Waters and Beatty Blast Lack of Diversity on SEC Advisory Committees." News release, January 14, 2020. https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406067
[13] Ibid.
[14] House Financial Services committee analysis of Greenlining Institute report, see The Greenlining Institute, "Offices of Minority and Women Inclusion: 2019 Snapshot of Financial Regulators Diversity and Inclusion." August 2020.
[15] Ibid.
[16] Ibid.
[17] 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.
[18] Consumer Financial Protection Bureau. "FY 2019 Office of Minority and Women Inclusion annual report to Congress." Office of Minority and Women Inclusion, April 1, 2020. https://www.consumerfinance.gov/data-research/research-reports/fy-2019-office-minority-and-women-inclusion-annual-report-congress/.
[19] Federal Housing Finance Agency. "2019 OMWI ANNUAL REPORT TO CONGRESS." Office of Minority and Women Inclusion, April 1, 2020. https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/OMWI-2019-Annual-Report.pdf.

therefore had not requested data for 2019.[20] Treasury does not have regulated entities that it supervises or examines,[21] but provides a report on its agency diversity policies and procedures.[22]

According to a 2015 Financial Services Committee staff report on Dodd Frank, voluntary compliance with the Joint Standards limits OMWIs ability to exercise the full authority granted to them under Section 342.[23] Chairwoman Waters, Chair Beatty and others have urged financial regulators to include: 1) mandatory diversity assessments and disclosures; 2) information on both workforce and supplier diversity data and practices; and 3) requirements for public disclosure of diversity data in the final standards.[24] In its 2020 report on bank diversity data, House Financial Services Committee staff noted that, "Diversity data is important to measuring the success of diversity and inclusion outcomes. Despite organizations' best intentions, without data, they will be unable to evaluate and effectively implement their diversity and inclusion goals."[25] Also in the report, Chair Beatty emphasized that "banks and other financial services companies must be more transparent with diversity data so that regulators, Congress and the American people can hold them accountable for real and intentional diversity and inclusion outcomes."[26]

Diversity and workforce experts also note the importance of diversity data in creating accountability for D&I results. A February 2020 article noted that when organizations are not transparent about their diversity and inclusion data and results, the public does not have a way to validate their commitments "to building diverse workforces and inclusive cultures."[27] The disruption of the COVID-19 pandemic may have also pushed D&I further down on the list of priorities for some companies, according to comments in a June 2020 article in *Human Resources Executive*.[28] Instead, the article notes that companies should use this time to focus even more attention on D&I and make sure diversity data is available and embedded in their decision-making.[29]

Legislative Proposals

This hearing will consider the following legislation:

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[20] U.S. Securities and Exchange Commission. "Office of Minority and Women Inclusion Annual Report to Congress." Office of Minority and Women Inclusion, April 1, 2020. https://www.sec.gov/files/OMWI_Annual_Report_FY2019_508.pdf

[21] Congressional Research Service. "Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework" March 10, 2020. https://fas.org/sgp/crs/misc/R44918.pdf.

[22] U.S. Department of the Treasury. "FY19 Annual Report to Congress." Office of Minority and Women Inclusion, April 1, 2020. https://home.treasury.gov/system/files/2016/OMWI-FY19-Annual-Report-FINAL-SUBMISSION.pdf

[23] U.S. House of Representatives Committee on Financial Services ""The Dodd-Frank Act Five Years Later: Diversity in the Financial Services Agencies" Democratic Staff Report, Nov. 5, 2015. https://financialservices.house.gov/uploadedfiles/fsc_dems_-_staff_report_-_dodd-frank_five_years_later_-_diversity_in_the_financial_services_agencies_-_final.pdf.

[24] U.S. House of Representatives Committee on Financial Services. "Leading Democrats Express Concerns with Agency Diversity Standards." News release, June 18, 2015. https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=399208.

[25] U.S. House of Representatives Committee on Financial Services "Diversity and Inclusion: Holding America's Large Banks Accountable." Staff Report, February 2020. https://financialservices.house.gov/issues/diversity-and-inclusion-holding-america-s-large-banks-accountable.htm#:~:text=%E2%80%9CA%20review%20of%20bank%20responses,intentional%20diversity%20and%20inclusion%20outcomes.%E2%80%9D.

[26] Ibid.

[27] Crabb, Shane. "Accountability is key to enabling diversity and inclusion in organizations." Chief Learning Officer. February 26, 2020. https://www.chieflearningofficer.com/2020/02/26/accountability-is-key-to-enabling-diversity-and-inclusion-in-organizations/.

[28] Starner, Tom. "Using data, accountability to make the D&I difference." Human Resource Executive. June 26, 2020. https://hrexecutive.com/using-data-accountability-to-make-the-di-difference/.

[29] Ibid.

H.R.7946, Federal Reserve Racial and Economic Equity Act (Waters). This bill would add a new section to the Federal Reserve Act that would require the Fed to carry out all of its various duties and functions in a manner that "minimizes and eliminates racial disparities in employment, wages, wealth, and access to affordable credit." The bill would also require reporting on disparities in labor force trends in the Fed's Semiannual Monetary Policy Report, and it would require the Fed Chair to identify in his or her semiannual testimony before Congress the existing disparities in employment, income and wealth across racial and ethnic groups and describe how the Fed is using its authorities to reduce these disparities.[30]

H.R. 8160, Promoting Diversity and Inclusion in Banking Act (Green). This bill would require Federal banking regulators to examine financial institutions' diversity and inclusion efforts, including reviewing bank diversity and inclusion policies.

H.R.____, Federal Reserve Bank Board Diversity Act (Beatty). This bill would require the consideration of at least one individual reflective of gender diversity and one individual reflective of racial or ethnic diversity when filling Federal Reserve bank board of directors' vacancies.

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.____, Federal Home Loan Bank Board Diversity Act. This bill would require the consideration of at least one individual reflective of gender diversity and one individual reflective of racial or ethnic diversity when filling Federal Home Loan Bank boards of directors' vacancies.

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, Securities and Exchange Commission, and the Federal Deposit Insurance Corporation.

[30] U.S. House of Representatives Committee on Financial Services. "Waters, Warren and Gillibrand Introduce Legislation Requiring the Fed to Close Racial Employment and Wage Gaps." News release, Aug. 5, 2020. https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406829.