



Audit Report



OIG-16-054

Treasury DO's Office of Minority and Women Inclusion is Generally Carrying Out Its Functions Consistent With Dodd-Frank Act

August 30, 2016

Office of
Inspector General

Department of the Treasury

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Abbreviations

CAPAL	Conference on Asian Pacific American Leadership
DO	Departmental Offices, Department of the Treasury
Dodd-Frank	Dodd-Frank Wall Street Reform and Consumer Protection Act
GAO	Government Accountability Office
JAMES	Joint Audit Management Enterprise System
MD-715	Management Directive 715
OFCCP	Department of Labor, Office of Federal Contract Compliance Programs
OMWI	Office of Minority and Women Inclusion
Secretary	Secretary of the Treasury
Treasury	Department of the Treasury

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*The Department of the Treasury
Office of Inspector General*

August 30, 2016

Kody Kinsley
Assistant Secretary for Management

Dr. Lorraine Cole
Director, Office of Minority and Women Inclusion

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) required the Department of the Treasury (Treasury) to establish an Office of Minority and Women Inclusion (OMWI) within its Departmental Offices (DO).^{1,2} OMWI is charged with responsibility for all matters of DO related to diversity in management, employment, and business activities, except for the enforcement of statutes, regulations, or executive orders pertaining to civil rights. This report presents the results of our review of activities to establish an OMWI within DO.

The objectives of our audit were to determine whether OMWI was established and is carrying out its functions consistent with Section 342 of Dodd-Frank. To accomplish our objectives, we reviewed applicable sections of Dodd-Frank; interviewed key personnel, including OMWI management and staff; and reviewed documentation provided by OMWI pertaining to its establishment, strategic plan, reporting structure, organization,

¹ Dodd-Frank required an OMWI be established within the Office of the Comptroller of the Currency, a Treasury bureau, as well as within the other select Federal financial agencies and the Federal Reserve Banks. The other agencies are the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, the Securities and Exchange Commission, and the Bureau of Consumer Financial Protection, commonly known as the Consumer Financial Protection Bureau. In this report, the abbreviation OMWI refers to the office established within Treasury's DO.

² DO is the headquarters bureau for Treasury. It provides leadership in economic and financial policy, financial intelligence and enforcement, and general management.

hiring policies, partnerships, sponsorships, and operations. We conducted the majority of our field work from September 2013 through October 2014 with subsequent follow up through early June 2016 to ensure the information supporting our conclusions had not changed. Appendix 1 contains a more detailed description of our objectives, scope, and methodology.

Results in Brief

We concluded that OMWI is generally carrying out its functions consistent with Section 342 of Dodd-Frank. Since its establishment in January 2011, OMWI has engaged in numerous activities including staffing the office, issuing annual reports, advising Treasury management, and taking affirmative steps to seek diversity in the workforce. As part of its requirement to develop standards and/or procedures to review and evaluate contract proposals, OMWI also formalized the requirement for a written statement to be included in certain contracts affirming the contractor's commitment to ensuring the fair inclusion of women and minorities in its workforce.

However, OMWI is still in the process of addressing the requirement to develop and implement procedures to determine whether contractors are making a good faith effort to include minorities and women in their workforce. Accordingly, we recommend that OMWI complete with deliberate speed the process of developing and implementing procedures to review and evaluate whether agency contractors have made good faith efforts to include minorities and women in their workforce.

In a written response, which is included as Appendix 2, management agreed with our recommendation and provided its proposed corrective actions which we consider responsive to our recommendation. OMWI will need to record the estimated date for completing its planned corrective actions in the Joint Audit Management Enterprise System (JAMES), Treasury's audit recommendation tracking system.

Background

Section 342 of Dodd-Frank required eight agencies, including DO, and each Federal Reserve Bank to establish an OMWI. DO's OMWI is responsible for all matters relating to diversity in management, employment, and Treasury's business activities in DO, excluding the enforcement of statutes, regulations, or executive orders pertaining to civil rights.

Section 342 states, among other things, that the Director of each OMWI is to develop standards for (a) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency; (b) increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses; and (c) assessing the diversity policies and practices of entities regulated by the agency. Because DO does not regulate any entities, this assessment does not apply to its OMWI. Section 342 also requires each OMWI to submit a report to Congress annually regarding the actions taken by the agency and its OMWI pursuant to this section.

Results of Audit

We concluded that OMWI is generally carrying out its functions consistent with Section 342 of Dodd-Frank. Specifically, OMWI was established timely and fulfilled several requirements of Section 342 as follows.

Establishment of OMWI

Section 342 of Dodd-Frank required that each OMWI be established no later than 6 months after the date of enactment of the act, which occurred on July 21, 2010. DO's OMWI was established on January 21, 2011, in accordance with the statute.

Existing Equal Employment Opportunity and Diversity Standards to be Used

Section 342 of Dodd-Frank called for each OMWI director to develop standards for equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management of the agency. An OMWI official stated that the applicable standards in this area are those already established by the Equal Protection Clause³ of the Constitution, Title VII of the Civil Rights Act of 1964⁴, and Federal court and administrative decisions interpreting these provisions. The official also noted that Section 342 cannot be read, consistent with the Constitution, to permit the OMWI Director to deviate from these standards. The Government Accountability Office (GAO) reported in April 2013⁵ that the OMWIs for six other agencies and most Reserve Banks indicated that either their previously established equal employment opportunity standards or Management Directive 715 (MD-715)⁶ requirements for the agencies helped satisfy the requirement.

In light of these restrictions, the same OMWI official stated that OMWI has used benchmarks to measure diversity of the DO workforce and participation in contracting. These benchmarks include comparisons with the workforce demographics of the

³ The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution prohibits states from denying any person within its jurisdiction the equal protection of the laws.

⁴ Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.

⁵ GAO, *Trends and Practices in the Financial Services Industry and Agencies after the Recent Financial Crisis*, (GAO-13-238; April 2013)

⁶ MD-715 is the policy guidance that the Equal Employment Opportunity Commission provides to Federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., and Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 et seq. MD-715 provides a roadmap for creating effective equal employment opportunity programs for all Federal employees as required by Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973.

civilian labor force,⁷ the relevant civilian labor force,⁸ Treasury-wide and government-wide workforces, and the financial services industry labor forces. Additionally, benchmarks of workforce inclusion include comparison with Treasury-wide and government-wide scores on the OPM Diversity and Inclusion Index.⁹

OMWI reported in its fiscal year 2014 annual report¹⁰ that DO's fiscal year 2014 diversity and inclusion index score was 60 percent. This score was fairly consistent with those for fiscal years 2011, 2012, and 2013 when the scores were 61.5 percent, 61.1 percent, and 62 percent, respectively. The 2014 government-wide and Treasury-wide index scores were 56 percent and 59 percent, respectively. Overall scores below 65 percent are regarded as areas of challenge.

The OMWI Director stated that historically, diversity was always focused on numeric representation, and now the focus is more on inclusion and qualitative factors such as diversity training and leadership. The Director also noted that OMWI wants to place less emphasis on numeric demographic representation and focus more on a culture that embraces diversity and inclusion.

⁷ The civilian labor force is a term used by the U.S. Bureau of Labor Statistics to describe the subset of Americans who have jobs or are seeking a job, are at least 16 years old, are not serving in the military and are not institutionalized.

⁸ The relevant civilian labor force refers to the Civilian Labor Force data that are directly comparable only to prevalent occupations in DO. Those occupations would include economists, attorneys, intelligence analysts, financial analysts, and information technology specialists.

⁹ The OPM Diversity and Inclusion Index is synonymous with the Inclusive Environment Index. It is derived from a subset of questions from the Federal Employee Viewpoint Survey, which is a government-wide tool that measures employees' perceptions of whether, and to what extent, conditions characterizing successful organizations are present in their agencies. The subset of questions, called the Inclusive Environment Assessment, is clustered around five factors, regarded as behavioral habits: fairness, open mindedness, cooperation, supportiveness, and empowerment.

¹⁰ As of the date of this report, the fiscal year 2015 report had not been issued.

OMWI reported in its 2013 annual report that it initiated two qualitative processes to elicit concerns, recommendations, and group consensus on issues and priorities to improve the workplace environment pertaining to diversity and inclusion. The first initiative was to conduct a forum to identify ways to improve the workplace experience and career advancement for women. The 2-day forum, entitled Treasury Women 3.0 took place in September 2012 and culminated in a report dated December 2012 entitled *Treasury Women 3.0: The Secretary's Initiative on the Status of Women*.¹¹ As a result of Treasury Women 3.0, ten priority rank-ordered recommendations were developed. For example, one recommendation focused on increased coaching and mentoring and another focused on expanded leadership/training opportunities. The second initiative was a qualitative research project using focus groups to determine employee perceptions across racial, ethnic, and gender groups about recruitment, hiring, career advancement, training, and retention. There were 25 major themes identified across the focus groups regarding overall perception of the DO workplace environment pertaining to seven topics, which are (1) workplace environment, (2) diversity and inclusion, (3) recruitment and hiring, (4) management and leadership effectiveness, (5) professional development, (6) career advancement, and (7) work-life balance. The results were reported in the *OMWI Focus Group – Final Report* in February 2013. The 2013 OMWI annual report noted that the results and recommendations of both initiatives would continue to inform those responsible for decision making, policies, initiatives, and strategies pertaining to workforce diversity and inclusion.

Section 342 also called for each OMWI director to develop standards for increased participation of minority-owned and women-owned businesses in the programs and contracts of the agency, including standards for coordinating technical assistance to such businesses. According to its 2014 annual report, Treasury achieved its most effective engagement with

¹¹ Treasury Women 3.0 was a collaborative effort of Treasury DO, OMWI, Office of the Comptroller of the Currency OMWI, Office of Civil Rights and Diversity, and Treasury Executive Institute.

minority-owned and women-owned businesses through substantial efforts to reach out to small businesses. It was reported that OMWI sponsored eight vendor outreach sessions, which provided individual counseling to approximately 184 small business concerns. Of the 184 small businesses, approximately 85 percent were minority-owned and nearly one-third were women-owned. OMWI also reported that in fiscal year 2014, there were 16 Treasury mentor-protégé agreements in place as part of the Treasury's Mentor-Protégé program. This program is designed to motivate and encourage large firms to assist small businesses, including small disadvantaged businesses and women-owned business. Eight of the 16 mentor-protégé agreements in place were minority-owned or women-owned businesses.

In its 2014 annual report, OMWI also reported that Treasury and DO met or exceeded the overall small business contracting statutory goal, as well as goals for small disadvantaged businesses and women-owned small businesses.¹²

Interactions with Senior Leadership and Actions Taken to Promote Contracting with Minority-Owned and Women-Owned Businesses

Section 342 of Dodd-Frank required that OMWI directors advise the agency administrator on the impact of the policies and regulations of the agency on minority-owned and women-owned businesses. The OMWI Director confirmed to us that she in fact serves as the principal advisor to the Secretary of the Treasury (Secretary) as well as the Assistant Secretary for Management and the Treasury's Senior Procurement Executive, on the impact of policies and regulations of the agency on small minority-

¹² OMWI, *Taking Stock & Making Change, Annual Report to Congress, 2014*, "The vast majority of minority-owned businesses and women-owned businesses (MWOB) in the United States are small businesses with 98 percent of all MWOB earning revenue under \$1 million, according to the most recently available census data. Consistent with the Dodd-Frank Act Section 342 mandate to focus on minority-owned and women-owned businesses, there are statutory goals set by the Small Business Administration (SBA) for small disadvantaged businesses (which are largely minority-owned) and women-owned small businesses."

owned and women-owned businesses. An action memorandum dated January 21, 2011, established a reporting line between DO's OMWI Director and the Secretary.

The Secretary issued a Diversity and Inclusion Call to Action dated August 27, 2013, which encouraged employees with procurement responsibilities to support the established socioeconomic programs that improve business diversity. According to the OMWI Director, the call to action was reinforced by the Assistant Secretary for Management, through a January 2014 memorandum to Treasury bureau heads, which stated contracting with minority-owned and women-owned businesses was a priority for Treasury.¹³ In addition, the Assistant Secretary for Management had issued memoranda in 2011, directing that small business contracting and socioeconomic goals be integrated into performance plans of Senior Executive Service and non-Senior Executive Service acquisition personnel.

Steps Taken Toward Inclusion in All Levels of Business Activities

Section 342 of Dodd-Frank required that OMWI directors develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including in procurement, insurance, and all types of contracts. The act also required that procedures be established by the agency for review and evaluation of contract proposals and for hiring service providers and that those procedures include, to the extent consistent with applicable law, a component that gives consideration to the diversity of the applicant. Such procedures must include a written statement, in a form and with such content as the OMWI director shall prescribe, that a contractor shall ensure, to the maximum extent

¹³ *Fiscal Year 2014 Small Business Program Goals* memorandum, January 30, 2014.

possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

As noted earlier in the report, an OMWI official stated that the applicable standards in the area of inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency are those already established by the Equal Protection Clause of the Constitution, Title VII of the Civil Rights Act of 1964, and Federal court and administrative decisions interpreting these provisions.

Regarding the requirement to establish procedures to review and evaluate contract proposals including a component that gives consideration to the diversity of the applicant and such procedures include a written statement, OMWI reported in its fiscal year 2014 annual report to Congress that it was formulating an implementation plan to monitor “good faith efforts” among contractors in accordance with the mandate. Subsequently, OMWI had been working with the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) to develop a process for the evaluation of DO contractors as a subset of OFCCP’s government-wide “good faith effort” reviews. However, an OMWI official told us that it was determined that this process would not be feasible on a continuous basis. Alternatively, OFCCP provided guidance to OMWI staff to assist them in independently utilizing data sets from the OFCCP system in order to evaluate DO contractors and fulfill the “good faith effort” requirement. In addition, OMWI staff worked to gain an understanding of the coding and definitions used in the massive data tables that result from OFCCP assessments. The same OMWI official told us that, due to limited resources, it is not expected that staff will be able to initiate independent assessments of Treasury contractors that have been included in the Department of Labor OFCCP “good faith effort” government reviews until fiscal year 2017.

Treasury issued a Final Rule, effective April 21, 2014, that amended the Department of the Treasury Acquisition

Regulation¹⁴ requiring a “good faith effort” clause in contracts exceeding the Simplified Acquisition threshold, which is currently \$150,000. The Final Rule noted that the rule satisfied the statutory requirement that contractors affirm a commitment to the fair inclusion of minorities and women in the workforce. Similarly, the National Credit Union Administration also uses the Simplified Acquisition threshold as a floor for inclusion of the “good faith effort” clause. In addition, the Federal Deposit Insurance Corporation and the Federal Housing Finance Administration use \$100,000 and \$150,000, respectively, as the floor but do not mention the Simplified Acquisition threshold.

Annual Reports Issued to Congress

In accordance with Section 342 of Dodd-Frank, OMWI issued annual reports to Congress for fiscal years 2011, 2012, 2013, and 2014. These reports contained all required information, which included (1) a statement of the total amounts paid by the agency to contractors since the previous report, (2) the percentage of the total amounts paid by the agency to contractors that were minority-owned and women-owned businesses, (3) the successes achieved and challenges faced by the agency in operating minority and women outreach programs, (4) the challenges the agency may face in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses, and (5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the OMWI Director determined appropriate.

With regard to operating minority and women outreach programs, the 2012 annual report noted that among other successes, OMWI facilitated partnerships between Junior

¹⁴ The Department of the Treasury Acquisition Regulation falls within Title 48 of the Federal Acquisition Regulation (FAR). The FAR governs the acquisition process by which the government purchases (acquires) goods and services.

Achievement of Greater Washington, Maya Angelou Public Charter School, and the Maya Angelou Academy, a school that serves students who have been involved in the juvenile justice system.¹⁵ Junior Achievement provided its financial literacy curricula and training to teachers in these schools. In its 2013 annual report, OMWI noted that DO continued its partnership agreement with Howard University, a historically black university, in an effort to expand access to internship and employment opportunities to more minority students. OMWI's 2014 report cites budgetary restraints, retention rates, and perceptions of the existing government-wide workplace culture as three important challenges to implementing the workforce diversity provisions of Dodd-Frank.

Affirmative Steps Taken

Section 342 of Dodd-Frank also required that each agency take certain affirmative steps to seek diversity in the workforce of the agency at all levels in a manner consistent with applicable law. OMWI has assisted DO in taking such affirmative steps to seek diversity in the workforce by:

- recruiting at a local historically black university;
- helping to sponsor (1) the Conference on Asian Pacific American Leadership (CAPAL) 3rd Annual Career Fair in July 2012, in Washington, D.C., (2) the Public Policy and International Affairs, 2012 Public Service Expo in July 2012 in Washington D.C., and (3) the Public Policy and International Affairs, 2013 Public Service Expo in July 2013 in Washington D.C.;
- utilizing the social media services of LinkedIn, a professional network, in order to more broadly publicize and increase awareness about available positions within DO. In addition, LinkedIn has a partnership with Professional Diversity

¹⁵ Junior Achievement is the world's largest organization dedicated to educating students in grades K-12 about entrepreneurship, work readiness and financial literacy through experiential, hands-on programs.

Network, which serves as an online network for diverse professionals. This partnership allows for advertised DO mission-critical job openings to reach target populations of minorities and women; and

- connecting the Office of Financial Research with CAPAL, which resulted in the hiring of a former CAPAL student.

Conclusion

Overall, we concluded that OMWI was established timely and is generally carrying out its functions consistent with Section 342 of Dodd-Frank. However, OMWI is still in the process of addressing the requirement to develop and implement procedures to determine whether contractors are making a good faith effort to include minorities and women in their workforce.

Recommendation

We recommend that the OMWI Director complete with deliberate speed the process of developing and implementing procedures to review and evaluate whether agency contractors have made good faith efforts to include minorities and women in their workforce.

Management Response

Management agreed with the recommendation. OMWI is developing a revised process under which it would obtain relevant data from OFCCP and conduct independent assessments on the basis of the data. OMWI is in the process of adding capacity to effectively process OFCCP data in order to begin substantive “good faith effort” reviews. OMWI expects to begin substantive assessments in fiscal year 2017.

OIG Comment

Management's proposed actions, taken as planned, are responsive to our recommendation. OMWI will need to record the estimated date for completing its planned corrective actions in JAMES.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. If you have any questions, please contact me at (202) 927-0384 or Jenny Ahn, Audit Manager, at (202) 927-8111. Major contributors to this report are listed in Appendix 3. A distribution list for this report is provided as Appendix 4.

Jeffrey Dye /s/
Audit Director

The objectives of this audit were to determine whether Department of the Treasury's Departmental Office's (DO) Office of Minority and Women Inclusion (OMWI) was established and is carrying out its functions consistent with Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) of 2010.

To achieve our audit objectives, we reviewed applicable sections of Dodd-Frank. We reviewed documentation provided by DO OMWI pertaining to its establishment and operations, and interviewed key personnel. Specifically, we performed the following actions:

- interviewed OMWI management and staff. This included interviews with the Director, and Special Assistant, as well as an Associate Director for Workforce Diversity, and a Business Analyst in the Office of Small Business Programs;
- reviewed documentation from OMWI regarding its establishment, strategic plan, reporting structure, organization, budget, hiring policies, partnerships, sponsorships, and small business contracting performance; and
- evaluated OMWI compliance with reporting requirements defined by Section 342.

We performed the major part of our audit fieldwork in Washington, D.C., between September 2013 and October 2014 with subsequent follow up through early June 2016 to ensure that information supporting our conclusions has not changed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2
Management Response

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 22, 2016

Mr. Jeffrey Dye
Director, Banking Audits
Office of Inspector General
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Dye:

We are in receipt of the OIG draft audit report, *Treasury DO's Office of Minority and Women Inclusion is Generally Carrying Out its Functions Consistent with Dodd-Frank Act*. The report recommends that the OMWI Director complete the process of developing and implementing procedures to review and evaluate whether agency contractors have made good faith efforts to include minorities and women in their workforce. Treasury agrees with this recommendation.

As explained in the report, OMWI's overall strategy for good faith efforts reviews is to rely on information on contractor diversity compiled by the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP). OFCCP conducts diversity-related reviews on contractors across the Federal government. Reliance on OFCCP's efforts will reduce overlapping reviews, and will help avoid the need to duplicate OFCCP's expertise within OMWI.

OMWI has explored the possibility of using OFCCP's data in order to conduct focused reviews of DO contractors. As a result, OMWI is developing a revised process under which it would obtain relevant data from OFCCP and conduct independent assessments on the basis of those data. OMWI is in the process of adding capacity to effectively process OFCCP data in order to begin substantive "good faith effort" reviews. OMWI expects to begin substantive assessments in FY 2017.

Thank you for your efforts in conducting this audit. We greatly appreciate your oversight role and we look forward to continued work with your office in the future.

Sincerely,

Lorraine Cole /s/

Lorraine Cole
Chief Diversity and Inclusion Officer
Office of Minority and Women Inclusion

cc: Kody H. Kinsley, Assistant Secretary for Management

Appendix 3
Major Contributors to This Report

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Treasury OIG Website

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