Wall Street Reform Act Requires Diversity from Federal Contractors

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The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act includes a relatively obscure provision aimed at increasing diversity in the financial services industry. Section 342 of the Act creates new diversity-related requirements for both the federal agencies that regulate the industry and the contractors and subcontractors with whom they do business. Specifically, Section 342 grants designated federal agencies the ability to terminate contracts with businesses that do not ensure the "fair inclusion" of female and minority employees within their workforces.

Section 342 provides for the creation of some 20 new Offices of Minority and Women Inclusion within such federal agencies as the Treasury Department, the Federal Reserve, the Securities and Exchange Commission, the Federal Deposit Insurance Corp., the Federal Housing Finance Agency the National Credit Union Administration, the Office of the Comptroller of the Currency, and the new Consumer Financial Protection Bureau. The directors of each of these newly created offices are then charged with developing and implementing "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 term "fair inclusion" is not defined.

Expanding far beyond the confines of Wall Street, Section 342 applies to all businesses that have service contracts with any of the covered federal financial agencies. The covered contractors subject to the law include not only "financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, [and] financial service entities," but also "underwriters, accountants, investment consultants, and providers of legal services." The scope of government contracts that can subject a company to the new requirements is very broad and explicitly includes contracts for all business and activities of any of the covered federal agencies, at all levels. In short, it appears that virtually any business that contracts with any finance-related government agency– and all the subcontractors of those businesses – may potentially be subject to the new inclusion requirements.

Upon entering into a covered contract with a covered agency, each contractor must certify that both its workforce and that of its subcontractors reflects a "fair inclusion" of women and minorities. Failure to achieve such "fair inclusion" could result in either cancellation of the government contract or referral to the Department of Labor's Office of Federal Contract Compliance Programs for review.

The question remains, however, as to how "fair inclusion" will be defined. Given that implementing regulations have not yet been drafted, Section 342's overall impact is at best uncertain. Among other things, it is unclear to what extent the new Section 342 requirements will overlap with or supplement existing requirements for those federal contractors already subject to the affirmative action requirements of Executive Order 11246. While it is still too early to speculate about the specific impact Section 342 will have, affected employers are encouraged to closely monitor the development of the proposed regulations.

This client alert is for general information purposes and should not be regarded as legal advice.