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September 2013 Banking and Mortgage Regulatory Update

For monthly updates on compliance issues email mortgage@mccathernlaw.com with your request.

While much has been made of Dodd-Frank's regulations that relate to Qualified Mortgages, High Cost Mortgages and the Ability to Repay Rule, Dodd-Frank's Section 342 has been largely overlooked. The regulations in Section 342 provide authority for the government to require financial institutions to monitor and report on the utilization of minorities and women in the institutions' workforce. To oversee this requirement, Section 342 creates Offices of Minority and Women Inclusion at many regulatory agencies, including the SEC, FDIC, Federal Reserve Banks, Office of Comptroller of Currency, Department of Treasury, National Credit Union Agency, Federal Housing Finance Agency, and the Consumer Financial Protection Bureau. These oversight offices ensure that the agencies and *any financial organization doing business with the agencies, and their subcontractors*, demonstrate a commitment to diversity.

The statute requires each oversight office to have a director that must develop standards for equal employment opportunities that create racial, ethnic, and gender diversity of the workforce and senior management, as well as increase the participation of minority-owned and women-owned businesses in the programs and contracts of each agency. If an agency contractor or subcontractor fails to make a good faith effort to include minorities and women in their workforce, Section 342 allows the director to terminate the contract. This termination ability extends to all contracts of the agencies listed above for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services. The contracts affected include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.

Agencies must also submit annual reports to Congress that details the payments made to the agency by contractors, the successes achieved and challenges faced in operating minority and women outreach programs, and the challenges faced in hiring qualified minority and women employees and contracting with qualified and diversified businesses. Agencies must also take and document affirmative steps to seek to diversify its workforce at all levels. Although some may believe that Section 342 merely duplicates already-existing anti-discrimination laws, it's actually broader in scope and adds these additional requirements as a threshold matter just to contract with the agencies listed. Under Section 342, agencies are prohibited from contracting with businesses that do not make good faith efforts to diversify its workforce. Complying with Section 342 is an important step to avoid what could be a significant loss in business opportunities.

One of McCathern's compliance partners is leading the way in guiding businesses impacted by Section 342. Pantheon National Title Company offers consulting services to businesses unsure of Section 342's compliance requirements. Additionally, Pantheon's CEO, Craig Chapman, has been appointed to join the MBA's new Diversity and Inclusion Committee, a committee that will create diversity programs and best practices to ensure compliance with Section 342, while also attracting and retaining the best and brightest candidates.

To congratulate Craig, and to offer you an opportunity to learn more about Section 342, McCathern and Pantheon will host a casual cocktail hour at the upcoming Mortgage Bankers Association's 100th Annual Convention and Expo to be held October 27 – 30 in Washington, D.C. For more information about the cocktail hour, please contact McCathern's Director of Brand Marketing, Jennifer Campbell at jbcampbell@mccathernlaw.com or at 214-741-2662.

This update is not to be considered an offering of legal advice and does not constitute an attorney-client relationship. If you are interested in a more specific and tailored analysis of the compliance-related issues associated with the Dodd-Frank Act, and how it affects your business, please contact Arnold Shokouhi at 214.741.2662.