

**MINORITIES AND WOMEN IN
FINANCIAL REGULATORY REFORM:
THE NEED FOR INCREASING
PARTICIPATION AND OPPORTUNITIES
FOR QUALIFIED PERSONS AND BUSINESSES**

JOINT HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND
INVESTIGATIONS
AND THE
SUBCOMMITTEE ON
HOUSING AND
COMMUNITY OPPORTUNITY
OF THE
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**MINORITIES AND WOMEN IN
FINANCIAL REGULATORY REFORM:
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PARTICIPATION AND OPPORTUNITIES
FOR QUALIFIED PERSONS AND BUSINESSES**

Wednesday, May 12, 2010

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS, AND
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittees met, pursuant to notice, at 2:48 p.m., in room 2128, Rayburn House Office Building, Hon. Dennis Moore [chairman of the Subcommittee on Oversight and Investigations] presiding.

Present from the Subcommittee on Oversight and Investigations: Representatives Moore of Kansas, Adler; Biggert and Lee.

Present from the Subcommittee on Housing and Community Opportunity: Representatives Waters, Cleaver, Green, Clay, Donnelly; Capito, Biggert, Jenkins, and Lee.

Also present: Representatives Watt and Hinojosa.

Chairman MOORE OF KANSAS. This joint hearing of the Subcommittee on Oversight and Investigations and the Subcommittee on Housing and Community Opportunity of the House Financial Services Committee will come to order.

I apologize for the delay in getting started. They called votes and we just finished, we are back, and more members, I hope, will be filtering in as we go along here.

Our hearing this afternoon is entitled, "Minorities and Women in Financial Regulatory Reform: The Need for Increasing Participation and Opportunities for Qualified Persons and Businesses." We will begin this hearing with members' opening statements up to 10 minutes per side, and then we will hear testimony from our witnesses. For each witness panel, members will have up to 5 minutes to question our witnesses.

The Chair advises our witnesses to please keep your opening statements to 5 minutes to keep things moving so we can get to members' questions. Also, any unanswered question can always be followed up in writing for the record.

Without objection, all members' opening statements will be made a part of the record.

I will recognize myself for 2 minutes for an opening statement. At some point, I think Chairwoman Maxine Waters will be over here as well. Mr. Chris Lee is occupying that chair right now.

As the Senate continues debating financial regulatory reform and key issues such as increasing consumer and investor protections and ending “too-big-to-fail,” I am pleased our two subcommittees are focused on something today that is too important to ignore, and that is the importance of increasing participation and opportunities for all qualified persons, including women and minorities.

I want to commend my colleague, Chairwoman Waters, for asking me to do this joint hearing with her on this important issue. She has been a vigorous defender of equal protection of the law and ensuring that all Americans, no matter who they are or where they are from, have a chance to do great things.

She always contributes her ideas and works hard on every piece of legislation this committee considers to make certain everyone has a fair opportunity to participate and no one is shut out of the process.

For today’s hearing, I look forward to hearing from GAO, which issued an excellent report a few years ago entitled, “Financial Services Industry, Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993 to 2004.” I look forward to hearing GAO’s observations and any update they can provide on this important report.

One concern I have is that women- and minority-owned businesses are adversely impacted by the aftermath of the financial panic we saw in 2008 and the ensuing great recession. I am also concerned that in the administration of TARP, not enough focus was paid to who was getting the money. We need to review this and ensure that no one was shut out of the process to become a contractor or recipient of TARP funds.

As the Senate debates financial regulatory reform, we need to make sure that diversity is considered and fully incorporated into the final bill the President will sign into law.

Every financial agency, both old and new, must redouble their efforts to pay more attention to these issues and provide everyone within their agency a chance to move up and become the next Federal Reserve Chairman or Secretary of the Treasury. We owe that to all of our constituents. We owe that to our children and our grandchildren.

At this time, the Chair will recognize Mr. Lee for 1 minute.

Mr. LEE. Thank you, Mr. Chairman. I am pleased that we are having this opportunity to hear from Ms. Williams Brown today about this issue. I think it is important that we understand the dynamics of what is going on in the financial market and what impact it is having on the minority community.

I am looking forward to your testimony. With that, I yield back.

Chairman MOORE OF KANSAS. The Chair will recognize Ms. Waters for up to 5 minutes for an opening statement.

Chairwoman WATERS. Thank you, Chairman Moore, for joining me for this joint hearing on minorities and women in financial regulatory reform, the need for increasing participation and opportunities for qualified persons and businesses.

Last year, the House passed a comprehensive regulatory reform bill, H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. That bill included an important provision authored by me and nine other Congressional Black Caucus members of this committee.

Our amendment would establish offices of minority and women inclusion at each of the Federal banking agencies to address the lack of employment and contracting opportunities available to minorities and women in our financial services agencies.

The case for the amendment was as clear then as it is now. Minorities and women remain underrepresented in our government financial services agencies. For example, according to data from the Office of Personnel Management, Hispanics only account for 8 percent of employees at the Treasury Department; 4.2 percent of employees at the FDIC; and 4.8 percent of employees at the Securities and Exchange Commission.

Within the Department of the Treasury, African Americans and Hispanics have an average pay grade of 8.8 and 8.3, almost a full grade lower than Whites, who have an average grade of 9.6.

The picture in the private sector is not much better, as GAO will testify today, minorities and women remain limited in their participation in the financial services industry. From 2005 through 2008, African Americans and Hispanics only held 6.3 percent and 5 percent of management positions in this sector.

In addition, minority- and women-owned businesses frequently find themselves excluded from contracting opportunities with financial services agencies.

The financial meltdown elicited an historic response from agencies such as Treasury and the Federal Reserve while undertaking efforts to shore up our economy. These agencies entered into contracts, some of which were no bid, with companies they regularly contract with, in order to assist them in carrying out these economic recovery programs.

For example, the Federal Reserve selected 4 firms to manage its \$1.2 trillion mortgage-backed securities purchase program through a closed RFP process.

While I believe our agencies should have the ability to act quickly in the event of an emergency, I am concerned that because of the challenges facing minority- and women-owned businesses, they are less likely to be known entities and are therefore less likely to have existing relationships with these agencies. And as these kinds of contracts can often lead to more contracts, this kind of exclusion can become permanent.

We have raised these concerns with the Administration and they have taken some steps to address these disparities, for example, the White House has taken its first steps to address this problem by issuing an Executive Memorandum to establish an interagency taskforce to improve contracting to small businesses.

In addition, the Treasury required all of the fund managers for its Legacy securities public/private investment program to partner with minority- and women-owned businesses.

While I commend the Administration for these actions, it remains vitally important to institutionalize access for minorities and

women through the establishment of offices of minority and women inclusion.

These offices would ensure that whether it is an emergency or if it is simply the day-to-day business of the agency, a senior level person charged with diversity will be in the room and will be able to inform the agency about the impact of their decisions on minority- and women-owned businesses.

The offices would also be charged with increasing diversity within the agency and among its contractors. This is a solution that is long overdue.

I welcome the testimony of our witnesses on this important provision, and I thank you, Mr. Chairman, and yield back the balance of my time.

Chairman MOORE OF KANSAS. Thank you. I am pleased to introduce our first witness this morning, Ms. Orice Williams Brown, Director of Financial Markets and Community Investment, GAO.

Ms. Williams Brown, it is a pleasure to have you before our subcommittee again. Without objection, your written statement will be made a part of the record. You are recognized for 5 minutes.

STATEMENT OF ORICE WILLIAMS BROWN, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, GOVERNMENT ACCOUNTABILITY OFFICE (GAO)

Ms. WILLIAMS BROWN. Thank you. Mr. Chairman, Madam Chairwoman, Ranking Member Capito, and members of the subcommittees, I am pleased to be here today to discuss our past work on diversity in the financial services sector.

While most of our findings are based on past work, we have updated several key statistics through 2008. My statement today will focus on the status of minority and women diversity in the financial services sector, and efforts the industry has taken to increase diversity and the challenges it faces.

First, let me highlight a few key statistics. Our past work revealed that from 1993 through 2004, White women representation among managers and officers was about one-third throughout this period. Minorities had increased from 11.1 percent to 15.5 percent.

EEOC's revised data for 2005 through 2008 show that representation by White women decreased by almost one percentage point during this period, and minority representation increased almost two percentage points, primarily due to increases in Asian and Hispanic representation among managers and officers.

However, in the past, you may recall that we pointed out that this broad category of officers and managers, which includes everyone from CEOs to managers of a small bank branch, may overstate the representation of women and minorities among senior managers in the industry.

Recognizing this limitation, EEOC revised its category of managers and officers by splitting this broad category into two more narrow categories: one that captures senior level managers and executives; and another that captures first and mid-level managers and officers. Using data from the new category of senior level executives, we found that the old broader category did in fact overstate the level of women and minority representation in upper management, specifically in 2008, the representation of White

women among executives and senior level officials was 27 percent, and 10 percent for minorities. By minority group, the breakout was: 2.8 percent for African Americans; 3 percent for Hispanics; and 3.5 percent for Asians.

As noted in our 2006 report, although financial services firms and trade groups told us they had initiated programs to increase workforce diversity, these initiatives faced challenges that may provide some insight into why diversity at the management level has not changed substantially.

Most said that diversity was an important goal and the top leadership was committed to recruiting and retaining minority and women candidates.

A few firms had even started to link managers' compensation and performance in promoting workforce diversity.

Among the challenges cited were gaining buy-in of employees such as middle managers who play a key role in implementing diversity initiatives, and fully leveraging the internal pipeline of minority and women for management positions.

For example, as mentioned earlier, in 2008, the executive or senior level officers and managers' category showed that 27 percent were White women and 10 percent were minorities. However, the first and mid-level managers and professionals' categories, a possible pipeline for top management talent, was more diverse, with White women representing 38 percent of first and mid-level managers and 39 percent of professionals, and minorities representing 19 percent of first and mid-level managers and 25 percent of professionals.

In closing, with the implementation of a variety of diversity initiatives over the past 15 years, diversity at the management level in the financial services industry has improved but not changed substantially.

Further, EEOC's new data provide a clear view of diversity among top management, showing that diversity is lower than the overall industry management statistics had indicated. Initiatives to promote management diversity at all levels within financial services firms face several challenges. Moreover, the impact of the recent financial crisis on diversity also warrants ongoing scrutiny.

Without a sustained commitment to overcoming existing challenges, management diversity in the financial services industry may continue to remain largely unchanged over time.

Mr. Chairman, Madam Chairwoman, and Ranking Members, this concludes my oral statement, and I would be happy to answer any questions that you may have. Thank you.

[The prepared statement of Ms. Williams Brown can be found on page 44 of the appendix.]

Chairman MOORE OF KANSAS. Thank you for your testimony, Ms. Williams Brown. I recognize myself for 5 minutes for questions.

Reviewing the two charts on pages six and seven of your testimony, those lines are very flat. If you compare these numbers with the demographics in the United States, minorities, which made up 34 percent of the general population in 2008, according to the Census Bureau, are underrepresented by roughly 50 percent in the financial industry, making up only 17 percent of management, but the most recent data ends in 2008, and I am concerned there is a

distinct possibility that women and minorities, perhaps new to their management positions, bore the blunt of the layoffs and lost jobs as a result of the financial crisis.

Is that a possibility, Ms. Williams Brown, and if so, what are your thoughts about the possible impact on efforts to improve diversity initiatives?

Ms. WILLIAMS BROWN. I think really without the data, it is hard to speculate about what it would show. I think it is possible it could change based on the new category that EEOC introduced in 2007. We now have a clearer picture for what diversity actually looks like at the very top level at organizations.

I think it is an understandable concern and it is one that has been raised by others, and that is what impact the financial crisis has had on diversity. There is a possibility that the actual statistics could be a lagging indicator of the impact.

Another area that we have tracked is the pipeline issue, and that is looking downstream at other positions that could eventually flow into top management positions, and also monitoring those statistics to see if there is an impact at that level. It could actually impact the statistics at upper management levels in future years.

Chairman MOORE OF KANSAS. Thank you. I appreciate the quick work that you and your colleagues at GAO did to update these numbers. You also note in your testimony that the kind of data available used for your 2006 report has changed and that makes it difficult to view trends with respect to some of that information.

It would seem worthwhile to give GAO some time to write a new report focusing on trends in the industry since the 2006 report with a special focus on the impact of the financial crisis on women and minorities in the financial industry.

Would that make sense to you, Ms. Williams Brown?

Ms. WILLIAMS BROWN. I would say yes, it does make sense. Our only concern would be that when we did this work, we really did focus on trend analysis versus a particular point in time, and we were able to update this through the available statistics which went through the end of 2008.

In several months, EEOC should have available the statistics for 2009. That will give us an additional data point, but we also think that a couple of additional years would be the most informative, but this is something that once again I think it makes sense to continue to monitor.

Chairman MOORE OF KANSAS. Very good. Chairwoman Waters, would you be interested in working with me to make this formal request of GAO for a new report identifying the key issues that we would like GAO to focus on, and I would welcome other members who might be interested, too?

Chairwoman WATERS. Absolutely. I look forward to that.

Chairman MOORE OF KANSAS. Very good. I have 1½ minutes left. I will ask you one more question, if I can, please.

Starting on page 11 of your written testimony, you mention 4 key challenges that may have affected the success of financial industry workforce diversity initiatives.

If you could only choose one that most troubles you from the standpoint of being the largest obstacle to improving diversity, which one would you choose and why?

Ms. WILLIAMS BROWN. I would go to fully leveraging the internal pipeline and I think the most recent EEOC statistics really illustrate the challenge associated with that. If you look at the upper level positions and the demographic makeup among those positions, and you look at the pipeline, you actually see greater diversity at the first and mid-level as well as the professionals' category compared to the upper level management, so I think to the extent that organizations have been challenged in finding a way to leverage that pipeline so they actually are able to retain their talent and have them fill those upper level positions, that has been a huge challenge for the industry.

Chairman MOORE OF KANSAS. Very good. Thank you.

Ms. WILLIAMS BROWN. You are welcome.

Chairman MOORE OF KANSAS. I will now recognize Ranking Member Capito for up to 5 minutes for questions.

Mrs. CAPITO. Thank you, Mr. Chairman, and I want to thank the witness. In your testimony, you mentioned that diversity in the financial services industry at the management level did not really change significantly from 1993 to 2008.

My question is, is the pool of minority candidates limited or are potential candidates going somewhere else? Have you been able to identify what the stumbling blocks are of getting more candidates and more people interested and more people actually filling these positions? Can you pinpoint some problem areas?

Ms. WILLIAMS BROWN. When we discussed this issue with representatives in the industry, a few issues rose to the surface. One, once again, is the pipeline issue. Part of that is the external pipeline.

In the financial services sector, many point to the issue that you often need a Bachelor's degree, and in some cases, a Master's degree is preferred. You have to look to the pipeline of available MBAs, for example, and watch trends there.

Many affinity groups as well as organizations have been taking steps to try to increase the pipeline of available talent.

We also heard from some of the associations and affinity groups that we spoke to that organizations tend to continue to go to the same universities, for example, to attract their talent, and those universities may not have a diverse pool of potential talent. Many recommend they broaden their potential pool of talent when they are actually recruiting.

Mrs. CAPITO. I guess what we are seeking obviously is diversity and opportunity for all groups, for every group, for women, minorities, men, whomever, young, educated folks.

Do you have any experience with actually trying to legislate that these things move forward or is the best legislation to create awareness and statistics that maybe back up the trends?

Do you have a sense of the best way to really shine a light on this topic? That is a big general question, I understand.

Ms. WILLIAMS BROWN. I will give it a try. I think shining a light is a huge part of the process. I also look to certain recent initiatives. For example, the SEC recently passed a rule that requires corporations in their proxy statement to disclose their efforts to address diversity at the corporate board level, and that disclosure has to be put in the proxy statement, and it also should address the

issue of how any practices they have in place are going to be measured.

I think one of the things that really comes to light in terms of diversity, and it is one of the key practices, is tone at the top. Another is accountability and measurement, and one of the things that came out in the 2007 SIFMA study of the industry on diversity, they raised the point that what is measured gets done.

I think it takes effort at every level, but most of it really has to happen at the firm level.

Mrs. CAPITO. Thank you, Mr. Chairman.

Chairman MOORE OF KANSAS. Thank you. Ms. Waters, you are recognized for 5 minutes for questions.

Chairwoman WATERS. Thank you very much. I would like to thank Ms. Williams Brown for being here today. I am pretty much familiar with the statistics and your data.

We have known for many, many years that most of the minorities in these firms are at the entry level and the lower levels, and this has persisted for many years now.

It is not about whether or not they are moving up the pipeline. It is about whether or not you have a pipeline and whether or not you intend to have a pipeline, and whether or not you are committed to a pipeline. History has taught us this has not changed, that they are concentrated at the bottom and basically never make it to the top.

We have come up with what we think can be a solution, and while that is not your job to do, I would like to explain to you, as we looked at the Wall Street Recovery bill, and we looked at the Consumer Protection Financial Agency, and the oversight committee that was being created, it was glaring. There were no minorities. There were all Whites, only two women, and all of your financial services agencies were identified there, from Treasury to the FDIC to the Fed.

We thought just from looking on the government side that in order to have these issues raised and have some attention paid to it, we really have to have people who are committed to it and who see it in the best interest of those communities to be involved.

We came up with several things on the government side. We came up with the offices of minority inclusion, to be created for each of these financial services agencies, so there is someone who is sitting at the table who can say ah, friends, do you not remember that we just had a subprime meltdown where minority communities were targeted, where they were sold bad products, where they were talked into no doc loans and ARMs, that the greatest foreclosure problems are in those communities.

The very people who had suffered because of the lack of anybody caring and watching out are the very people who cannot get hired in government or in the private sector. We came up with those offices of minority inclusion to put some people at the table.

We think that whether it is in the private sector or in the public sector, unless you create something inside these businesses or government whose attention will be directed toward solving this problem, it is not going to happen.

You could come here year after year, and I do not know how long you will be in service or how long you have been there, but I have been hearing this for many years, the concentration at the bottom.

The goodwill statements, we believe in diversity, but the proof of the pudding is not in the eating. We have to take affirmative steps to do something. That is why we did the office of minority inclusion that is being resisted by the same people who resist diversity.

Having said all that, do you agree that this problem is one where people say they are concerned about it but their actions have not shown they have taken a lot of steps to do anything about it?

You talked about a little something that has been done at the SEC. Do you see any other real efforts that you can identify that is being put forth to address this diversity issue?

Ms. WILLIAMS BROWN. I will say one of the things I did in preparation for the hearing is I went on to a variety of Web sites this morning to see what a cross section of institutions had to say. They all had diversity statements. They had nice diversity statements.

When I look at that, and I also look at a survey conducted by Toigo Foundation, I found that many of the folks in the industry believe that there is not a true commitment to diversity, and they have begun to see somewhat of a shift since the financial crisis.

I would say yes, they say they believe in diversity, but when you look at the statistics, it does raise an obvious question.

Chairwoman WATERS. I would like to thank you. We just have been fighting this problem and struggling with it for so many years, until sometimes you want to give up, but you know you cannot. Whether we are talking about in the financial services industry or for example, with the new appointment to the Supreme Court, who says Thurgood Marshall is her idol, and she had 29 White men at Harvard, not one Black, and a couple of women.

We know that the spoken words are not matched with real actions, and we have to come up with ways by which to take concerted action and effort to do something about this problem.

For those of us who are trying to bring about justice and equality in this society, we just cannot continue to sit and hear the information year after year after year about everybody who believes in diversity but does nothing about it.

We are going to submit your information to the Senators on the other side as we deal with the office of minority inclusion. We are going to do everything we can to make it public. Your observances of having looked at all these Web sites and seeing the spoken word but not seeing the actual results of any real action taken, we will try to use that to help us to open these opportunities up.

I thank you so very much.

Chairman MOORE OF KANSAS. I thank the gentlelady. At this time, without objection, Representative Watt will be recognized as a member of the subcommittee for the duration of this hearing, and sir, if you have questions, you are recognized for up to 5 minutes.

Mr. WATT. Mr. Chairman, I think I will pass. I missed the wonderful opportunity to hear Ms. Williams Brown. I will certainly review carefully her testimony and express my thanks to her for being here. I will not question her for fear I will re-tread territory that has already been tread.

Chairman MOORE OF KANSAS. Thank you, sir. At this time, the Chair will recognize Mr. Green for up to 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witness for appearing.

I would like to share a statement that I heard just today that I think is relevant. It was stated by a member whose name I shall not mention. It was indicated by this member that if you are not at the table, you are on the menu. If you are not at the table, you are on the menu. I have been on the menu most of my life. It feels good to be at the table, but not everyone who is at the table is a diner.

We have a constant struggle and a constant battle to accord equality of opportunities to persons who are capable, competent, and qualified. It is important to mention this. Capable, competent, qualified, and when you are talking about businesspeople, capable, competent, qualified, and who have money. Capable, competent, qualified with money, and still cannot do business.

We have to find, as the chairwoman of the Housing Subcommittee has indicated, a better way to do business. Year in and year out, reports are not quite enough to make the difference that we seek.

The office of inclusion, rather the offices, really, of inclusion, because they will be in a multiplicity of agencies, they provide the opportunity for us to have a hands-on experience to a limited extent on a day-to-day basis, so that we do not have to wait until the end of a year to pick up some empirical evidence that may be irrelevant by the time that we acquire it.

I salute you for what you do, and I compliment you for what you do. My hope is that what you have presented to us by way of empirical testimony and empirical evidence will provide us the means by which we can move now to this office of minority inclusion, or these offices, so that we may have this notion of inclusiveness, equality of opportunity, for capable, competent, and qualified people on the agenda on a daily basis.

Final point: My belief is you are eminently correct when you indicate that the tone and tenor is set by the person at the top. If the person at the top wants it to happen, it usually occurs. The person at the top has to be willing to say there are capable, competent, and qualified people who can do this, let's not continue to exclude capable, competent, and qualified people that we do not necessarily know, who may not look like us.

You have to want it to have it. I think the office of minority inclusion would provide an additional impetus for us to do this.

I am so grateful that the chairwoman stood by the concept and I stand by her and hope that we will continue to see this move forward in legislation that will be before us shortly in Congress.

Mr. Chairman, I thank you, and I will yield back the balance of my time. Ma'am, by the way, no reflection on you, I think your testimony was outstanding. I just wanted to make a few comments. Mr. Chairman, I thank you for the time.

Chairman MOORE OF KANSAS. Thank you, Mr. Green. Thank you, Ms. Williams Brown, for your testimony today. You are now excused.

I will invite the second panel of witnesses to please take your seats.

Chairwoman WATERS. [presiding] Our second panel consists of: Ms. Pamela Bethel, a partner of O'Riordan Bethel Law Firm, on behalf of the National Association of Minority- and Women-Owned Law Firms; Mr. Thomas Boston, professor of economics, Georgia Institute of Technology; Mr. Alexander Chaparro, president, National Association of Hispanic Real Estate Professionals; Mr. Orim Graves, executive director, National Association of Securities Professionals; Mr. Carlos Loumiet, partner, Hunton & Williams LLP, and president, New America Alliance, on behalf of the U.S. Hispanic Chamber of Commerce; and Mr. Vincent Wimbish, president and chief executive officer, National Association of Real Estate Brokers.

Thank you. I welcome you. You will each be recognized for 5 minutes. I will start with Ms. Bethel.

**STATEMENT OF PAMELA J. BETHEL, ESQ., PARTNER,
O'RIORDAN BETHEL LAW FIRM, LLP, ON BEHALF OF THE NA-
TIONAL ASSOCIATION OF MINORITY- AND WOMEN-OWNED
LAW FIRMS**

Ms. BETHEL. Good afternoon. I would like to thank the Chair. I would like to thank Ms. Capito. And I would like to thank the other honorable members of this subcommittee for the opportunity to present the case, the abominable case, of the exclusion of minority- and women-owned law firms in the government's business.

My name is Pamela J. Bethel. I am executive partner of the O'Riordan Bethel Law Firm located here in Washington, primarily with a national practice in Federal procurement and business representation.

I am here today representing the National Association of Minority- and Women-Owned Law Firms, an organization that was established in 2001, and a national minority law group established in 2005.

To the member's point, Mr. Green, we are capable, competent, and qualified. Membership in both organizations requires that both the firm and the individual lawyers have obtained the highest peer rating available to lawyers, and that is a rating published by Martindale-Hubbell, and it is an AV rating. All firms who are members of the organizations that I represent have the same rating as any member of any brand name firm.

The two organizations have joined together to make known the exclusion of minority- and women-owned law firms by government agencies and others with respect to the contracting opportunities related to the financial crisis and the restoration of our financial systems.

The government's track record regarding use of minority- and women-owned firms is poor. It is exceedingly poor. Federal spending increased over \$300 billion between the years 2001 and 2008, while the Federal contracts secured by minority- and women-owned firms have seen shortfall after shortfall.

With the release of the Fiscal Year 2008 data, we find that the government failed to meet its remarkably low goals in each category—women and minorities.

As poor as the utilization of minority- and women-owned firms is in general, in Federal contracting, it is almost nonexistent when it comes to legal services and other professional services.

We as a country have only begun to understand that it makes good business sense to include companies of all stripes in Federal procurements relating to certain industries, such as construction, the teaming agreements, the joint ventures, those are things that have entered into our commonplace business vocabularies and understanding.

The government has failed miserably in its responsibility to ensure that the same inclusionary goals and principles are being incorporated into the government's procurement of legal and other professional services.

While tens of millions of dollars in legal contracts have been awarded by the Treasury Department at the top, no significant dollar amount has gone to minority- or women-owned law firms. Diverse firms were not even provided an opportunity to compete for such contracts.

In reading the newspaper reports of name brand firms receiving contracts worth millions of dollars in the middle of the night with charges to the government for the services of individual attorneys ranging from \$700 to \$1,000 an hour, while millions of our tax dollars have gone to pay for legal services for the purposes of assisting the government and getting us out of this crisis, very few of those dollars have gone to firms that are anything other than what we used to call in the old days "white shoe firms."

The same firms over and over again are being called upon for lucrative contracts to provide services that our firms can ably provide.

I say to you that I also make the case that the cost of these contracts are astronomical. As I cited, we have all seen the newspaper articles with the fees of \$700 to \$1,000 an hour. Firms in my organizations and other minority- and women-owned firms can provide competent, qualified services at far lower prices than the government is now paying.

I respectfully request your vote in support of the bill passed by the House and now pending with the Senate, which would establish a series of offices of minority and women inclusion. Those would be for employment inside the regulatory agencies as well as the contractors whom they employ.

Thank you very much for this opportunity.

[The prepared statement of Ms. Bethel can be found on page 35 of the appendix.]

Chairwoman WATERS. Thank you very much, Ms. Bethel.

Mr. Thomas Boston.

**STATEMENT OF THOMAS D. BOSTON, PROFESSOR OF
ECONOMICS, GEORGIA INSTITUTE OF TECHNOLOGY**

Mr. BOSTON. Thank you, Chairwoman Waters, and members of both subcommittees. I am deeply honored to have been invited to testify before you regarding something that I think is extremely

important, and that is these offices of minority and women business inclusion at the financial agencies of the country.

I, without qualification, strongly support this effort and I hope it materializes as it is conceptualized. It is endowed with the appropriate authority to actually have positive outcomes in regards to the disparities that minorities encounter.

My name is Thomas Boston and I am testifying both as a professor of economics at Georgia Tech where I have served on the faculty since 1985, and I am also a business owner. My company, EuQuant, specializes in economic and statistical research, and one area of specialization is particularly a focus on minority business and community economic development.

If you will allow me, I am going to say what I have written here, but I want to vary it a bit so that I can get it in within the amount of time allotted, so I will summarize some of the comments.

I want to just simply make a point and that is that these offices of minority and women business inclusion, the concept behind that, is broader than just the issue of social equity; it also represents the value added of minority- and women-owned businesses to society as a whole.

I want to spend a minute just simply talking about that. First of all, these comments are going to be based on my examination of the records of all businesses, small businesses, that are registered with the Central Contractor Registration system with the Federal Government, over 47,000 that we have examined.

What we found is that procurement opportunities with the government actually matter. They matter a great deal. Although 18 percent of all firms in society as a whole are minority-owned firms, those firms represent 40 percent of all of the firms that are pursuing government contracts. The reason they represent 40 percent is because minorities in general feel like their opportunities to be successful are much greater with the government contracting than it is in the private sector as a whole.

Government procurement programs have served as a point of entry into the marketplace for many minority firms that have gone on to be successful.

You may be aware that in 2010, there was a study commissioned by the Minority Business Development Agency that also indicated all of the various patterns of disparity in lending to minority-owned firms.

That study showed that minority firms were more likely to be rejected in their applications for loans. When they received loans, those loans were more likely to have a lower value, and also they were more likely to have been awarded at higher interest rates. These kinds of findings have been backed up by numerous studies.

Minority firms that are registered with the government program through CCR, there are about 19,000 of those firms, and of those firms, there are also firms that are 8(a)'s and SDBs. There are also firms that are not minority-owned but are not a part of either one of those programs, and there are about 10,000 of those firms.

When we analyzed those firms against similarly situated non-minority firms, we found that disparity in revenue was about \$500,000, even after controlling for the fact that they had similar attributes.

The importance that is made by the SDB and 8(a) program is that they added \$2.8 million to the annual revenue of minority-owned firms, yet those firms still had \$900,000 less revenue than they would have had had they been treated equally as non-minority-owned firms are.

We found that the firms that participate in the government procurement programs, and these are about 15,000 firms, they add almost \$44 billion annually to the economy in terms of the revenue that they generate, and they employ 287,000 workers. This was in 2006.

When we looked at the firms that participated in the 8(a) program and analyzed their economic impact, we found that as a result of being in the 8(a) program, the economic impact was \$3.7 billion, and they added about 86,000 jobs.

There were also firms that have graduated from the program. When you add those graduated firms together with the firms that are in the program, they had an annual economic impact of \$5.5 billion and created 124,000 jobs.

Moreover, the jobs that they created tend to be more heavily concentrated in low-income communities where there is economic distress, that the income that they generated was generated through the kinds of ventures that were of higher value.

I will conclude by saying over and beyond just the social necessity of creating equality in the marketplace, there is a compelling economic value for why we should have this program of minority and women inclusion.

Thank you.

[The prepared statement of Professor Boston can be found on page 40 of the appendix.]

Chairwoman WATERS. Thank you very much.

We will now hear from Mr. Alexander Chaparro.

STATEMENT OF ALEXANDER CHAPARRO, CHAIRMAN, NATIONAL ASSOCIATION OF HISPANIC REAL ESTATE PROFESSIONALS (NAHREP)

Mr. CHAPARRO. Chairwoman Waters, Chairman Moore, and members of the subcommittees, thank you for this opportunity to testify on this very important subject, the ability of minority- and women-owned businesses to access government contracting opportunities in the areas of housing and financial services.

I am pleased to offer my views as a small business real estate owner and as the chairman of the National Association of Hispanic Real Estate Professionals, NAHREP.

NAHREP is a nonprofit trade association with over 18,000 members and 65 local chapters nationwide. Our mission is to increase sustainable Hispanic homeownership by empowering real estate professionals who serve the community.

NAHREP members are real estate agents, brokers and mortgage and settlement service providers, and other housing professionals.

The Federal Government procurement process is complicated and labor intensive. Larger companies with substantial experience and vast resources have an insurmountable advantage competing for government work. Most minority-owned firms are small businesses

that generally lack the experience and human capital to successfully navigate through the process.

Hispanic-owned firms have acquired contract work from financial institutions at an alarmingly low rate. Although it is difficult to get complete data, NAHREP estimates that Hispanic-owned firms currently acquire less than 1 percent of the total supplier contracts from financial institutions.

Considering the mass consolidation of the financial services industry and the extensive government interventions, it is extremely important that the Federal Government become increasingly vigilant to ensure that minority-owned firms receive a fair share of supplier contracts. Not doing so will likely lead to even greater disparities in the unemployment rate between minorities and non-minorities and will be a setback to the Nation's stabilization efforts.

NAHREP receives many requests for support around the government contracting process from its members. One member from Riverside, California, who prefers to remain unnamed, says that she has been actively pursuing government work for almost 2 years with no success. Her story typifies the experience of the large majority of minority-owned firms.

This individual has owned and operated a successful business for more than 10 years. Her company is minority- and women-owned with an impeccable track record, 30 of her 35 employees are minorities and she is very active in her community and her industry. In our view, she runs the type of operation that should be ideal for government work, reputable, capable, with a strong track record of community investment.

During the past year, she has invested more than \$27,000 in consultants and has dedicated more than 70 percent of her managerial time preparing proposals and earning certifications. All of this was done in an effort to better position her company for success in government contracting space. To date, she has failed to acquire any government business. She describes the process as complicated and exhausting and says, "It is like taking a difficult exam and never being told why you failed." She has recently decided to abandon the pursuit of government contracts and focus her energy and resources on other business opportunities.

Other members describe similar experiences but consistently state that the government contracting process is difficult, demoralizing, and with a complete lack of transparency.

For all of these reasons, NAHREP stands in full support of the provisions in H.R. 4173 that would create an office of minority and women inclusion at each of the major Federal financial regulatory agencies. This provision is similar to the one in the Housing and Economic Recovery Act that applied to the Federal Housing Finance Agency, Fannie Mae, Freddie Mac, and the Office of Finance of the Federal Home Loan Bank System.

Our members' experience is that HERA law has had a noticeable and beneficial impact on improving the Federal contracting opportunities for minorities and women.

In April, our organization submitted a comment letter to the FHFA in support of its regulation. We are in complete support of the bill.

On behalf of NAHREP, we thank you for your efforts. We really appreciate it.

[The prepared statement of Mr. Chaparro can be found on page 62 of the appendix.]

Chairwoman WATERS. You are certainly welcome.

Mr. Graves?

STATEMENT OF ORIM GRAVES, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF SECURITIES PROFESSIONALS (NASP)

Mr. GRAVES. Good afternoon, Chairwoman Waters, Ranking Member Biggert, and Representative Watt. I appreciate the invitation to appear before you today representing the National Association of Securities Professionals or NASP.

My name is Orim Graves. My career has spanned more than 2 decades in financial services.

The National Association of Securities Professionals, representing more than 100 firms, is the premier trade organization supporting minorities and women in leveling the playing field in the financial services industry.

Founded in 1985, NASP is based in Washington, D.C., with 10 chapters in major financial centers throughout the United States. Our members represent the most senior minorities and women in majority owned investment banking and asset management firms, as well as the largest minority- and women-owned firms in the country.

In the past 3 years, unprecedented events have reshaped the financial services industry. During this economic upheaval, it has been widely reported that the United States Government implemented over \$12.6 trillion of direct financial intervention into our economy.

This massive mobilization of taxpayer funds required the rapid hiring of numerous government contractors by the Treasury Department, the FDIC, and the Federal Reserve Bank of New York, to name a few. In the early days of the crisis, lawyers, accountants, consultants, and asset managers were hired with an extremely limited RFP process, in some instances, using expedited contracting or no process at all.

The RFPs that were widely circulated had barriers to inclusion for minority- and women-owned firms that were arbitrary and capricious. For example, the initial RFPs for the Legacy securities and Legacy whole loan programs of the Treasury Department required minimum assets under management of \$100 million and \$25 billion, respectively.

The initial RFP for the public/private investment partnership or PPIP, likewise, contained a minimum \$10 billion in eligible assets under management, and a demonstrated capacity to raise at least \$500 million.

Despite Section 107(b) of the Emergency Economic Stabilization Act of 2008, minorities and women and entities owned by them were not included to the maximum extent practical. These requirements falsely presupposed that large is equated with the best or better.

Another example of the lack of access to contracting opportunities with the Federal Government in financial services was the \$1.2 trillion agency mortgage-backed securities purchase program undertaken by the Federal Reserve. In this instance, four firms were selected to manage the mortgage-backed securities assets in a closed RFP process.

NASP compared minority- and women-owned MBS money managers' aggregate performance in 1, 3, and 5 years to the larger majority firms selected. The minority firms performed better than three of the four firms selected according to third party independent performance evaluations.

Lastly, the most egregious example of a large contract awarded without an RFP process is Blackrock's management of the \$165 million Maiden Lane funds on behalf of the Federal Reserve Bank of New York. The Wall Street Journal reported that Blackrock earned \$71 million in 1 year as their asset management fee for this assignment. Today, the crisis has subsided, yet Blackrock is still managing those assets.

Section 116(h) of the Emergency Economic Stabilization Act of 2008 directs the Comptroller General to report to Congress the total dollars spent with all contractors, as well as the amount spent solely with minority- and women-owned firms. To our knowledge, such a report has never been received by Congress.

Likewise, Section 1116 of the Housing and Economic Recovery Act of 2008 requires regular reporting of the dollar amounts paid to minority- and women-owned firms juxtaposed against payments made to all firms for contract services.

Despite the prudence of complying with congressional directives, Fannie Mae, Freddie Mac, and the Federal Home Loan Banks have similarly not reported their contractual relationships with minority- and women-owned firms.

I will now turn my remarks to the lack or minimum levels of participation of minority- and women-owned firms in the area of asset sales.

The transfer of hundreds of billions of dollars in assets through the FDIC's receivership and structured asset sales is an historic opportunity for the Federal Government to encourage the participation of small, women- and minority-owned investors.

Inclusive policies for these programs should be adopted by the FDIC considering its use of debt is backed by the full faith and credit of the United States.

While the FDIC has changed its bidding instructions to include a questionnaire asking minorities to voluntarily describe their race and gender, the language in the form naturally leads investors to question the FDIC's commitment to minority investors.

Not only is the form optional, but the FDIC in bold print announces that minority status "will not affect the scoring of the application."

The FDIC should include clear and affirmative language in all its communications that the encouragement of minority-owned investors is a priority for the agency and will be among the non-price or best value considerations in determining bidder eligibility.

We fully support Section 4173, the inclusion of minorities and women diversity, and we fully agree with the support of the goals and intent of this section.

[The prepared statement of Mr. Graves can be found on page 66 of the appendix.]

Chairwoman WATERS. Thank you very much. I am sorry. We have to move on.

Mr. Carlos Loumiet.

STATEMENT OF CARLOS E. LOUMIET, PARTNER, HUNTON & WILLIAMS LLP, AND CHAIR, NEW AMERICA ALLIANCE, ON BEHALF OF THE U.S. HISPANIC CHAMBER OF COMMERCE

Mr. LOUMIET. Thank you very much. It is my great honor to appear before you today to provide testimony on behalf of the New America Alliance, a national organization of Latino business leaders focused on the advancement of the American Latino community for the benefit of the United States as a whole, which I happen to chair, and also as a representative of our distinguished sister organization, the United States Hispanic Chamber of Commerce, which for years has ably represented millions of Latino businessmen and businesswomen from across the Nation. On behalf of our organizations and myself, thank you for the opportunity.

I had the privilege of appearing before the Subcommittee on Oversight and Investigations just 4 years ago to comment on the prior GAO report, which frankly was not much more heartening or much less heartening than the one we heard about today.

I wish that I could say now, 4 years later, anecdotally that there have been great advances made in these last 4 years in terms of the role of women and minorities in our Nation's financial services industry, but I cannot any more than the GAO could.

I also wish I could tell you that these past 4 years have witnessed great strides in the manner in which Treasury, Federal banking agencies, and the GSEs interact with women and minorities and the importance they attach to bringing about an industry that even remotely represents the population of our great country. Unfortunately, with rare exceptions, again, I cannot.

The Census Bureau is hard at work right now as we testify gathering information on the demographic makeup of America in 2010. Let me anticipate the results. Some two-thirds of our Nation's population will be found to consist of women and minorities. However, anyone who believes that these numbers are even remotely reflected at the management and particularly senior levels of our country's financial services industry is very mistaken.

Let's take banking as an example. That I know of right now, 2 of the 25 largest banks in this country are headed by minority individuals, neither of them are Latino, and that I know of, none of them by a woman.

A friend and fellow NAA member serves on his very distinguished and prominent financial firm's 80-person management committee. He is the only minority to do so.

The Office of the Comptroller of the Currency's Web site indicates that as of the end of 2009, there were 7 Latino-owned national banks in this country out of 1,800 or so altogether, about one-half of one percent.

Overall, our banking system does somewhat better, slightly over 200 of the Nation's 8,000 or so FDIC insured banks or somewhere between 4 and 5 percent, are controlled by women and minorities. Of course, measured in terms of the deposits of assets, these small percentages are even smaller.

In terms of asset management, in accordance with data carefully assembled by one of our members in 2009, in the U.S. \$12.5 trillion tax exempt market, firms owned by women or minorities managed about \$90 billion or less than one percent, and Latino-owned firms, \$21 billion or less than one quarter of one percent.

Federal pension funds have approximately U.S. \$268 billion in assets. That we know of, none of the 60 or so Latino-owned asset managers or brokers in our country is involved.

So on and so on. To anyone, as you have heard from other witnesses today, who believes that women and minorities are for some reason less capable of success in the financial services industry, these numbers may not be disturbing. To everyone else, these numbers at least must be embarrassing if not troubling. Frankly, I have difficulty thinking of many other industries where the numbers are as bad.

What can the U.S. Government do? One would naturally think that the government itself would be particularly mindful of including qualified persons from all backgrounds but as we have heard, that is not the case.

I believe that Congress in the last 2 years or so with Section 107 of the Emergency Economic Stabilization Act of 2008 and with Section 1801 of H.R. 4173 and through the personal efforts of Members of Congress like Congressman Frank, Congresswoman Waters, Congressman Xavier Becerra and Senator Bob Menendez, have made great efforts to prod the Executive Branch to focus on doing so.

Sadly, however, as we have again heard, these efforts have often fallen on deaf ears and only rarely have we seen successes.

I would like to digress a little bit from the rest of my testimony, which will be provided in writing, to mention that we have an amendment pending in the Senate to the financial reform bill which calls for the same provisions that for 20 years have applied to allow the FDIC to work with women- and minority-owned firms in certain contexts in connection with the resolution of thrifts to be extended to the banking industry, because today it is the banks that are failing, not the thrifts.

Last night, I heard for the first time that this amendment may actually encounter some opposition in the Senate and even from the Administration itself. Frankly, we do not understand. To us, this is a step backwards in our government's commitment to the advancement of women and minorities in this industry, and I would hope that the members of this committee would help us to bring this into law in the final legislation that emerges.

Thank you.

[The prepared statement of Mr. Loumiet can be found on page 77 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Wimbish?

STATEMENT OF VINCENT WIMBISH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF REAL ESTATE BROKERS (NAREB)

Mr. WIMBISH. Madam Chairwoman, Mr. Chairman, and members of the Subcommittee on Housing and Community Opportunity and members of the Subcommittee on Oversight and Investigations, first, I want to take this opportunity to thank Chairwoman Waters and Chairman Moore for their leadership in convening this joint hearing on minorities and women in financial regulatory reform, the need for increasing participation and opportunities for qualified persons and businesses.

I come before you today as president and chief executive officer of the National Association of Real Estate Brokers, the Nation's oldest minority trade association, formed in 1947, to ensure democracy in housing.

For more than 6 decades, NAREB has worked not only to promote sustainable homeownership for all Americans and African Americans in particular, but also to ensure that business opportunities are accessible and available for our realist members.

For the record, "realist" is the designation given to every NAREB member. Realists are predominately African-American real estate professionals representing the full spectrum of the real estate industry.

It is important to note that NAREB promotes and abides by the highest standards of professional integrity. We follow a strict code of real estate industry ethics. We require professional certifications and accreditations.

We advocate for public policies that protect and expand sustainable homeownership, and in keeping with today's proceedings, NAREB works tirelessly to open and to keep open the doors of economic opportunities for African Americans and other multi-cultural real estate professionals.

With this as a backdrop, I want to speak with some level of detail on NAREB's support for the incorporation of the office of minority and women inclusion in H.R. 4173, the Wall Street Reform and Consumer Protection Act, and the reasons we believe this provision is critical to ensuring economic opportunities for minority real estate professionals.

As you are aware, minority business development continues not to reach its full potential, whether due to intentional legislative omissions, unintended consequences of loose legislative language, or misinterpretations of rules, regulations, guidelines or laws.

Minority real estate professionals have virtually been locked out and shut out of the business opportunities made available through the Federal Government agencies.

A glaring example is the bundling of contract solicitations that limit a successful response to large, highly capitalized general market firms with a performance history of doing business with Federal agencies dealing with the financial crisis. Consequently, the solicitation requirements immediately bar minority- and women-owned businesses from participating in the bidding process.

This is particularly critical in regard to the recent legislation affecting reform of the financial services and investment industries, and while language was put forth by Chairwoman Waters to make

minority inclusion a legislative imperative, every best effort was not made in the legislation's final passage and implementation.

Again, much to the dismay of the minority business community, minority real estate professionals, minority financial services companies and other professionals were left outside the door without the benefit of legislatively mandated recourse.

I am here also to express concern with regard to the limited contracting opportunities with major financial institutions. Major banks, lending institutions and GSEs tend to ignore or overlook minority businesses when awarding contracts for asset and property management, appraisals, brokerage, development and commercial leasing business opportunities.

Again, these contracts are awarded to major conglomerates and real estate franchises that do not feel the need to include or to extend subcontracting or joint venture opportunities to qualified minority businesses, and when subcontracting opportunities are offered, the price points are so prohibitive that it is not financially feasible to perform the work required.

NAREB commends the leadership of these two subcommittees with the sincere hope that change is in the offing. One recommendation that I would like to leave with you today is the consideration of unbundling, breaking up the mega procurements that prohibit participation by minority businesses.

We specifically recommend reducing the size by 50 percent of government services and supply contracts awarded for financial, professional and real estate services.

Further, we recommend that a number of these contracts be at the \$1 million to \$5 million price mark, which we believe will significantly increase the number of minority bidders.

Additionally, these contracts need to cover smaller geographical areas. By taking these measures in addition to eliminating the current bonding requirements, minority business participation will rise.

As I conclude, I again thank Madam Chairwoman and Mr. Chairman for the opportunity to bring forth the concerns of minority real estate professionals. The over 60,000 African Americans in the real estate industry are counting on your support and your continued vigilance.

Thank you.

[The prepared statement of Mr. Wimbish can be found on page 82 of the appendix.]

Chairwoman WATERS. I would like to thank all of our witnesses on the second panel for coming today and sharing with us basic information that will help us to try and solve what appears to be an intractable problem of discrimination and exclusion.

I would like to further grant myself 5 minutes to ask you a few questions.

One of the most difficult processes to watch was what took place following the subprime meltdown here in this country, where the Treasury Department and the Fed, I suppose, had the opportunity to contract with minority and women professionals in the securities industry.

The way they handled that, you started to make some recommendations, and I think just before I gaveled your 5 minutes

were up, you started your recommendations, and I do not think I remember hearing them.

It was obvious that something wrong was taking place. I see over 87 contracts, 14 of them fall within the category of small, women, minority, so we do not know how many were African American or how many were Latino or Asian for that matter. That lumped into this 14 all of that.

You mentioned something about perhaps no big contracts or unusual and extraordinary requirements for how much money you had to have under your control, etc.

Could you reiterate for us one or two recommendations if we had to do legislation that would prevent that kind of exclusion through rules and regulations that are made up by these regulatory agencies?

For you, Mr. Graves?

Mr. GRAVES. Thank you, Chairwoman Waters. I would submit to you that there are two things that we think would get to the heart of this.

First, tie compensation, bonus pay, and evaluation of the various agencies and departments to their level of inclusion for minority- and women-owned firms. We think that will go a long way to getting their attention and putting some teeth and commitment behind the need to increase the level of contracting and exposure with women- and minority-owned firms.

Second, we would offer that agency heads should sign some form of commitment on an annual basis as they report to Congress or report to the various authorities that they have made or are in concert with the law, with the current law if it passes, the inclusion amendment, so that the heads of these agencies are on record as committing and actually putting in place and hiring or contracting with minorities and women who are in the securities industry.

We think those two things would go a long way.

Chairwoman WATERS. Mr. Loumiet, you mentioned something that has been bothering me for a long time, and that is the lack of minority involvement in public pension funds. We really do need to do something legislatively.

Do you have any concrete suggestions or is there something you could send me on what you think we can do to open up this? This is so unfair.

Mr. LOUMIET. I agree. Congresswoman. I will be delighted to send you something in writing on behalf of the NAA, and we will consult with some of our fellow organizations represented here before doing so.

Chairwoman WATERS. Thank you. Mr. Wimbish, many minorities have talked about unbundling for years, and we have not done it. We need to do it. This business such as we saw in TARP of requiring minimum assets under management of \$100 billion or \$25 billion, respectively, whether it is in the Treasury Department or other agencies of government, these kinds of requirements do nothing but exclude. Certainly, that is too much.

I see some of your recommendations going to how we could deal with a smaller amount. I would like to have further written advice from you on this and some discussion. I think we need to move aggressively with legislation in that area also.

Finally, let me just say to Mr. Chaparro that I started to meet with some real estate professionals. I want to meet with your association, the Association of Hispanic Real Estate Professionals. We have started to contact the banks and bring them out to talk about what they are doing. We know what they are doing.

For example, the REOs are not being listed with minorities. Number two, when they are listed with minorities and minorities are making the offers that their clients are giving them to offer on the properties, they are not taking them even if it is more than the speculators are getting.

The speculators are speculating on large numbers of properties, maybe 10, 15, 20, 30, 50, what-have-you. They are way under market value and they are cutting out the real estate brokers and the small ones, for example.

Then there is another broker organization that is out there that calls itself the Association of Real Estate Brokers for REO properties who have direct connections with these banks and they have a limited number of people that they will allow into their association, which eliminates for the most part minorities.

We have a handle on this. We are going to break this up. What they are doing is they are squeezing these communities where real estate professionals have been working for years and have been responsible for buying and selling, and it is an important economic engine in our communities that is being cut out.

I would like to meet with your association and I would like to bring the bankers in, just as I am doing with consolidated Realtors in the L.A. area, to talk about how we do this. While everybody is opposed to any kind of pure affirmative action, we are looking at zip codes.

It does not make good sense, for example, in South Central L.A., for the real estate brokers out of Beverly Hills to be getting the listings and the people who live and work there not getting them.

We are onto that. We get it. We understand it. As a matter of fact, some of us understand all of this. We need to have you on record in terms of your knowledge and your experience about what has happened in your industries.

With that, my time has expired. I am going to turn to my colleague on the other side of the aisle, Ms. Biggert, for her questions.

Mrs. BIGGERT. Thank you, Madam Chairwoman. I am sorry I missed the first panel due to being on the Floor.

I think it was Mr. Loumiet talking about how much has not been accomplished since 2004. As I recall, in the year 2000, I was a co-sponsor with Representative Velazquez on a bill, the Equity in Contracting for Women Act of 2000. I would have to say that not much has happened since then either.

The bill was really to work with the SBA and the SBA was going to have the regulations. This was really in the Small Business Committee, but it was to give women more opportunities to get into the businesses.

The bill went forward but the regulations and everything were not drafted. It was for creating the women's procurement program to help women successfully compete for government work. It boiled down to finally they said there were only four types of categories and it would limit the women to those four categories. That was

national security and international affairs' coding, engraving, heat treating and allied activities, household and institutional furniture and kitchen cabinet manufacturing, and then other motor vehicle dealers.

I think Representative Velazquez's opinion was that women were only to be in the kitchen cabinet business or in the kitchens, I guess.

I was a co-sponsor of it. We are still sitting here.

Maybe my question would be even when we do the bills, we are not getting that message out. I have to say when I went to law school, I was told I was taking the place of someone who belonged there—a man. I went anyway.

I also thought I wanted to get an MBA. I wrote for an application from the universities. I got back a letter saying we are sorry, we do not take women into the business school. You could take a few courses if you wanted to.

Unfortunately, I scrunched that answer up so I cannot use it to show what has happened since then. I have to say in law, it is 51 percent or over now are women. It took a long time and it took a long time in the educational field.

How long is it going to take us in the business world to do that? If you could just give me one thing that you think would work to improve this. It might be the bill. I do not know.

Mr. LOUMIET?

Mr. LOUMIET. Unfortunately, Congresswoman, I do not think there is a magic bullet. I just think that everybody who cares about this issue of some day having an industry that at all levels looks like America just has to keep working. It is going to take an awful lot of effort to get there.

I will be very honest with you. There are many times when I deal with the Executive Branch, different agencies of the Executive Branch, and I wonder, who do they think they represent? It is not clear to me that they think they represent all of the country. That is very disheartening, but frankly, we do not have a choice but to keep moving forward because we all believe in this cause, as you did when you tried to enact your legislation. We just have to stay on top of them.

Mrs. BIGGERT. Ms. Bethel? Not the silver bullet but in a nutshell, what do you think we should do?

Ms. BETHEL. All the problems that my fellow panelists have cited, in fact, in my written testimony, I talk about the bill that you co-sponsored with Representative Velazquez, and what happened with the SBA.

In fact, I think the U.S. Women's Chamber even had to sue the SBA. That is almost comical when you think about it.

I think, to paraphrase the young lady—I do not think you heard it from the GAO.

Mrs. BIGGERT. No. I did miss your testimony, too. I am sorry.

Ms. BETHEL. It has to start at the top. If your boss cares about it, you care about it. I do not know how much plainer to put that. Until they care about it, like the general counsels, when you go and see them, we have always used brand name firms. Yes, and we can pay them \$700 an hour, and all the firms and the organizations

that I represent, being a lawyer, you understand, we are all AV rated, every firm, every member.

Let's talk about \$400 an hour, \$500 an hour, versus \$1,000 an hour, what some of the firms have gotten. It is just a constant. The general counsel cares about diversity. The people who report to the general counsel care about diversity.

If the person in charge of asset management, whatever title, cares about diversity in asset management, there is going to be diversity in asset management.

Mrs. BIGGERT. Thank you. Would anybody else like to comment? Mr. Boston?

Mr. BOSTON. Yes. I have just a couple of things that I would mention very briefly that I think are very important, particularly since this person is going to be endowed with both responsibility and the authority to track the performance of these agencies, so in that regard, and I have looked at agencies from all levels of government, and here is what happens.

When that tracking process starts, it is important beforehand to have some agreed-upon procedures. In other words, what is being tracked, what information is being captured, how that information is being measured.

You can come up with different percentages if you have a different denominator. What we found is when corporations report their diversity usage, it varies, and it varies because they are using a different subset. That is the first thing.

Secondly, it is also important, and you just mentioned it, that there be some way of identifying the supply chain, where in the supply chain are these firms being used. Some firms, if they want to achieve a goal, they can achieve a goal by hiring maintenance firms. There is nothing wrong with that. That may be completely outside of the scope of their value-added supply chain. That is important.

How do you define the good faith efforts and how do you determine whether or not a firm has made good faith efforts, and finally, second tier contracting. There are some, for example—I have worked with some businesses in the financial services industry who say we have a threshold, we do not deal with minority businesses with less revenue than \$10 million. That excludes most of them. They can deal with them through second tier subcontracting.

Are there procedures also to capture the use of firms that a prime financial institution will mandate on a subcontractor that is passed down to a second tier subcontractor.

Mrs. BIGGERT. Thank you. I see my time has expired. I yield back.

Chairwoman WATERS. Thank you very much. Mr. Watt?

Mr. WATT. Thank you, Madam Chairwoman. Let me start by apologizing to the last two witnesses. I had to step out but I was in the back room multi-tasking, meeting with some people and listening to your testimony. I appreciate having an opportunity to hear you.

Mr. Wimbish, we actually had a pretty aggressive initiative going with Fannie and Freddie before they kind of went south and got put into conservatorship. We were not ever satisfied with the amount of minority contracting and hiring and staffing and what-

have-you they were doing, but my impression is they were doing a heck of a lot better than they are now.

Is my impression wrong or right?

Mr. WIMBISH. Congressman Watt, you are probably correct. The opportunities at Fannie and Freddie now, they have informed us they do not make the decisions, that the conservator, FHFA, the Federal Housing Finance Agency, is making most of those decisions.

Mr. WATT. Who is the responsible party at FHFA? That is the Federal Government, is it not?

Mr. WIMBISH. Yes.

Mr. WATT. To the extent that they are not doing very well, it is our own Federal Government we ought to be putting the pressure on, I take it, is what you are saying.

Mr. WIMBISH. Yes.

Mr. WATT. Is anybody tracking minority contracting there? Who was it who testified? Mr. Graves, I think, testified that we are due some reports that we are not getting. That is in your written testimony also, is it not?

We should try to crank up a letter, Madam Chairwoman, to FHFA saying they are not complying with the law.

Are they exempt from the law because they went into conservatorship? Mr. Graves?

Mr. GRAVES. To my knowledge, no, that is not the case. They are bound to uphold the law.

Mr. WATT. Your observation, Mr. Wimbish, and you, too, Mr. Graves, I guess, if you have been watching this, is that they are not doing very well in terms of contracting or staffing or any of the other criteria that we used to try to hold them accountable for?

Mr. GRAVES. That is exactly right. Back in 1992, they started what was called the Access Program, which allowed participation for minority- and women-owned firms in a piece of their debt issuance, if you will, but it was only a small amount.

To my knowledge, that program still exists. It has not grown. In 1992 dollars, if you think about it, many of the firms or many more firms—firms have obviously gotten larger as the overall economy has, but their efforts are sort of stuck with respect to that particular program in 1992 levels.

Mr. WATT. I hope we have consensus here to try to generate a letter to FHFA to try to hold them more accountable on this. If we do not hold them accountable, nobody else is going to do that.

Ms. Bethel, my impression is this thing we called in the law “the chilling effect” has been at play fairly substantially ever since *Adarand* was decided. A lot of folks just say, well, you know, we cannot do minority contracting any more because the courts will not let us do that.

Is my impression there wrong?

Ms. BETHEL. You are absolutely correct.

Mr. WATT. Is it your understanding that the *Adarand* case has anything to do with the Federal Government?

Ms. BETHEL. It has something to do with it. In the industries that we are talking about, underutilization, you do not even need to do a study.

Mr. WATT. Do you not have to have a benchmark under *Adarand*?

Ms. BETHEL. Yes, *Adarand* at least says—to some extent it can be read to say that you have to have some demonstrated reason for engaging in the “preferential treatment.” We are talking about legal services, professional services, asset management services.

They have never used so. They could not even find the bench to establish the benchmark. That is my opinion.

To the extent that you use *Adarand*, let’s be clear that the kinds of things we are talking about, the government has never used us. We have been here. The government has never used us. That is not a legal excuse, although I am sure you will get told that.

Mr. WATT. Madam Chairwoman, my time has expired. I did want to tell the gentleman whose name I cannot pronounce, from Hunton & Williams—

Mr. LOUMIET. “Loumiet.”

Mr. WATT. Yes, Mr. Loumiet. Congratulations. You probably did not know this, but my good friend, Frank Emory, who is one of your associates, one of your partners down in the Charlotte office, was just honored by the Chamber of Commerce locally. He is doing very well.

Mr. LOUMIET. He is a terrific person. Thank you for telling me. I had not heard that.

Mr. WATT. I yield back.

Chairwoman WATERS. Thank you very much. Mr. Cleaver?

Mr. CLEAVER. Thank you, Madam Chairwoman. *Adarand* impacts mainly municipal and county governments. It is not applicable here. It was not designed for the Federal Government, which I am glad, because the Federal Government is worse than municipalities and counties.

Ms. BETHEL. Absolutely.

Mr. CLEAVER. What I am concerned about is what can we do? Apparently, legislation does not work. Apparently, meeting with the heads of all of the regulatory agencies did not work because we did meet with them on more than one occasion and heard them all say it is going to be fine, we are going to do our part, and then obviously, you would not have taken the time out of your day to be here if they had done their part. They have not.

Is it a question of qualification?

Ms. BETHEL. If I can take that part for what I said, the firms that we present have the highest rating available to lawyers, that is the Martindale-Hubbell AV rating. I do not know how an argument could be made—we are not the only firms that have that rating. That is the group that I represent.

I do not see how a credible argument can be made that they are talking about competency. I think Mr. Graves talked about independent third party measurement or evaluation of the portfolio management, and how the minority firms excel.

We are not talking about qualification.

Mr. CLEAVER. Mr. Graves, is there any explanation beyond the obvious when we talk about the fact that the minority- and women-owned broker-dealers who were admitted to the TALF program were not able to complete a transaction before the expiration of the program?

Mr. GRAVES. By the time the minority- and women-owned firms were actually approved for their TALF certification, it was 1 month after the larger majority-owned firms, and by that time, all of the clients, the borrowers ultimately, who would have utilized the structure had gone through a pretty rigorous review process related to their ability to pay back or borrow funds from the Federal Reserve to basically purchase those securities.

The process was already completed by most of the major clients and therefore, when the minority firms got involved, they were not able to access the same clients, plus there was a pretty onerous approval process; the Federal Reserve wanted the minority firms to back stop or guarantee if their client did not perform. That was a pretty onerous requirement as well.

Mr. CLEAVER. Were any of the regulatory agencies easy to work with? Is there one that shined brighter than the others? Were all of them pale?

Mr. GRAVES. They are all in various forms relatively difficult. We have had a reasonable relationship with Treasury. There is one individual in Treasury who gets it, whom we have been working with actively, and who has gone out of his way to include us in various discussions and in contracting with our members to do business. Again, that is it.

Let me just add this point. I have done business as an investment consultant for one of the top five firms in the country. I have done business with corporate plans. I have done business with municipals. I have done business with Taft-Hartley plans. The Federal Government without question is the lowest on that list in terms of the ability for minority firms to do business. It is not even close.

It is a shame in this day and age that we are sitting here at this point. Everybody else sort of gets it. Granted, we are not where we need to be with other places, but we are lightyears ahead of where we are with the Federal Government.

Mr. CLEAVER. We are ahead in the NBA. Outside of basketball, I am trying to figure out what we need to do. Is there anything that you can recommend for us that would be helpful to you? Any of you? Mr. Boston?

Mr. BOSTON. Congressman, I think the position that is conceptualized within the financial services agencies is the right way to do it because it gives the authority at the top and then it also endows that person with monitoring responsibility.

If there is a way that person then is held to the standards that the position calls for, I think you begin to have the elements. What happens, over the period of time when the data are collected, you have information that you then can make modifications or make stronger interventions if needed in order to ensure remedies for minority- and women-owned firms that are excluded.

That is really what the court says. The court says you should capture data, you should monitor that data and determine whether or not there is exclusion before you take an even more aggressive step.

This program, I think, is set up in such a way that it really conforms with the case law in this area.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Chairwoman WATERS. Thank you. Mr. Green?

Mr. GREEN. Thank you, Madam Chairwoman. I thank the witnesses as well. I am sorry that I did not get to hear all of your testimony. I am sure all of you heard me. You probably have some sense of what I think about what we are doing.

I am concerned about those at the top. I am concerned that we do not have a system that fairly evaluates those at the top because the tone and the tenor are set by the people at the top.

If you never evaluate the top, you never get to the people who actually make things happen.

If you walk into an office and you see diversity, probably the person at the top has made diversity an issue, because it is so easy to just do other things and allow things to just kind of happen.

My concern is, how do we deal with the people at the top? You would probably say well, that is your job, Congressman, how are you going to deal with them? I want to know about your experiences with the people at the top. We have to at some point evaluate people at the top.

Ms. Bethel, do you have some comment that you would like to make? By the way, I am beyond the capable, competent, qualified, people who say we cannot find anybody. I am beyond that. We will go on and try to provide empirical evidence of persons who can do things, and that is a wonderful thing, but we know there are capable, competent, and qualified people.

We also know there are people who are capable, competent and qualified with money who would like to make investments. I have had bankers come to me and complain that they are ready but they cannot do business.

It says to me we have some leadership problems that have to be addressed. What I want to do is hear from you. Eventually, they all sit where you are sitting. It will accord me an opportunity to ask some of the questions that are important for us to continue this process of moving in the right direction.

Ms. BETHEL. Sadly, the private sector in terms of lawyers and legal services is doing a better job than the Federal Government. There are probably 30 to 40, maybe 50 now, major Fortune 100 companies that signed on to a call to action for the utilization of minority- and women-owned law firms and minority partners in majority law firms, and this is starting at the top.

I do not know what makes one of similar skills, a head of a government agency, not see both the business and the compelling reason for doing that.

A comparison between the Government Assistant Secretary or Secretary and General Counsel with his or her counterpart in commercial, and I can get you a list of the companies and the commitment they have made in terms of their utilization for the next two or three business cycles, that might be a place—

Mr. GREEN. Has that comparison been codified? Is it there? Do we have a study?

Ms. BETHEL. No. We have not. The call to action is about 2 years old. To my knowledge, there has not been a study. We can certainly provide the commitments that the companies have made. I do not know that we have now yet gathered the data to say who has lived up to that commitment.

Mr. GREEN. Anyone else? Yes, sir?

Mr. CHAPARRO. I will tell you, the stakes are high in the sense that the minority practitioners are vested in the community, when we were talking about the REOs. The minority practitioner is living in the community, is vested in the community, and can help bring first time home buyers in neighborhoods that need them to be there.

What we feel is the reporting requirements of these agencies need to be strengthened and possibly even reporting directly to Congress. It was said in this meeting that when it is reported, it generally happens. We are eager to see this bill and we are backing this bill.

Mr. GREEN. Thank you for backing it. How important is this aspect of the bill, the office of inclusion? Is it so important that if it is not in the bill, the bill is incomplete to the extent that one might say it is flawed and should not go forward? How important is it?

If the bill comes forward and it is not there, there will be those who will talk about how we have to do what we have and there will not be a lot of talk about how we are going to get these other things included.

How important is it? Anybody. Tell me quickly, if you would. How important is this to the bill?

Mr. BOSTON. Congressman, I think it is indispensable to the integrity, credibility, and validity of the bill.

Mr. GREEN. Because my time is up, if you agree it is indispensable, I hate to treat you this way, but would you kindly extend a hand into the air, just so I can get a quick reading.

[show of hands]

Mr. GREEN. Let the record reflect that all assembled have raised their hands and see this as indispensable to the bill.

Madam Chairwoman, I apologize for going over. I yield back.

Chairwoman WATERS. Thank you so much. We have been joined by Representative Hinojosa. Without objection, he will be considered a member of the subcommittee for the duration of this hearing, and I will call on him for 5 minutes of questioning.

Mr. HINOJOSA. Thank you, Madam Chairwoman. My first question would be to Ms. Bethel. In light of the fact that only 2.4 percent of all minority- and women-owned firms are in the finance and insurance industries, what type of educational programs should we offer to empower minority- and women-owned businesses?

Ms. BETHEL. It is a very good question. I think it has to begin—we have to strengthen and encourage, particularly as it concerns women. I think it is demonstrated that women do less well in certain academic areas than their male counterparts, certainly in high school and grade school. I think that is true probably in minority communities where if you are trying to get the basic ABC's, sometimes there is not a lot of educational opportunities for some of the other endeavors.

I think we have to strengthen it. I think it is some of our responsibility to go back and make sure that we counsel and guide and tutor and mentor our young people as to what this means and what the wave of the future is, and I think it is on our universities and our colleges. They, too, have to take an active effort. A lot of times people coming out of minority communities are not aware of these

careers. They have never seen a stockbroker. They have never seen an asset manager.

It is a societal responsibility, in order to start early and often, to apprise young people—

Mr. HINOJOSA. If I may interrupt, because they only gave me 5 minutes, I agree with you that it is a societal responsibility. Before I ask the next question, note there has been a change in what you thought was the case, that men were doing better. We are graduating more women from high school and many more women from college in the last 5 years than men.

I want to ask my next question to Mr. Alexander Chaparro, president of the National Association of Hispanic Real Estate Professionals. What have been your association's members' experiences in working with States and local governments with regard to the neighborhood stabilization program and have your members obtained any contracts to market the NSP properties?

Mr. CHAPARRO. That is a great question. It is one that many of our members have been eager to be involved with because it directly impacts the communities, and NAREB's strength has been with our 65 chapters throughout the country within the communities.

We have had a few, from what I am aware of, we have had one of our members who has had a meaningful contract. Not enough. We feel the opportunity is great to revitalize our communities and we would like to be able to make sure that the minority practitioner is involved in rebuilding the communities that we live in.

We have had some members and we are proud of them, but I think there is more ground for us to tread, and I would be happy to provide you a report of where we are.

Mr. HINOJOSA. Do you think they might be able to do better if they got technical assistance as they prepare the applications to be competitive?

Mr. CHAPARRO. I think it can be helpful, but many of our members who are applying are very capable. We had talked about the qualifications. These are top notch individuals who have been in the field—

Mr. HINOJOSA. Would you say the readers of the applications, since they are competitive, are possibly not being fair to your members?

Mr. CHAPARRO. We definitely feel that the process in multiple layers that we have discussed in this panel are broken, that need to be addressed. I am proud to be here today with this distinguished panel because that is what we are talking about, fixing a process that needs to be fixed because the people who—

Mr. HINOJOSA. We definitely are going to look into it. I want to ask one more question to Mr. Graves. Given the unprecedented number of banks that have failed and the resulting assets now resident within the FDIC, can you please comment on the lack of minority- and women-owned firms' participation in those asset sales?

Mr. GRAVES. Yes. Essentially, what has happened is that the FDIC's barriers to entry for minority and women investors, minority and women bankers, are basically too high.

There are a number of programs or initiatives that can be undertaken to alleviate that, which will not violate what the FDIC consistently throws up, which is the least cost issue. The least cost, I believe, is mandated by law, that they cannot accept a bid that is lower in cost than they could otherwise get. Obviously, getting the highest price for the bank or the asset they are trying to sell.

What happens is you have a lot of parameters that are a lot larger or requirements that are a lot larger that minority and women investors and banks cannot meet. There are a number of examples which are in the testimony that we cite where there has not been a concerted effort to try to include minority- and women-owned businesses into the mix to be able to be effective purchasers of FDIC assets.

Mr. HINOJOSA. My time has run out. Those are interesting responses that all three of you gave me. Thank you.

Chairwoman WATERS. Thank you very much. Thank you, Mr. Hinojosa. I would also like to thank our witnesses who have appeared here today. I know many of you and the consistent involvement that you have had in trying to bring about justice and equality in the area of contracting and all the other areas you have mentioned here today, employment, etc. We appreciate your work.

The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

We do have some written submissions to be made a part of the record before we adjourn. The written statements of the following organizations will be made part of the record of this hearing: Dr. Derrick Hamilton of The New School, Minority Business Development Agency, an article entitled "Disparities in Capital Access Between Non-Minority and Minority Businesses," Real Estate Executive Council, and also contracting information from Section 105(a), and report to Congress.

With that, this hearing is adjourned. Thank you very much.

[Whereupon, at 4:39 p.m., the hearing was adjourned.]

A P P E N D I X

May 12, 2010

House Financial Services Oversight & Investigations Subcommittee
House Financial Services Housing and Community Opportunity Subcommittee

JOINT SUBCOMMITTEE HEARING

“Minorities and Women in Financial Regulatory Reform: The Need for Increasing Participation and Opportunities for Qualified Persons and Businesses”

Wednesday, May 12, at 2:00 p.m. in 2128 Rayburn House Office Building

Opening Statement of Chairman Dennis Moore

As the Senate continues debating financial regulatory reform and key issues such as increasing consumer and investor protections or ending “too big to fail”, I am pleased our two subcommittees are focused on something today that is “too important to ignore”, and that is the importance of increasing participation and opportunities for all qualified persons, including women and minorities.

I want to commend my colleague, Chairwoman Waters, for asking me to do this joint hearing with her on this important issue. She has been a vigorous defender of ‘equal protection under the law’, and ensuring all Americans, no matter who they are or where they come from, have a chance to do great things. She always contributes her ideas and works hard on every piece of legislation this Committee considers to make certain everyone has a fair opportunity to participate, and no one is shut out of the process.

For today’s hearing, I look forward to hearing from GAO, who issued an excellent report a few years ago entitled “Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004”. I look forward to hearing GAO’s observations and any update they can provide on this important report.

One concern I have is that women and minority-owned businesses were adversely impacted by the aftermath of the financial panic we saw in 2008, and the ensuing “Great Recession”.

I’m also concerned that in the administration of the TARP program, not enough focus was paid to who was getting the money. We need to review this and ensure that no one was shut out of the process to become a contractor or a recipient of TARP funds.

As the Senate debates financial regulatory reform, we need to make sure that diversity is considered and fully incorporated into the final bill the President will sign into law. Every financial agency – both the old and the new – must redouble their efforts and pay more attention to these issues and provide everyone within their agency a chance to move up and become the next Fed Chairman or Secretary of the Treasury. We owe that to all of our constituents, and we owe that to our children and our grandchildren.

Testimony of Pamela J. Bethel, Esquire

The O'Riordan Bethel Law Firm, LLP

Subcommittee on Housing and Community Opportunity

and

Subcommittee on Oversight and Investigations

May 12, 2010

"Minorities and Women in Financial Regulatory Reform: the Need for Increasing Participation and Opportunities for Qualified Persons and Businesses".

A. Background

NAMWOLF was established in July, 2001. NAMWOLF promotes true diversity in the legal profession by fostering the development of long-lasting relationships between preeminent minority and women-owned law firms and major corporations and public entities.

NMLG was established in 2005 to bring together a group of certified minority-owned law firms of at least 10 lawyers devoted to delivering legal services to corporate America on a national basis.

Membership of both organizations is comprised solely of Martindale-Hubbell AV Peer Review Rated law firms.

B. Government's Track Record

The Government's track record regarding the use of Minority and Women-Owned Vendors is poor.

FY2008 Contracting Misses Goal for Contracting with Women-Owned Businesses by Over Twelve Billion Dollars (\$12,000,000,000.00).

After more than a decade of failure to meet federal contracting goals with women, and nearly nine years of delay in the implementation of the Women's Procurement Program, the recently released FY2008 federal spending report shows that women-owned small businesses suffered the greatest opportunity loss in history. FY2008 federal spending with women missed the 5% goal for spending with women by 22% representing a shortfall of over \$12 Billion in just one year.

"Federal spending increased over \$300 Billion between 2001 and 2008, while the federal contracts secured by women-owned firms have seen shortfall after shortfall," said Margot Dorfman, CEO of the U.S. Women's Chamber of Commerce. "And now, with the release of the FY 2008 data, we find that women-owned businesses lost over \$12 Billion of opportunity in FY2008 as the federal government failed to meet the remarkably low goal of five-percent for contracting with women-owned small businesses. For more than ten years, the federal government has failed to meet their own goal, and for more than nine years, the Small Business Administration has failed to implement the Women's Procurement Program which was established by Congress to assist federal agencies to overcome this tragic shortcoming," added Dorfman.

In 2005, the U.S. Women's Chamber of Commerce won a lawsuit against the U.S. Small Business Administration for failure to implement a law passed in 2000 to provide a targeted set-aside program for women-owned businesses seeking federal contracts. This set-aside was established to help end the disparity in contracting faced by women. Even though women own nearly 30 percent of all businesses in the United States, in 2007, they received only 3.41 % of federal contracts

The ranking Democrat on the House Small Business Committee, Rep. Nydia Velazquez (NY), called SBA's statement "the same story over and over again."

President Clinton signed the Women's Procurement Program into law on Dec. 21, 2000. It allows set-aside contracts "in industries historically underrepresented by women-owned small businesses."

In its May 25 statement SBA said it will "request proposals for undertaking the industry-by-industry study, as recommended by the NAS, needed to determine those industries where women-owned small businesses are underrepresented and substantially underrepresented."

Velazquez remarked, "It took a year to do the study and now, three-and-a-half years later, they are studying the study."

Congress has set a goal of awarding 5% of federal prime contract dollars to woman-owned firms, but their share was less than 3% through fiscal 2003.

"Talk is cheap," the Women's Chamber CEO, Margot Dorfman, said. "We don't need your special SBA women's awards, special SBA women's newsletters and publications with pictures of happy women and endless women's events. What we need is for the Small Business Administration to implement the law."

Federal agencies could set aside contracts for women-owned businesses in up to 31 industries, under a new rule issued by the Small Business Administration.

That's an expansion from the four industries originally proposed for the set asides, but groups representing women-owned businesses contend the rule still falls far short of what is needed to give women their fair share of federal contracts.

The SBA's original proposal not only limited contracting set-asides to four narrow industries, it also required agencies to find that they had discriminated against women-business owners before

implementing the program.

Groups representing women business owners, as well as members of Congress, urged the SBA to withdraw the rule, so a new administration could draw up a more expansive rule next year.

The final rule represents "a vast increase in the number of industries eligible" for the program, Baruah said. The additions range from architectural/ engineering services to waste treatment and disposal. In addition, agencies will no longer have to find they actively discriminated against women-owned businesses in order to set aside contracts for them. Critics said agency officials would be hesitant to admit this out of fear it would open the agencies to discrimination lawsuits.

Under the revised final rule, agencies will have to find only that they spent money in an industry where women were discriminated against. How they go about making that determination is up to each agency, Baruah said.

Dorfman said this kind of determination is not required for any other contracting set-aside program, and she sees no benefit in the SBA's changes to this requirement.

Ann Sullivan, a lobbyist for Women Impacting Public Policy, said the agency discrimination requirement remains "the most onerous part of the rule."

The SBA contends set-aside programs for specific groups must be narrowly tailored to remedy actual discrimination in order to survive constitutional challenges.

"There are folks who just want us to launch a set-aside program, but neither the executive branch nor the legislative branch can just unilaterally launch a set-aside program," Baruah said.

Women-owned businesses received 34% of federal contracting dollars in fiscal 2007, well below Congress' goal of 5%. Contract set-asides are the only way women will ever hit this goal, according to women's business groups. Failure to hit this goal is costing women-owned businesses up to \$6 billion a year, they say .

"Had the SBA chosen to implement a meaningful program, this stimulus could have resulted in positive growth of women's businesses, which is sorely needed at this time," Sullivan said. The program should be open to women in far more than 31 industries, she added.

Sen. John Kerry, D-Mass., agrees. "Interpreting just 31 out of more than 100 industries as underrepresented is insulting and hardly an improvement from the SBA's earlier ruling," said Kerry, who heads the Senate Small Business and Entrepreneurship Committee. He contends the agency "has subjected this program to a level of review that is not required by any constitutional standard."

C. Specific Recent Examples

The Emergency Economic Stabilization Act, October 3, 2008 ("EESA") requires the Treasury Secretary to develop and implement standards and procedures to ensure, to the maximum extent practicable, the inclusion and utilization of women and minority owned businesses.

In practice, that has not happened. To date, such diverse businesses have been excluded from

providing services in any meaningful fashion. Recent history has demonstrated, however, that there is still the compelling need to ensure federal contracting opportunities originally envisioned by the provisions of the Federal Acquisition Regulation.

Both NAMWOLF and NMLG member firms have submitted credentials directly to Treasury and they have offered services directly to law firms already retained by Treasury. While tens of millions of dollars in legal service contracts have been awarded by Treasury under TARP, no significant dollar amount has been allocated to diverse minority and women-owned law firms.

D. Proposed Solutions

HR 4173 Section 1801 (passed by House and now pending with Senate: Requires Treasury to establish an "Office of Minority and Women Inclusion" that would ensure, to the maximum extent possible, the inclusion and utilization of minorities and women, and minority-and women-owned businesses in all procurements issued by the financial regulatory agencies as well as contracts issued by commercial concerns that relate to any assisted institution.

There are ample opportunities, and historical precedent, for diverse firms to be included in the substantial legal work arising out of the National Credit Crisis. During the Savings and Loan crisis of the 1980s and 1990s, the Resolution Trust Corporation ("RTC") required contractors, including law firms, to partner with diverse firms as a way of achieving inclusion. Like this crisis, the RTC hired many private law firms to assist the government in its work. Those law firms were not simply allowed to staff the projects in their normal fashion, but they were required to joint venture with diverse firms on each assignment. The result was that the work was performed successfully and cost effectively. In addition, many diverse firms gained exposure and expertise that would have been denied them. Many have grown into the NAMWOLF/NMLG members they are today.

Work with existing OSBDU's. Every federal agency has an "Office of Small & Disadvantaged Business Utilization" ("OSBDU"). Every Agency's OSBDU has a Director. This would be "far easier on the Budget" (as stated by Senator Inouye's Legislative Asst):

Treasury's OSBDU assists, counsels, and advises small businesses of all types (small businesses, small disadvantaged business, women-owned small businesses, veteran owned small businesses, service disabled veteran owned small businesses, and small businesses located in historically underutilized business zones) on procedures for contracting with Treasury.

Federal Office of Small and Disadvantaged Business Utilization Directors Interagency Council ("OSBDU Council") is an informal organization of Federal small business program officials that comes together monthly to exchange and discuss information on acquisition methods, issues and strategies; small business program initiatives and processes; and small business related outreach events that permit their respective agencies to increase their utilization of small businesses as prime and subcontractors to meet their annual requirements for services and goods.

The OSBDU Council is led by the Directors of the Federal OSBDUs who individually work closely with the U. S. Small Business Administration in the implementation of the Federal small business contracting programs.

Thus, there is already in place a mechanism to coordinate work from federal agencies (Treasury and Commerce in particular) to diverse businesses. BUT policy is set from the top down!

Small businesses are the largest employers in the U.S. Small business should be supported and nurtured because they will lead the jobs recovery which is desperately lacking as Wall Street leads itself out of the recession!

Appointment of a person in White House responsible for small, minority and women-owned businesses.



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May 12, 2010

Honorable Maxine Waters, Chairwoman
Subcommittee on Housing and Community Opportunity
Rayburn House Office Building
US House of Representatives
Room 428(A)
Washington, DC 20510
Attn: Amanda Fischer

RE: Joint Hearing on "Minorities and Women in Financial Regulatory Reform"

Testimony of: Thomas D. Boston, Professor of Economics, Georgia Tech and CEO of EuQuant

Honorable Chairwoman Maxine Waters, Hon. Chairman Dennis Moore, and Hon. members of the Subcommittee on Housing and Community Opportunity and the Subcommittee on Oversight and Investigations; I am deeply honored to have been invited to testify before you about the importance of minority and women business inclusion in financial regulatory reform. Chairwoman Waters and Chairman Moore, I am a great admirer of your work to create a level playing field for all American business owners and individuals. I especially support this effort to promote greater business and employment opportunities in federal contracting for minority and women-owned businesses. The proposed "Office of Minority and Women Inclusion" as reflected in H. R. 4173, The Wall Street Reform and Consumer Protection Act, can be an effective and creative way to help level the playing field.

My name is Thomas "Danny" Boston, and I am testifying today as a Professor of Economics at Georgia Tech and as CEO of EuQuant; an economic consulting company that specializes in, among other things, research on small and minority-owned businesses. I have written or edited six books and many scholarly articles on topics related to minority-owned businesses and community economic development. I have also prepared a large number of reports on these subjects and currently provide background research to congressional committees that are seeking to improve the effectiveness of the country's procurement practices with minority businesses. One of the most important reports I have prepared is entitled, "Increasing the Capacity of the Nation's Small and Disadvantaged Businesses

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(SDBs)". The report does several things: it focuses specifically on 47,000 small business concerns that were registered with the federal government in 2007 (the study is currently being updated to 2010); it documents the national and local employment and income impact of minority businesses that are federal contractors; it measures the magnitude of discriminatory barriers that minority firms encounter even when their business related attributes are equivalent to the attributes of non-minority firms; and it makes specific recommendations for improving the effectiveness of the 8(a) and SDB programs.

A 2010 study, commissioned by the Minority Business Development Agency, documents the disparities encountered by minority businesses when they seek loans. The study found that minority firms, in comparison to non-minority-owned firms: are significantly less likely to receive loans; are more likely to receive lower value loans when they do, are more likely to be denied a loan, and are more likely to pay a higher interest rate when they receive a loan. For these reasons, they are more often discouraged and deterred from applying for loans.

In 2007, I conducted an empirical study of 47,254 small business concerns that were registered with the Central Contractor Registration system of the federal government; 39% of these firms were owned by members of members of minority groups. After controlling for differences in the attributes and industries of firms, I found that minority firms that participated in the SDB or 8(a) program had annual revenues that were \$2.8 million greater than were the revenues of minority federal contractors who did not participate in those programs. I also found that the revenue of SDBs (which includes 8a firms) would be \$900,000 higher if they were compensated for their work in the same manner as are similarly situated non-minority federal contractors.

Distinguished subcommittee members, I could consume all of my time talking about market disparities that minority firms encounter that are not encountered by non-minority-owned firms. However, over the next few minutes I would like to share a perspective that too often is missing from the national debate on minority businesses. Specifically, I would like to focus on the value proposition to the American economy of supporting minority- and women-owned businesses. I will not minimize the importance of leveling the playing field by providing remedies for past and present discriminatory treatment of minority and women business owners. Rather, I argue that, even if business disparities did not exist, America still has a compelling economic rationale for supporting the Office of Minority and Women Inclusion.

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The Value Proposition of Minority-owned Businesses

Honorable members of these two Subcommittees, I am certain it does not surprise you to hear that since 1992, 77% of all the country's new jobs have been created by businesses with 500 or fewer employees. It may however surprise you to learn that during the worst quarter of the last recession (Q1: 2009) small businesses added 82% of all new jobs and those jobs were concentrated in firms with 50 or fewer workers. As of the last business census in 2002, minority-owned firms comprised 18% of all US small businesses and their number is increasing at a rate that greatly exceeds that of non-minority-owned firms.

In 2007 there were 47,254 small business concerns registered with the federal government's CCR program (this excludes WOBs and VOBs). Of this number, 19,237 (or 40.7%) were minority-owned businesses-- even though minorities comprise only 18% of all US businesses. This means that minority firms are much more dependent upon federal contracting than are non-minority-owned firms.

The 19,237 minority businesses that were federal contractors had total revenues of \$43.5 billion and employed 287,482 workers in 2006. Of these firms, 6,758 participated in the 8(a) and SDB programs and 2,848 formerly participated in those programs. Their total revenue of active participants was \$19.2 billion in 2006. By actively participating in the SDB and 8(a) Programs, they added \$3.7 billion to GDP and created 86,038 jobs. These revenues and jobs would not have existed absent the program. Combined, current and former program participants added 124,000 jobs and \$5.5 billion to the US economy annually.

The study selected fourteen central cities for closer examination. The purpose was to identify the characteristics of the neighborhoods where these minority-owned federal contractors located their business headquarters. It was found that 31% of these minority businesses were located in high poverty areas (i.e. places where the poverty rate was 20% or higher). These communities have the greatest need for employment, income and economic development. In Baltimore and Philadelphia, 69% and 60% respectively of minority owned federal contractors located their businesses in high poverty areas. In Los Angeles and San Francisco, 31% located their businesses in high poverty areas.

The results document that minority-owned firms are more likely than are non-minority-owned firms to locate their businesses in low income central city neighborhoods, but they also tended to operate higher skilled ventures in these locations. In 2007, I conducted a national survey of 350 CEO of Black-owned small

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businesses with 10 to 100 employees. The survey found that 67% of the workforce of these companies was African American.

Honorable Chairpersons and Subcommittee members, the implications of these findings are clear. Minority-owned businesses add significantly to national output and employment; the lingering effects of discrimination in private markets has lead minority firms to rely more heavily on federal contracting opportunities than donon-minority firms; by participating in federal procurement programs such as the 8(a) and SDB Programs, annually these firms added almost \$6 billion to GDP and created 84,000 jobs; minority firms are more likely than are non-minority firms to locate in distressed areas of urban communities where unemployment rates are significantly higher—especially among minority populations; the quality of employment provided by minority firms in those locations exceed that provided by non-minority firms on average; and finally, we know that (at least for Black-owned businesses), two-thirds of their workforce is Black.

Given these facts, it is possible to argue that the most important rationale for the proposed Office of Minority and Women Inclusion has very little to do with social justice (although it addresses that issue). Much like the unemployment compensation act initiated during the Great Depression, this bill can be viewed solely on its merits as an effective approach to economic stimulus, poverty reduction, community revitalization and job creation among minority workers in distressed central cities.

Therefore, in closing Honorable Committee members, the provision of HR 4173 is much more than an attempt to achieve social equity. Rather, it aligns with the value proposition that minority businesses represent to America-- if they are properly and effectively supported through the federal contracting process. Thank you.

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United States Government Accountability Office

GAO

Testimony
Before the Subcommittees on Oversight
and Investigations and Housing and
Community Opportunity, House
Committee on Financial Services

For Release on Delivery
Expected at 2:00 p.m. EDT
Wednesday, May 12, 2010

FINANCIAL SERVICES INDUSTRY

Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008

Statement of Orice Williams Brown, Director
Financial Markets and Community Investment



May 12, 2010

GAO
Accountability Integrity Reliability
Highlights

Highlights of GAO-10-736T, a testimony to Subcommittees on Oversight and Investigations and Housing and Community Opportunity, Committee on Financial Services, House of Representatives

Why GAO Did This Study

As the U.S. workforce has become increasingly diverse, many private and public sector organizations have recognized the importance of recruiting and retaining minority and women candidates for key positions. However, previous congressional hearings have raised concerns about a lack of diversity at the management level in the financial services industry, which provides services that are essential to the continued growth and economic recovery of the country. The recent financial crisis has renewed concerns about the financial services industry's commitment to workforce diversity.

This testimony discusses findings from a June 2006 GAO report (GAO-06-617), February 2008 testimony (GAO-08-445T), and more recent work on diversity in the financial services industry. Specifically, GAO assesses (1) what the available data show about diversity at the management level from 1993 through 2008 and (2) steps that the industry has taken to promote workforce diversity and the challenges involved.

To address the testimony's objectives, GAO analyzed data from the Equal Employment Opportunity Commission (EEOC), reviewed select studies; and interviewed officials from financial services firms, trade organizations, and organizations that represent minority and women professionals. To the extent possible, key statistics have been updated.

View GAO-10-736T or key components. For more information, contact Orice Williams Brown at (202) 512-9678 or williams@gao.gov.

FINANCIAL SERVICES INDUSTRY

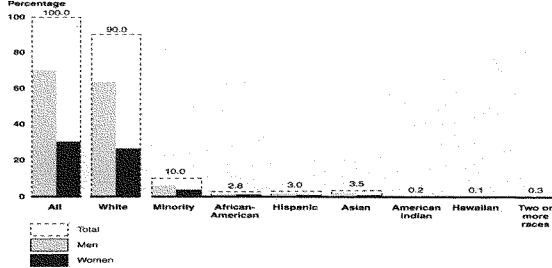
Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2008

What GAO Found

EEOC data indicate that overall diversity at the management level in the financial services industry did not change substantially from 1993 through 2008, and diversity in senior positions remains limited. In general, EEOC data show that management-level representation by minority women and men increased from 11.1 percent to 17.4 percent during that period. However, these EEOC data overstated minority representation at senior management levels, because the category includes mid-level management positions, such as assistant branch manager, that may have greater minority representation. In 2008, EEOC reported revised data for senior-level positions only, which showed that minorities held 10 percent of such positions compared with 17.4 percent of all management positions. The revised data also indicate that white males held 64 percent of senior positions in 2008, African-Americans held 2.8 percent, Hispanics 3 percent, and Asians 3.5 percent (see figure).

Financial services firms and trade groups have initiated programs to increase workforce diversity, but these initiatives face challenges. The programs include developing scholarships and internships, partnering with groups that represent minority professionals, and linking managers' compensation with their performance in promoting a diverse workforce. Some firms have developed indicators to measure progress in achieving workforce diversity. Industry officials said that among the challenges these initiatives faced were recruiting and retaining minority candidates, and gaining the "buy-in" of key employees such as the middle managers who are often responsible for implementing such programs. Without a sustained commitment to overcoming these challenges, diversity at the management level may continue to remain generally unchanged over time.

EEOC Data for Executive/Senior Level Officers and Managers in the Financial Services Industry, 2008



Source: GAO analysis of EEOC data.

Note: Percentages may not always add to 100 due to rounding.

Chairman Moore, Chairwoman Waters, Ranking Members Biggert and Capito, and Members of the Subcommittees:

I appreciate the opportunity to be here today to revisit our June 2006 report and subsequent 2008 testimony on diversity in the management level in the financial services industry and to discuss more recent information that we have gathered on this important topic.¹ As you know, the U.S. workforce has become increasingly diverse over the last several decades. As the composition of the workforce has changed, many private and public sector organizations have recognized the importance of recruiting and retaining minority and women candidates for key positions. In a 2005 report on diversity management, we stated that workforce diversity could benefit organizations in a variety of ways—for example, by allowing them to better meet the needs of a diverse customer base, reduce the costs associated with employee turnover, and increase staff morale.² However, some in the diversity management arena have raised concerns about the impact of the recent financial crisis on diversity initiatives in the financial services industry, which provides key services necessary to help restore growth and economic prosperity to the country. In hearings held by the Oversight and Investigations Subcommittee in 2004, 2006, and 2008, some witnesses stated that financial services firms—banks and securities firms, for example—had not made sufficient progress in recruiting and retaining minorities and women at the management level.³

¹GAO, *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2004*, GAO-06-617 (Washington, D.C.: June 1, 2006) and *Financial Services Industry: Overall Trends in Management-Level Diversity and Diversity Initiatives, 1993-2006*, GAO-08-445T (Washington, D.C.: Feb. 7, 2008). For purposes of this testimony, we focused on changes in management-level representation over time by gender and racial/ethnic minority groups, including African-Americans, Asians, Hispanics, and American Indians.

²GAO, *Diversity Management: Expert-Identified Leading Practices and Agency Examples*, GAO-05-90 (Washington, D.C.: Jan. 14, 2005).

³Diversity in the Financial Services Sector, Hearing before the Comm. on Financial Services, Subcomm. on Oversight and Investigations, 110th Cong., 2nd session, (2008); *Diversity: The GAO Perspective*, Hearing before the Subcomm. on Oversight and Investigations of the House Comm. on Financial Services, 109th Cong., 2nd session, (2006); and *Diversity in the Financial Services Industry and Access to Capital for Minority Owned Businesses: Challenges and Opportunities*, Hearing before the Comm. on Financial Services, Subcomm. on Oversight and Investigations, 108th Cong., 2nd Session (2004).

My testimony summarizes the key findings from our past work, which has sought to collect, analyze, and report data and information that provide insights into diversity in the financial services industry, and to provide updated data where available. Specifically, I will discuss (1) what the available data show about diversity at the management level in the financial services industry from 1993 through 2008, and (2) the types of initiatives that the financial services industry and related organizations have taken to promote workforce diversity and the challenges involved in these efforts.

To prepare our June 2006 report, we used the Equal Employment Opportunity Commission's (EEOC) Employer Information Report (EEO-1) data on financial services firms with 100 or more employees for the period from 1993 through 2004.⁴ The EEO-1 data provide information on racial/gender representation for various occupations, including "officials and managers," for a broad range of industries, including financial services. In updating our work in preparation for this testimony, we collected and analyzed EEO-1 data for financial services firms with 100 or more employees for 2005 through 2008. However, because EEOC began using an updated system for classifying industries, we cannot combine the two data sets to conduct a direct and continuous trend analysis of changes in the representation of minorities and women at the management level.⁵ Nevertheless, the 2005 through 2008 EEO-1 representation data for the financial services industry can generally be compared with the EEO-1 data for 2004 and prior years. For this testimony, we also used more complete EEO-1 data that EEOC began to collect in 2007 for senior management

⁴For the June 2006 report, we used the EEO-1 "officials and managers" job category as the basis for our discussion of management-level diversity within the financial services industry. EEOC defines the job category of "officials and managers" as occupations requiring administrative and managerial personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operation.

⁵Our June 2006 report describes our approach to reporting the 1993 through 2004 EEO-1 data, which used the Standard Industry Classification System (SIC). In preparing for the 2008 testimony, EEOC said that the previous approach would not be reliable for the 2006 EEO-1 data because the SIC had become increasingly unreliable over time and had been replaced by the North American Industrial Classification System.

positions.⁶ EEOC, as described in this testimony, began to report data specifically for senior management positions rather than combining the data with data for mid-level management positions as had been the reporting practice prior to 2008. Our past work also involved reviewing reports on the state of workforce diversity and initiatives to increase the representation of minority and women in financial services firms and interviewing academics and officials from a variety of financial services firms and trade and professional groups.

We performed these performance audits during the periods previously described and updated this work in May 2010, 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.

Summary

EEO-1 data indicate that from 1993 through 2008 overall workforce diversity in management positions within the financial services industry did not change substantially, and revised EEO-1 data that EEOC began to report in 2008 indicates that diversity in senior management positions is limited. As described in our June 2006 report, EEO-1 data show that management-level representation by minority women and men increased from 11.1 percent to 15.5 percent from 1993 through 2004. The revised EEO-1 data for the period 2005 through 2008 indicate that overall minority representation at the management level increased from 15.5 to 17.4 percent. This increase was largely driven by growth in Asian representation in management positions. Asian representation increased by nearly a full percentage point, from 4.7 percent to 5.5 percent over the period, while African-American and Hispanic representation remained stable at around 6.3 percent and nearly 5 percent, respectively. While the

⁶Beginning in 2007, EEOC divided the "officials and managers" category into two subcategories. The first one, "Executive/Senior Level Officials and Managers," includes individuals who reside in the highest levels of organizations and plan, direct and formulate policies, set strategy, and provide the overall direction of enterprises/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies. The second category, "First/Mid-Level Officials and Managers," includes individuals who receive directions from Executive/Senior Level management, and oversee and direct the delivery of products, services, or functions at group, regional or divisional levels of organizations.

EEO-1 data shows some increase in overall diversity in management levels from 1993 through 2008, in 2008 EEOC also began to report revised EEO-1 data for a new category specifically focused on senior-level executives and managers. The revised data indicate that the earlier data overstated the representation of women and minorities among senior executives. Specifically, the revised data indicate that minorities accounted for about 10 percent of all senior management positions in the financial services industry in 2008 while the broader measure was 17.4 percent. The revised data also indicate that white men held about 64 percent of senior management positions in 2008 while African-Americans held 2.8 percent, Hispanics 3.0 percent, and Asians 3.5 percent.

Although financial services firms and trade groups had initiated programs to increase workforce diversity, these initiatives faced challenges that may help explain why overall diversity at the management level has not changed substantially. Officials at financial services firms said that diversity was an important goal and that top leadership was committed to recruiting and retaining minority and women candidates. Some financial services firms had established scholarship and internship programs or partnered with groups that represent minority professionals. Officials from a few firms told us that they had begun linking managers' compensation and performance in promoting workforce diversity, and some firms had developed indicators (e.g., representation by minorities and women in key positions) to measure progress in achieving workforce diversity. Industry officials said that among the challenges these initiatives faced were recruiting and retaining minority candidates, as well as gaining the "buy-in" of key employees, such as the middle managers who were often responsible for implementing such programs. Without a sustained commitment to overcoming these challenges, diversity at the management level in the financial services industry may continue to remain generally unchanged over time.

Background

We defined the financial services industry to include the following sectors:

- depository credit institutions, which include commercial banks, thrifts (savings and loan associations and savings banks), and credit unions;
- holdings and trusts, which include investment trusts, investment companies, and holding companies;
- nondepository credit institutions, which extend credit in the form of loans and include federally sponsored credit agencies, personal credit

institutions, and mortgage bankers and brokers;

- the securities sector, which is made up of a variety of firms and organizations (e.g., broker-dealers) that bring together buyers and sellers of securities and commodities, manage investments, and offer financial advice; and
- the insurance sector, including carriers and insurance agents that provide protection against financial risks to policyholders in exchange for the payment of premiums.

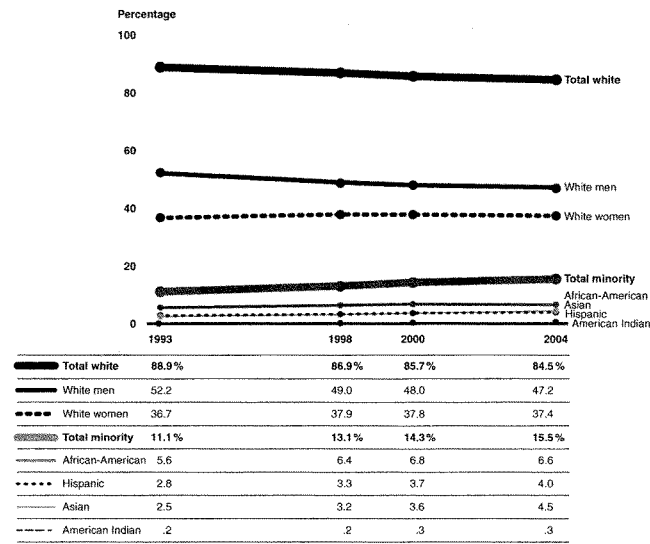
The financial services industry is a major source of employment in the United States. EEO-1 data showed that financial services firms we reviewed for this work, which have 100 or more staff, employed over 3 million people in 2008. Moreover, according to the U.S. Bureau of Labor Statistics, employment in the financial services industry was expected to grow by 5 percent from 2008 to 2018.⁷ Employment in the credit intermediation and related activities industry, which includes banks, is expected to account for 42 percent of all new jobs within the finance and insurance sector.

**Diversity in the
Financial Services
Industry at the
Management Level
Did Not Change
Substantially from
1993 through 2008,
and Diversity in
Senior Management
Positions Is Limited**

As discussed in our 2006 report, overall diversity in management-level positions did not change substantially from 1993 through 2004. Specifically, figure 1 shows that diversity in senior positions increased from 11.1 percent to 15.5 percent during that period. Regarding the change within specific groups, African-Americans increased their representation from 5.6 percent to 6.6 percent, Asians from 2.5 percent to 4.5 percent, Hispanics from 2.8 percent to 4.0 percent, and American Indians from 0.2 to 0.3 percent. Management-level representation by white women was largely unchanged at slightly more than one-third during the period, while representation by white men declined from 52.2 percent to 47.2 percent.

⁷Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 Edition, (Washington, D.C.: December 17, 2009).

Figure 1: EEO-1 Data on Trends in Diversity in the Financial Services Industry at the Management Level (1993, 1998, 2000, and 2004)



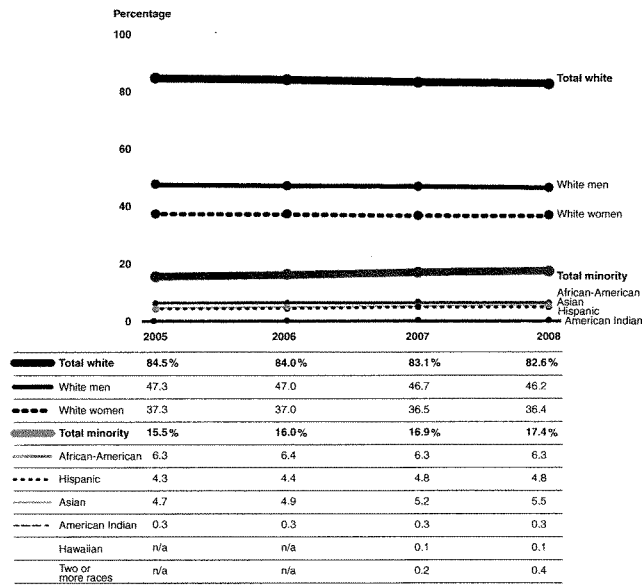
Source: GAO analysis of EEOC data.

Note: Percentages may not always add to 100 due to rounding.

Revised EEO-1 data for the period 2005 through 2008 show an increase in minority representation in management positions from 15.5 percent to 17.4 percent (fig. 2). This increase was largely driven by the growing representation of Asians in management positions—an increase of nearly a full percentage point from 4.7 percent to 5.5 percent during the period.

Meanwhile, African-American representation remained stable at about 6.3 percent from 2005 through 2008, while Hispanic representation increased by half of a percentage point from 4.3 to 4.8 percent. Management-level representation by white women and white men both decreased by about one percentage point from 2005 through 2008.

Figure 2: EEO-1 Data on Trends in Diversity in the Financial Services Industry at the Management Level, 2005 through 2008



Source: GAO analysis of EEOC data.

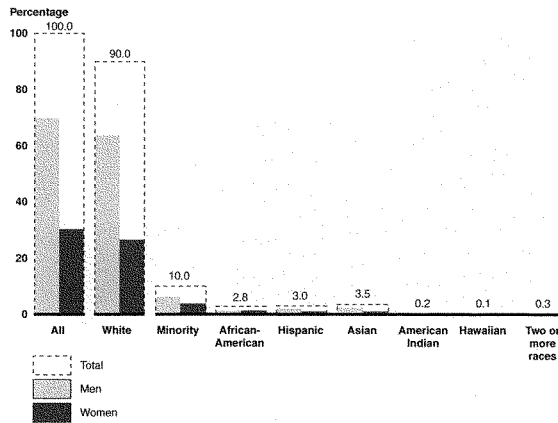
Note: Percentages may not always add to 100 due to rounding.

However, before 2008 EEO-1 data generally overstated representation levels for minorities and white women in the most senior-level positions,

such as chief executive officers of large investment firms or commercial banks, because the category that captured these positions—"officials and managers"—covered all management positions. Thus, this category included lower-level positions (e.g., assistant manager of a small bank branch) that may have a higher representation of minorities and women. Recognizing this limitation, starting in 2007 EEOC revised its data collection form for employers to divide the "officials and managers" category into two subcategories: "executive/senior-level officers and managers" and "first/midlevel officials."

EEOC's revised data, as reported in 2008, indicate that minorities accounted for 10 percent of senior positions in the financial services industry. As I discussed previously, the percentage in the broader data category was 17.4 percent. Moreover, as shown in figure 3, white men accounted for approximately 64 percent of senior-level management positions. In contrast, African Americans held 2.8 percent of such senior management positions, while Hispanics held 3.0 percent and Asians 3.5 percent.

Figure 3: EEO-1 Data for Executive/Senior Level Officers and Managers in the Financial Services Industry, 2008



Source: GAO analysis of EEOC data.

Note: Percentages may not always add to 100 due to rounding.

Initiatives to Promote Workforce Diversity in the Financial Services Industry Face Challenges

Officials from the firms that we contacted for our previous work said that their top leadership was committed to implementing workforce diversity initiatives but noted that making such initiatives work was challenging. In particular, the officials cited ongoing difficulties in recruiting and retaining minority candidates and in gaining employees' "buy-in" for diversity initiatives, especially at the middle management level. Some firms noted that they had stepped up efforts to help ensure a diverse workforce. However, the recent financial crisis has raised questions about their ongoing commitment to initiatives and programs that are designed to promote workforce diversity.

Financial Services Firms Implemented a Variety of Diversity Initiatives

Minorities' rapid growth as a percentage of the overall U.S. population, as well as increased global competition, convinced some financial services firms that workforce diversity was a critical business strategy. Since the

mid-1990s, some financial services firms have implemented a variety of initiatives designed to recruit and retain minority and women candidates to fill key positions. Officials from several banks said that they had developed scholarship and internship programs to encourage minority students to consider careers in banking. Some firms and trade organizations had also developed partnerships with groups that represent minority professionals and with local communities to recruit candidates through events such as conferences and career fairs. To help retain minorities and women, firms have established employee networks, mentoring programs, diversity training, and leadership and career development programs.

Industry studies have noted, and officials from some financial services firms we contacted confirmed, that senior managers were involved in diversity initiatives. Some of these officials also said that this level of involvement was critical to success of a program. For example, according to an official from an investment bank, the head of the firm meets with all minority and female senior executives to discuss their career development. Officials from a few commercial banks said that the banks had established diversity "councils" of senior leaders to set the vision, strategy, and direction of diversity initiatives. A 2007 industry trade group study and some officials also noted that some companies were linking managers' compensation to their progress in hiring, promoting, and retaining minority and women employees.⁹ However, the study found that most companies reported that they still did not offer managers financial rewards for improving diversity performance.

This study also found that firms, overall, have significantly increased accountability for driving diversity results. For example, more firms reported that they were holding managers accountable for improving diversity. Performance reviews and management-by-objectives were the top two methods for measuring managers' diversity performance. Finally, firms whose representation of women and minorities was above the median for the survey group were considerably more likely to use certain diversity management strategies and practices.

⁹See Securities Industry and Financial Markets Association, *2007 Report on U.S. Workforce Diversity and Organizational Practices* (November 2007). According to SIFMA, 31 firms submitted responses, capturing demographic information on a representative sample of the industry workforce (over 330,000 employees).

A few firms had also developed performance indicators to measure progress in achieving diversity goals. These indicators include workforce representation, turnover, promotion of minority and women employees, and employee satisfaction survey responses. Officials from several financial services firms stated that measuring the results of diversity efforts over time was critical to the credibility of the initiatives and to justifying the investment in the resources such initiatives demanded.

Several Challenges May Have Affected the Success of Workforce Diversity Initiatives in the Financial Services Industry

While financial services firms and trade groups we contacted had launched diversity initiatives, officials from these organizations and other information suggested that several challenges may have limited the success of their efforts. These challenges include the following:

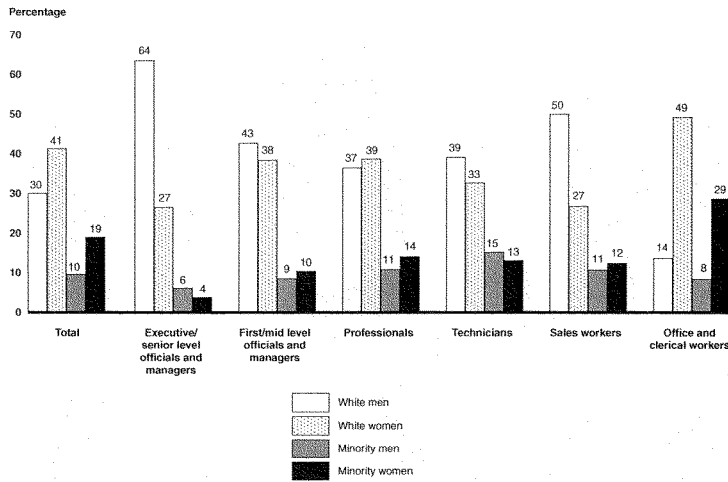
- *Recruiting minority and women candidates for management development programs.* Available data on minority students enrolled in Master of Business Administration (MBA) programs suggest that the pool of minorities, a source that may feed the “pipeline” for management-level positions within the financial services industry and other industries is a limiting factor.⁹ In 2000, minorities accounted for 19 percent of all students enrolled in MBA programs in accredited U.S. schools; in 2006, that student population had risen to 25 percent. Financial services firms compete for minorities in this pool not only with one another but also with firms from other industries.
- *Fully leveraging the “internal” pipeline of minority and women employees for management-level positions.* As shown in figure 4, there are job categories within the financial services industry that generally have more overall workforce diversity than the “Executive/Senior Level Officials & Managers” category, particularly among minorities. For example, minorities held almost 25 percent of “professional” positions in the industry in 2003, compared with 10 percent of “executive/senior level officials & managers” positions. According to a 2006 EEOC report, the professional category represented a possible pipeline of available management-level candidates.¹⁰ The EEOC report stated that the chances

⁹Association to Advance Collegiate Schools of Business, the world’s largest accreditation association for business schools, conducts an annual survey called “Business School Questionnaire” of all its accredited schools. Participation in this survey is voluntary. For the year 2006, 94.3 percent of the accredited schools responded to the survey.

¹⁰Equal Employment Opportunity Commission, *Diversity in the Finance Industry* (Washington, D.C.: April 2006).

of minorities and women (white and minority combined) advancing from the professional category into management-level positions were lower than they were for white males.

Figure 4: EEO-1 Data (Percentage) on Workforce Diversity in the Financial Services Industry by Position, Gender, and Racial/Ethnic Group (2008)



Source: GAO analysis of EEOC data.

Note: Percentages may not always add to 100 due to rounding.

- Retaining minority and women candidates that are hired for key management positions.* Many industry officials said that financial services firms lack a critical mass of minority men and women, particularly in senior-level positions, to serve as role models. Without a critical mass, the officials said that minority or women employees might lack the personal connections and access to informal networks that are often necessary to navigate an organization's culture and advance their careers. For example, an official from a commercial bank we contacted said he learned from staff interviews that African-Americans believed that they were not

considered for promotion as often as others partly because they were excluded from informal employee networks needed for promotion or to promote advancement.

- *Achieving the “buy-in” of key employees, such as middle managers.* Middle managers are particularly important to the success of diversity initiatives because they are often responsible for implementing key aspects of such initiatives and for explaining them to other employees. However, some financial services industry officials said that middle managers may be focused on other aspects of their responsibilities, such as meeting financial performance targets, rather than the importance of implementing the organization’s diversity initiatives. Additionally, the officials said that implementing diversity initiatives represented a considerable cultural and organizational change for many middle managers and employees at all levels. An official from an investment bank told us that the bank had been reaching out to middle managers who oversaw minority and women employees by, for example, instituting an “inclusive manager program.”

In closing, with the implementation of a variety of diversity initiatives over the past 15 years, diversity at the management level in the financial services industry has improved but not changed substantially. Further, EEOC’s new EEO-1 data provide a clearer view of diversity within senior executive ranks, showing that diversity is lower than the overall industry management diversity statistics had indicated. Initiatives to promote management diversity at all levels within financial services firms face several key challenges, such as recruiting and retaining candidates and achieving the “buy-in” of middle managers. The impact of the recent financial crisis on diversity also warrants ongoing scrutiny. Without a sustained commitment to overcoming these challenges, management diversity in the financial services industry may continue to remain largely unchanged over time.

Mr. Chairman and Madam Chairwoman, this concludes my prepared statement. I would be pleased to respond to any questions you or other members of the subcommittees may have.

**Contact and
Acknowledgments**

For further information about this testimony, please contact Orice M. Williams Brown on (202) 512-8678 or at williamso@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals making key contributions to this testimony include Wesley M. Phillips, Assistant Director; Emily Chalmers; William Chatlos; John Fisher; Simin Ho; Marc Molino; and Linda Rego.

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Testimony

of

Alex Chaparro

President of The Chaparro Group

and

Chairman of the National Association of Hispanic Real Estate
Professionals (NAHREP)

Before the

Joint Hearing of

The Subcommittee on Housing and Community Opportunity

and

The Subcommittee on Oversight and Investigations

on

“Minorities and Women in Financial Regulatory Reform: The
Need for Increasing Participation and Opportunities for
Qualified Persons and Businesses”

May 12, 2010

Chairwoman Waters, Chairman Moore, and Members of the Subcommittees, thank you for the opportunity to testify on this very important subject – the ability of minority- and women-owned businesses to access government contracting opportunities in the areas of housing and financial services.

I am pleased to offer my views as the owner of a small real estate sales business, and also as the Chairman of the National Association of Hispanic Real Estate Professionals, or NAHREP.

NAHREP is non-profit trade association with over 18,000 members and 65 local chapters nationwide. Our mission is to increase sustainable Hispanic homeownership by empowering the real estate professionals that serve the community. NAHREP members are real estate agents, brokers, mortgage and settlement service providers and other housing professionals.

The federal government procurement process is complicated and labor intensive. Larger companies with substantial experience and vast resources have an insurmountable advantage competing for government work. Most minority-owned firms are small businesses that generally lack the experience and human capital to successfully navigate through the process.

Hispanic-owned firms have acquired contract work from financial institutions at an alarmingly low rate. Although it's difficult to get complete data, NAHREP estimates that Hispanic owned firms currently acquire less than 1% of the total supplier contracts from financial institutions.

Considering the mass consolidation of the financial services industry and the extensive government interventions, it is extremely important that the federal government become increasingly vigilant to insure that minority owned firms receive a fair share of supplier contracts. Not doing so will likely lead to even

greater disparities in the unemployment rate between minorities and non-minorities and will be a setback to the nation's community stabilization efforts.

NAHREP receives many requests for support around the government contracting process from its members. One member from Riverside, California, who prefers to remain unnamed, says that she has been actively pursuing government work for almost two years with no success. Her story typifies the experience of the large majority of minority-owned firms. This individual has owned and operated a successful business for more than ten years.

Her company is minority and women owned with an impeccable track record. 30 of her 35 employees are minorities and she is very active in her community and her industry. In our view, she runs the type of operation that should be ideal for government work – reputable, capable with a strong track record of community investment. During the past year she has invested more than \$27,000 in consultants and has dedicated about 70% of her managerial time preparing proposals and earning certifications. All this was done in an effort to better position her company for success in the government contracting space. To date she has failed to acquire any government business. She describes the process as complicated and exhausting and says “it’s like taking a difficult exam and never being told why you failed”. She has recently decided to abandon the pursuit of government contracts, and focus her energy and resources on other business opportunities.

Other members describe similar experiences but consistently state that the government contracting process is difficult and demoralizing, with a complete lack of transparency.

For all those reasons, NAHREP stands in full support of the provision in H.R. 4173 that would create an Office of Minority and Women Inclusion at each of the major federal financial regulatory agencies. This provision is similar to one in the

Housing and Economic Recovery Act that applied to the Federal Housing Finance Agency, Fannie Mae, Freddie Mac, and the Office of Finance of the Federal Home Loan Bank System. Our members' experience is that the HERA law has had a noticeable and beneficial impact on improving the federal contracting opportunities for minorities and women.

In April, our organization submitted a comment letter to the FHFA in support of its regulation implementing the provision in HERA. In addition, we also included several proposals that we felt would help to strengthen the measure.

We should now build on the steps taken in HERA by expanding its application. That is why we support the much needed provision in HR 4173.

On behalf of NAHREP, we thank you for your efforts.

**TESTIMONY OF
ORIM GRAVES, CFA
EXECUTIVE DIRECTOR,
NATIONAL ASSOCIATION OF SECURITIES PROFESSIONALS**

**BEFORE THE
HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEES ON OVERSIGHT AND INVESTIGATIONS AND
HOUSING AND COMMUNITY OPPORTUNITY**

**“MINORITIES AND WOMEN IN FINANCIAL REGULATORY REFORM:
THE NEED FOR INCREASING PARTICIPATION AND OPPORTUNITIES
FOR QUALIFIED PERSONS AND BUSINESSES”**

MAY 12, 2010

Good Afternoon Chairwoman Waters, Chairman Moore, Ranking Member Capito,
Ranking Member Biggert and Members of the Subcommittees;

I appreciate the invitation to appear before you today representing the National Association of Securities Professionals or NASP. My name is Orim Graves and my career has spanned more than two decades in the financial services industry before becoming the Executive Director of NASP. Prior to joining NASP, I was a commercial banker servicing Wall Street, a fixed-income trader, a high yield analyst, a chief investment officer for a major municipal pension plan, portfolio strategist and an investment consultant to municipal, Taft-Hartley, corporate, and endowment pools of capital or pension plans.

BACKGROUND & HISTORY OF NASP

The National Association of Securities Professionals (NASP), representing more than 100 firms, is the premier trade organization supporting minorities and women in leveling the playing field in the financial services industry. We connect members to industry leaders and business opportunities; advocate for policies that create equal representation and inclusion; provide

educational opportunities; and work to build awareness about the value of ensuring that people of color and women are included in all aspects of the financial services industry. Founded in 1985, NASP is based in Washington, D.C. with 10 chapters in major financial centers throughout the United States. Our members include asset managers, broker-dealers, pension fund consultants, public finance professionals, investment bankers, securities/bond counsel, commercial bank underwriters, institutional investors, pension and endowment plan sponsors and other professionals in the financial services industry.

NASP has been asked to testify today about the representation of minorities and women in the financial services industry, the ability of minority- and women-owned businesses (MWOB) to access government contracting opportunities in the areas of housing and financial services and the extent to which minority- and women-owned businesses obtain capital and credit. Specifically, we have been asked to respond to a series of questions as follows;

How would you describe the level of access of minority and women securities professionals to contracting and professional development opportunities with the federal government?

In the past three years, unprecedented events have reshaped the financial services industry. During this economic upheaval, it has been widely reported that the United States Government implemented over \$12.6 trillion of direct financial intervention into our economy. This massive mobilization of taxpayer funds required the rapid hiring of numerous government contractors by the Treasury Department, the FDIC and the Federal Reserve Bank of New York to name a few. In the early days of the crisis, lawyers, accountants, consultants and asset managers were hired with an extremely limited RFP process, in some instances using expedited contracting or no process at all. The RFPs that were widely circulated had barriers to inclusion for minority- and women-owned firms that were arbitrary and capricious. For example, the initial RFPs for the Legacy Securities and Legacy Whole Loan Programs of the Treasury Department required minimum assets under management of \$100 billion and \$25 billion respectively. The initial RFP for the Public Private Investment Program or “PPIP” likewise contained a minimum \$10 billion dollars in eligible assets under management and a demonstrated capacity to raise at least \$500 million. Despite Section 107b of the Emergency Economic Stabilization Act of 2008, minorities and women and entities owned by them were NOT included to the “maximum extent practicable.”

These requirements falsely presuppose that large is equated with best and as a result, opportunities to work with many of the best and the brightest entrepreneurs and professionals in the financial services industry were and are missed. The resulting absence of diversity in service providers creates a glaring lack of diverse ideas, leading to concentration of risk in alarming proportions, particularly considering some of the same firms who contributed to the crisis were allowed to bid on opportunities for efforts to stabilize the economy.

Another example of the lack of access to contracting opportunities with the Federal government in financial services was the \$1.2 trillion agency mortgage backed security (MBS) purchase program undertaken by the Federal Reserve. In this instance, four firms were selected to manage the mortgage backed securities assets in a closed RFP process. NASP compared minority- and women-owned MBS money managers' aggregate performance in one, three, and five years to the larger majority firms selected. The minority firms performed better than three of the four firms selected according to third party independent performance evaluations. These firms have been managing mortgage backed securities and other fixed income instruments for public and corporate pension plans, foundations and endowments for ten years or more in some instances. Their assets under management range from \$100 million to more than \$20 billion. It should also be noted that many of the principals at minority-owned firms spent much of their professional development in large majority firms. Once again, the federal government's failure to solicit the entire universe of qualified financial services firms resulted in sub-optimal solutions for the American taxpayer. Lastly, the most egregious example of a large contract awarded without an RFP process is Blackrock's management of the \$165 billion Maiden Lane funds on behalf of the Federal Reserve Bank of New York. The Wall Street Journal reported that Blackrock earned \$71 million in one year as their asset management fee for this assignment. Today the crisis has subsided yet Blackrock still manages these assets. Numerous qualified minority firms have repeatedly requested an opportunity to compete for this business through an open RFP process. While we understand the expediency of Blackrock's initial appointment two years ago, NASP feels that the Federal Reserve Bank of New York can now afford the time necessary to carefully consider a wider universe of qualified candidates, including women- and minority-owned firms through an open RFP process.

OTHER FEDERAL RESERVE PROGRAMS

The Federal Reserve began several programs to provide liquidity to markets in late 2008 and early 2009. Two examples of these programs include: the aforementioned MBS purchase program, wherein the Federal Reserve purchased \$1.2 trillion dollars of Fannie Mae and Freddie Mac mortgage-backed securities; and the Term Asset-Backed Loan Facility (TALF), which provided purchasers of asset-backed securities access to Federal Reserve funds for the purpose of making such purchases. In both instances, qualified minority- and women-owned broker-dealers were excluded from the process, despite their experience in this field. The MBS purchase program required broker-dealers to purchase MBS and deliver them to the Federal Reserve's custodian. Many minority- and women-owned broker-dealers provide this service daily to their own clients. Despite the Federal Reserve Bank's awareness of this opportunity to include more, qualified broker-dealers, MWOB broker-dealers were still excluded.

Though three MWOB broker-dealers were eventually admitted into the Term Asset-Backed Loan Facilities (TALF) program, the program's design prevented their meaningful participation. One barrier was the requirement that MWOB firms guarantee the loans of their substantially larger clients. It is therefore upsetting, but not surprising that of the many minority firms allowed into the program, none of them completed a single transaction as a TALF agent before the program ended in March of 2010.

Section 116H of the Emergency Economic Stabilization Act of 2008 directs the Comptroller General to report to Congress the total dollars spent with all contractors as well as the amount spent solely with minority- and women-owned firms. **To our knowledge, such a report has never been received by Congress.** Likewise, Section 1116 of the Housing and Economic Recovery Act of 2008 requires regular reporting of the dollar amounts paid to minority- and women- owned firms juxtaposed against payments made to all firms for contract services. Despite the prudence of complying with Congressional directives, Fannie Mae, Freddie Mac and The Federal Home Loan Banks have similarly not reported their contractual relationships with minority- and women-owned firms.

How would you describe the level of professional development opportunities afforded to women and minorities within financial services firms?

Women and minorities face many barriers to professional development in the financial services industry. They are seldom invited to join boards, and other professional or even informal networking organizations. This prevents them from developing relationships with influential decision makers. It prevents them from bringing in as many clients as their non-minority peers. It prevents them from fully realizing their potential in the industry. Though they do not enjoy equal access to business networking organizations, surely minorities and women deserve equal access to their government's financial services.

Many of these firms are qualified and eager for a chance to prove their abilities but they are excluded from deal flow, access to capital and investment assets. This is why access to these government programs is vital. Without the opportunity to exhibit their talent, MWOBs, and women and minorities, cannot progress America's financial industry.

I will now turn my remarks towards the lack or minimum levels of participation of minority- and women-owned firms in the area of asset sales. The transfer of hundreds of billions of dollars in assets through the FDIC's receivership and structured asset sales is a historic opportunity for the federal government to encourage the participation of small, women- and minority-owned investors. Inclusive policies for these programs should be adopted by the FDIC considering its use of debt is backed by the "full faith and credit of the United States". While the FDIC does not receive taxpayers' dollars directly, the Agency's ability to resolve failed banks depends on taxpayers who are ultimately financially responsible for the FDIC. The Agency's operations should fulfill public policies beyond insuring the nation's banking deposits. They should reflect the values of the people who hold the ultimate financial responsibility for its actions. Moreover, it is absolutely vital for the future economic and political stability of our nation that the investment decisions are made by a more diverse group than the one that created the economic crisis today and in the 1980s.

FDIC CAPITAL ASSISTANCE TO MINORITY INSTITUTIONS SEEKING TO ACQUIRE FAILED BANKS

The first opportunity for the FDIC to encourage the utilization of minority investors is receivership where the agency holds a competitive process for financial institutions to acquire the assets and deposits of failed commercial banks. To date, the FDIC has encouraged minority-owned institutions to acquire failing banks. Asian-owned Mutual Bank in Harvey, IL failed in July 2009 and was acquired by Asian-owned United Central Bank in Garland, TX. African-American-owned Gateway Bank in St. Louis failed in November 2009 and was acquired by woman-owned Central Bank of Kansas City, MO. Legislation passed during the S&L crisis (1441a (u)) provided minority-owned businesses with a substantial competitive advantage by offering interim financing for up to two years at the agency's average cost of funds. The legislation only permitted such assistance when the agency had not received acceptable bids so the FDIC followed its legal mandate to pursue "least cost resolution." Of the 140 institutions that failed in 2009, only 90 were resolved as loss-share transactions where an acquiring bank purchased and assumed the entire institution. In many of the remaining cases, the FDIC had to create a bridge bank to operate the institution or directly paid off depositors. Instead, the FDIC could likely resolve these failed banks at a lower cost by encouraging minority-owned banks to use the federal capital assistance permitted under the statute. Since financial institutions can jointly bid for failed institutions with non-bank investors, this legislation could also benefit non-bank minority investors as well.

IMPROVED FDIC BIDDING INSTRUCTIONS

While the FDIC has changed its bidding instructions to include a questionnaire asking investors to voluntarily describe their race and gender, the language in the form naturally leads investors to question the FDIC's commitment to minority investors. Not only is the form optional, but the FDIC in bold print announces that minority status "will not affect the scoring of the application." The FDIC should include clear and affirmative language in all of its communications that the encouragement of minority-owned investors is a priority for the agency and will be among the non-price or best value considerations in determining bidder eligibility. A strong signal from the FDIC will encourage joint ventures between minority-owned investors and other firms. Joint

ventures are a key to ensuring that a sufficient number of minority-owned investors participate in the FDIC's process and ultimately secure a proportionate share of the FDIC's assets.

CREATION OF AN FDIC BIDDERS' PREMIUM

One effective way to create incentives for majority-owned firms to partner with MWBEs would be to add a "bidders' premium" to bids which are submitted by (i) MWBE bidders or (ii) bids submitted by "combined groups" which consist of majority and MWBE owned bidders. The "bidders' premium" would be relatively small (say, 2 to 4%), and would be added to these bids solely to select the highest bidder. The bidders' premium would not affect the actual amount paid for the loan pool. For example, if there were two bidders for a pool of mortgage loans and Bidder A was a majority-owned investor which submitted a bid of \$100 and Bidder B was a combined majority/MWBE-owned investor which submitted a bid of \$100; a bidders' premium of 2% would then be added to Bidder B's bid to increase it to \$102. While Bidder B would be deemed to have submitted the highest bid, the actual monetary price to be paid by Bidder B for the pool will be the original \$100 bid amount submitted by Bidder B.

RESERVATION OF FDIC EQUITY INTEREST FOR MINORITY-OWNED INVESTORS

Typically acquiring banks assume only a portion of the failed banks' assets leaving the unwanted assets with the FDIC. In the case of the December 2009 failure of Amtrust, New York Community Bank acquired only \$9 billion of the \$12 billion in assets in the bank. The remaining assets were predominately troubled real estate loans and are currently being sold to investors in a structured asset sale. In these sales, the FDIC provides 50% financing at 0% interest for up to nine years to encourage investors to acquire the loans, foreclose and acquire the properties directly, then hold them until the real estate market recovers. The ownership of the portfolio is split 40% to the private investor who manages the portfolio and 60% to the FDIC with an equivalent share of future profits. Structured asset sales are competitively bid with large institutional investors undertaking extensive and expensive due diligence prior to bidding. The primary factor in selecting winners is purchase price. The FDIC can adjust the amount of retained ownership and could reserve a 5 to 10% equity interest that would be sold to qualified minority investors. Minority investors would benefit from the attractive leverage provided by the FDIC and the least cost resolution issue can be addressed by selling its interest to minority investors at the same price paid at the initial auction. Structured asset sales are performed under an LLC

agreement proposed by the FDIC which bidders must be agreed to in whole. The FDIC has extensive oversight and asset management functions which flow to minority-owned investors who purchase a portion of the FDIC's interest. This would especially benefit those minority-owned investors. They would gain valuable experience and eventually create a new generation and pool of potential market participants.

RESERVATION OF SECURITIZED FDIC EQUITY INTERESTS FOR MINORITY-OWNED INVESTORS

A final opportunity for the FDIC to encourage minority investors comes from the securitization of the FDIC's equity interests. By pooling equity interests from multiple structured sales, the FDIC can create a diversified and attractive passive investment where investors receive cash flows from a number of the FDIC's asset sales. This investment would be more passive than the previous opportunities but because its diversification would be an attractive investment for public plans seeking to fulfill their minority manager requirements. Once again, the FDIC could avoid the least cost resolution issue by holding two auction rounds. A first round, open to all investors where the price would be established and a second round, only open to minority investors, where a material (5 to 10%) portion of the securities would be sold at the established price.

While there has been access granted to minority- and women- owned businesses in government programs such as PPIP, CPP and the TALF, minority- and women- owned firm participation has been minimal with respect to the total dollars generated from these programs. Moreover, their precarious success is due to the efforts of a few dedicated individuals. NASP would like to thank Gary Grippo at the Treasury, and Sandra Thompson, David McDermott and Mickey Collins at the FDIC who have championed the participation of minorities and women within their respective agencies. In appreciating the efforts of these dedicated individuals, we must all face the reality that programs where limited success hinges on a few people soon wither. NASP seeks more substantial, long-term policies to include minority- and women-owned firms in the nation's financial services.

Can NASP please comment on the provision within H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, which would establish Offices of Minority and Women Inclusion at each to the major federal financial regulatory agencies?

With respect to H.R. 4173, Section 1801, Inclusion of Minorities, Women, and Diversity, we fully agree with and support the goals and intent of including this Section. This Section provides for an office of minority and women inclusion in each agency covered by H.R. 4173 which we believe will be helpful in broadening and monitoring the affirmative steps taken by various federal agencies to expand the inclusion of minority- and women-owned business in their business and contracting activities. Equally important are the new legislation's requirements that 1) the contracting review and proposal process includes a component that considers and weighs the diversity of the proposed agency contractor or vendor firm; and 2) each agency contractor provide a written assurance or certification that such agency vendor shall ensure, to the maximum extent possible, the inclusion of minorities and women in its workforce and its contractors.

In addition, we believe that the effectiveness and impact of this Section could also be significantly increased through directly tying the agency inclusion efforts and results to the performance measurement and compensation practices of each agency regarding its agency head and senior management. In prior written and oral testimony, our association has suggested this approach with respect to the private sector, and we believe such an incentive mechanism would materially encourage greater inclusion of minorities and women in contracting participation and the agency workforce.

There are three primary "key success drivers" in attracting and retaining a more diverse workforce: (1) workforce diversity efforts require a long-term, sustained commitment to be successful; (2) workforce diversity initiatives require a C-Level Executive commitment; and (3) workforce diversity efforts in recruiting and retention-which go hand in hand-should begin very early in an investment professional's career and be consistently supported and maintained by such professional's employing firm or company. Linked to various of these "key success drivers" are ten central best practices, including (i) development of a multi-year plan, (ii) long/short term measuring of success and progress made, (iii) tying workforce diversity goals to executive and managerial compensation, (iv) establishing mentor programs led by C-Level Executive

participation, (v) providing ongoing internal training and position/career development opportunities that correspond to increasing business or position demands, and (vi) leverage the expertise of outside organizations, such as NASP which can help with recruitment of qualified minority and women professionals at all career levels. While investment firms surveyed have increased general accountability of managers for diversity performance and results by measuring managerial performance through both performance reviews and management-by-objectives, the majority of investment firms report that they still do not offer financial rewards for or tie compensation or monetary incentives to diversity performance at the managerial or executive levels. Investment firms and companies that do not in some way measure their managers' diversity performance are 2 ½ to 6 times more likely to fall below the median for representation of minority and women professionals in their respective workforces.

It is also a reasonable implication that those investment firms that do in fact measure and periodically assess their managers' and executives' diversity performance but do not tie-in or link compensation or other financial incentives to such managerial diversity performance are still more likely than not to fall below median levels for representation of minority and women professionals in their respective workforces. In totality across the various diversity studies and reports from the GAO, the USI and SIFMA above, what we see from our industry vantage point is a disappointing, woefully incremental and unacceptable picture of diversity in the U.S. financial services industry.

We firmly believe that the best way to impact the disappointing and incremental diversity metrics and fundamentally change and accelerate industry diversity implementation is to do business with minorities and women wherever they are found, either within majority-owned firms or minority- or women-owned firms. There must be both external and internal economic incentives to positively impact workforce diversity. As an internal economic incentive to achieve meaningful workforce diversity within majority institutions, managerial diversity performance should be measured periodically and incentivized by being tied to compensation or other economic or financial reward.

GENERAL RECOMMENDATIONS

The provisions already adopted by Congress have the potential for spurring more inclusion of minorities and women; however, Congress's policies are being ignored by the agencies compelled to abide by them. The Treasury Department and the GSEs, for example are not reporting their contracting activity with MWOB firms despite their Congressional directive to do so. In addition to questions about the details of their activity, this raises questions about their willingness to abide by inclusive policies. While we feel that reporting requirements can serve as a powerful mechanism for encouraging inclusion, it is only effective if it is actually practiced. We would even suggest that all Federal Agencies should be compelled to report their activity with minority- and women-owned firms and for the heads of these agencies to certify the agency's compliance with inclusive initiatives.

Testimony of
Carlos E. Loumiet
Chair, New America Alliance

Before
Subcommittee on Housing and Community Opportunity
and
Subcommittee on Oversight and Investigations

May 12, 2010

“Minorities and Women in Financial Regulatory Reform: the Need for Increasing Participation and Opportunities for Qualified Persons and Businesses”.

U.S. Committee on Financial Services Chairman Barney Frank, Ranking Minority Member Spencer Bachus; Subcommittee on Housing and Community Opportunity Chair Maxine Waters, Ranking Minority Member Shelley Moore Capito; Subcommittee on Oversight and Investigations Chair Dennis Moore, Ranking Minority Member Judy Biggert; Honorable Members of the Committee and the Subcommittees:

It is my great honor to appear before you today to provide testimony on the issue of minorities and women in financial reform. I appear both as Chair of the New America Alliance (NAA), a national organization of Latino business leaders focused on the advancement of the American Latino community for the benefit of the United States as a whole; and as representative of our distinguished sister organization, the United States Hispanic Chamber of Commerce (USHCC), which for years has ably represented millions of Latino businessmen and businesswomen from across the nation. On behalf of both organizations and myself, thank you for this opportunity.

I had the privilege of appearing before the Subcommittee on Oversight and Investigations just four years ago, to comment on a General Accountability Office (GAO) report that had just then been published entitled, “Financial Services Industry: Overall Trends in Management-Level

Diversity and Diversity Initiatives, 1993-2004". To summarize, that report depressingly concluded that "[b]etween 1992 through 2004, overall diversity at the management level of the financial services industry did not change substantially . . ."

I now appear before you four years later, and I wish I could tell you that great advances have been made in these last four years in terms of the role of women and minorities in our nation's financial services industry. I cannot.

I also wish I could tell you that these past four years have witnessed great strides in the manner in which the Treasury, federal banking agencies and the GSEs interact with women and minorities, and the importance they attach to bringing about an industry that even remotely represents the population of our great country. Unfortunately, with some exceptions, again I cannot.

The Census Bureau is hard at work as we testify here today gathering information on the demographic make-up of Americans in 2010. Let me anticipate the results in one regard - some two-thirds of our nation's population will be found to consist of women and minorities. However, anyone who believes that these numbers are even remotely reflected at the management and senior levels of our country's financial services industry, is very mistaken.

Let us take the banking industry as an example. That I know of, right now two of the 25 largest banks in this country are headed by minority individuals, neither of them a Latino, and that I know of, none by a woman. A friend and fellow NAA member serves on his very distinguished financial firm's 80-person management committee. He is the only minority to do so. The Office of the Comptroller of the Currency's website indicates that as of December 31, 2009, there were seven Latino-owned national banks in this country, out of 1800 or so national banks altogether -

about one-half of one percent. Over-all, our banking system does somewhat better - slightly over 200 of the nation's 8000 or so FDIC insured banks - or somewhere between four and five percent - are controlled by women and minorities. Of course, measured in terms of deposits or assets, these small percentages are even much more tiny.

In terms of asset management, in accordance with data carefully assembled by NAA member Altura Capital, in 2009, in the U.S. \$12.5 trillion tax- exempt market, firms owned by women or minorities managed about U.S. \$90 billion, or less than one percent, and Latino-owned firms, U.S. \$21 billion, or less than one-quarter of one percent.

Federal pension funds have approximately US \$ 268 billion in assets. That we at the NAA know of, none of the 60 or so Latino-owned asset managers or brokers in our country is involved.

And so on and so on. To anyone who believes that women and minorities are for some reason less capable of success in the financial services industry, these numbers may not be disturbing. To everyone else, these numbers at least must be embarrassing, if not troubling. Frankly, I have trouble thinking of many other industries where the numbers are as bad.

Let me make it clear that I am not suggesting that these numbers reflect current intentional discrimination against women and minorities in this industry. Rather, I believe that the industry historically evolved at a time when neither women nor minorities were viewed or treated as equals, so that built into this industry are structural elements that often make it particularly difficult for women and minorities to advance, even now. Within any sizable company, it is often difficult for those elements to be overcome absent the dedicated, conscious effort of very senior decision makers. However, that effort all-too-often is not there, in part because under the

pressure of other weighty considerations, it is easier to delegate these concerns to a company's Human Resources and Legal Departments.

I would also note that: I am not discussing "quotas" of any type. However, "quotas" aside, the disparity between the representation of women and minorities in our general population, and in senior and management positions in our financial services industry, is so glaring that it can only be missed by those who choose not to see.

So what can the U.S. Government do? One would naturally think that the federal Government itself would be particularly mindful of including qualified persons from all backgrounds when contracting with the private sector.. And I believe that in the last two years or so Congress, with Section 107 of the Emergency Economic Stabilization Act of 2008, with Section 1801 of H.R. 4173, and through the personal efforts of Members of Congress like Congressman Frank, Congresswoman Waters, Congressman Xavier Becerra and Senator Bob Menendez, has made legislative and other significant efforts to prod the Executive Branch to focus on doing so.. Sadly, those efforts in many situations appear to have fallen on deaf ears, although there have been exceptions, such as the SEC's recent proxy disclosure rules on Board diversity, and Treasury's initial steps last Spring in connection with its Public-Private Investment Program. However, particularly in matters involving financial services and capital markets, federal Government agencies continue to have a very poor track record in seeking to work with Latino-owned, qualified firms.

As to the relative importance federal regulators have attached to this issue of diversity in the private-sector financial services entities they supervise, let me cite a simple example: I have practiced law related to the financial services industry for over 30 years. In all of that time, I

cannot recall ever hearing of a bank being challenged hard by federal bank examiners on the issue whether its employment practices (as opposed to its lending and consumer practices) comply with applicable federal equal opportunity laws, some of which have existed since 1866. Just how important can this issue of fairness and equality in employment be - or be perceived by the financial services industry to be - to the federal Government, when its examiners routinely and carefully inquire about compliance by financial institutions with other types of laws, but not these?

We would also respectfully suggest that any Member of Congress who really cares about these issues can help the situation simply by making it clear to financial services industry constituents seeking an audience to discuss something that is important to those constituents, that this issue of diversity is, in turn, something the Member believes is very important. If done by enough Members of Congress, the point might be made that the people of this country, whose money the industry holds and manages, and their representatives in Congress, do not understand why women and minorities appear to have such difficulty succeeding in this industry.

Thank you very much.



Testimony on behalf of the
National Association of Real Estate Brokers (NAREB)

Regarding the Inclusion of Minority- and Women-owned Businesses in the
Financial Services Industry

before the
United States House of Representatives
Committee on Financial Services
Subcommittee on Housing and Community Opportunity
The Honorable Maxine Waters, Chair
Subcommittee on Oversight and Investigations
The Honorable Dennis Moore, Chair

May 12, 2010

Submitted by

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President and Chief Executive Officer

Madam Chairwoman, Mr. Chairman, Members of the Subcommittee on Housing and
Community Opportunity, and Members of the Subcommittee on Oversight and
Investigations:

First, I want to take this opportunity to thank Chairwoman Waters and
Chairman Moore for their leadership in convening this joint hearing on "Minorities and
Women in Financial Regulatory Reform: The Need for Increasing Participation and
Opportunities for Qualified Persons and Businesses." I come before you today, as
president and chief executive officer of the National Association of Real Estate
Brokers, the nation's oldest minority trade association, formed in 1947 to ensure
"Democracy in Housing."

For more than six decades, NAREB has worked not only to promote sustainable
homeownership for all Americans, and African-Americans in particular, but also to
ensure that business opportunities are accessible and available for our Realist
members. For the record, Realist is the designation given to every NAREB member.

Realists are predominantly African American real estate professionals representing the full spectrum of the real estate industry.

It is important to note that NAREB promotes and abides by the highest standards of professional integrity. We follow a strict code of real estate industry ethics. We require professional certifications and accreditation. We advocate for public policies that protect and expand sustainable homeownership. And, in keeping with today's proceedings, NAREB works tirelessly to open and keep open the doors of economic opportunity for African-American and other multi-cultural real estate professionals.

With this as a backdrop, I want to speak with some level of detail on NAREB's support for the incorporation of the Office of Minority and Women Inclusion in H.R. 4173, the Wall Street Reform and Consumer Protection Act and the reasons we believe this provision is critical to ensuring economic opportunity for minority real estate professionals.

As you are aware, minority business development continues not to reach its full potential. Whether due to intentional legislative omissions, unintended consequences of loose legislative language, or misinterpretations of rules, regulations, guidelines or laws, minority real estate professionals have virtually been shut out of business opportunities made available through Federal government agencies. A glaring example is the bundling of contract solicitations that limit a successful response to large, highly capitalized, general market firms with a performance history of doing business with Federal agencies dealing with the financial crisis. Consequently, the solicitation requirements immediately bar minority and woman-owned businesses from participating in the bidding process.

This is particularly critical with regard to the recent legislation affecting reform of the financial services and investment industries. And while language was put forth by Chairwoman Waters to make minority inclusion a legislative imperative, every best effort was not made in the legislation's final passage and implementation. Again, much to the dismay of the minority business community, minority real estate professionals, minority financial services companies and other professionals were left outside the door without the benefit of legislatively mandated recourse.

I am also here to express concern with regard to the limited contracting opportunities with major financial institutions. Major banks, lending institutions and GSEs tend to ignore or overlook minority businesses when awarding contracts for asset and property management, appraisals, brokerage, development, and commercial leasing business opportunities. Again, these contracts are awarded to major conglomerates and real estate franchises that do not feel the need to include or extend sub-contracting, or joint venture opportunities to qualified minority businesses. And, when sub-contracting opportunities are offered, the price points are so prohibitive, that it not financially feasible to perform the work required.

NAREB commends the leadership of these two subcommittees with the sincere hope that change is in the offing. One recommendation that I would like to leave with you today is the consideration of unbundling....breaking up of the mega procurements that prohibit participation by minority businesses. We specifically recommend reducing the size by 50 percent (50%) of government services and supply contracts awarded for financial, professional and real estate services. Further, we recommend that a number of these contracts be at the one million dollar to five million dollar mark which, we believe, will significantly increase the number of minority bidders. Additionally, those contracts need to cover smaller geographical areas. By taking these measures, in addition to eliminating the current bonding requirements, minority business participation will rise.

As I conclude, I again thank you Madam Chairwoman, and Mr. Chairman for the opportunity to bring forth the concerns of minority real estate professionals. The over 60,000 African Americans in the real estate industry are counting on your support and your continued vigilance.

Thank you.

