

What do the Data Reveal about (the Absence of Black) Financial Regulators?*

Chris Brummer, JD, PhD
Georgetown University Law Center
Washington, DC 20012

Abstract:

This study provides empirical evidence on African Americans in positions of authority at financial regulatory agencies. It shows that African Americans have been largely excluded from senior leadership opportunities since the New Deal. It also shows that this absence is the product of a bipartisan failure to nominate African Americans to positions of authority, and provides evidence indicating that when African Americans accede to regulatory positions it is overwhelmingly the product of ‘sponsorship,’ or prompting, by the Executive branch, not the Senate. The paper also reveals a near total exclusion of African Americans from roles as senior policy staffers in current financial regulatory agencies, regardless of the political affiliation of the political appointees making hiring and staffing decisions.

Perhaps one of the biggest open secrets in Washington, D.C. is the virtual absence of African American financial regulators in the United States government. Across the federal government, they are missing, and *have been missing for generations*, with at best short appearances by single political appointees two to three years at a time. There are no Black Commissioners at the Securities and Exchange Commission (SEC). Or at the Commodity Futures Trading Commission (CFTC). There has never been a Black Chairman of the Federal Deposit Insurance Corporation (FDIC), SEC, or CFTC. And today, the staffs of political appointees—whether Democrat or Republican—are, with few exceptions, almost devoid of African Americans.

To put this into perspective, there have been 141 Black members of Congress¹ since 1900, 98 of whom have been elected within the last two decades.² At least 140 African American judges are currently on the judiciary today between all levels of U.S. federal courts.³ Even across Fortune 500 companies, despite a slight decrease from last year and slow turnover offering less

* The author acknowledges Georgetown’s Institute of International Economic Law and the Penn Program on Regulation for their support, and thanks Howell Jackson, Me Jain, Aaron Klein, and Yesha Yadav for their critical feedback. The author also acknowledges Robert Secrist for the careful data gathering and analysis.

¹ 128 Representatives and 6 Delegates elected to the House of Representatives, and 7 Senators. See LIBRARY OF CONGRESS, MEMBERS OF THE U.S. CONGRESS (May 2020), <https://www.congress.gov/members>.

² U.S. HOUSE OF REPRESENTATIVES OFFICE OF THE HISTORIAN, MEMBER PROFILES (last visited July 12, 2020), <https://history.house.gov/People/Search>.

³ FEDERAL JUDICIAL CENTER, AFRICAN AMERICAN JUDGES ON THE FEDERAL COURTS (last visited July 12, 2020), <https://www.fjc.gov/history/judges/search/african-american>.

opportunity for new representation, 11% of new directors on boards of S&P 500 companies have been Black.⁴

The absence of African American financial regulators poses enormous challenges from the standpoint of participatory democracy, and economic inclusion. Financial regulatory agencies are ultimately tasked with creating the rules of the road for America's capitalist system. As such, they are responsible for framing policies that determine how \$70 trillion in U.S. assets are regulated, how capital is allocated in society, and at what cost. They determine the extent to which corporations should serve priorities other than shareholders, and disclose information about their hiring practices and demographics. They involve how investors are protected, and the kind of language and warnings that must be shared to people of diverse backgrounds, communities and levels of vulnerability. Plus, financial regulators are routinely involved in making critical determinations as to who is afforded taxpayer backed financial assistance in times of economic distress, under what conditions, and much more. Consequently, the absence of African Americans deprives the community from having members present in decisions that not only impact them directly, but are often made in their name.

Yet despite the importance of financial regulation to the U.S. economy, and widespread awareness of a paucity of African Americans crafting policy, the full extent of the problem remains entirely undocumented, obscuring the full dimensions of the problem. This is in part because no such data of record is kept of political appointees or their staffers, and no rules require that they do so.⁵ Additionally, the absence of Black regulators has received scant attention from financial journalists, nonprofits, special interest groups, and academics. As a result, the decision making process, from agency nominations to subsequent staffing decisions by newly confirmed regulators, remains shrouded in secrecy and lacks the transparency necessary for a fact-driven dialogue on one of the most critical issues of economic inclusion and justice in the federal government.

This study provides the first empirical evidence providing cross-agency insight on the full scope of the challenge of diversity among regulatory agencies.⁶ Part I provides a historical overview of

⁴ Seema Mody & Rikita Shah, *Fewer Black Executives Were Added to S&P 500 Boards Over the Past Year*, CNBC (June 25, 2020), <https://www.cnbc.com/2020/06/25/fewer-Black-executives-were-added-to-sp-500-boards-over-the-past-year.html>.

⁵ One of the Dodd-Frank Act's goals was to increase racial and gender balances at financial institutions and regulatory agencies, and one step toward this goal is to require federal agencies to create an Office of Minority and Women Inclusion (OMWI). OMWI is responsible for overseeing all agency matters relating to diversity in management, employment, and business activities. Each agency must appoint a director for its OMWI, which is a senior executive service position charged with developing standards for (1) agency diversity in regard to race and gender, (2) increased participation of minority- and women-owned businesses, and (3) assessing the policies and practices of the agency-regulated entities. Daniel J. Moore and Stephanie Wilson, *Dodd-Frank Wall Street Reform Act Requires Federal Financial Agencies to Address Diversity and Fair Inclusion of Minorities and Women*, Employment Law Watch (October 20, 2010). However, it does not necessarily call for quotas or actions, and it does not levy penalties. The OMWI has neither the authority nor the responsibility of enforcing civil rights laws. *Id.*

⁶ Critical light has, however, been shed on the challenges facing individual agencies, especially the Federal Reserve. See, e.g., Aaron Klein, *The Fed's striking lack of diversity and why it matters*, at

African American financial regulators since the New Deal. It provides not only information on who was nominated and when, but also important political conditions that existed at the time of their nomination. One important insight, among others, is that the data suggest that where Senate leaders have enjoyed the prerogative to suggest or sponsor names for appointments to the President (e.g., when a Commissioner must be nominated who is not a member of the Party of the presiding President), the Senate has acted only once to do so for an African American. Indeed, the data provide strong evidence that African Americans have for two generations been entirely dependent on the Executive branch for mobilizing nominations resulting in political appointments. The historical record suggests that neither party in the Senate, Democrat or Republican, has sponsored an African American appointment in the absence of Executive political alignment since the first term of the Reagan administration.

Part II provides an overview of data gathered concerning the current state of the Black regulator, and surveys the positions of African Americans in political appointee and senior staff positions across the federal financial agencies. The study also provides data suggesting that political ideology has little impact on hiring—and that White political appointees of both parties are failing, in some instances across agencies entirely, to hire African Americans for senior policy staff positions. The study also explains how the absence of staffing senior policy roles with African Americans will likely impact the future shape and leadership of financial regulatory agencies long after political appointees leave their posts.

Finally, Part III examines what the data indicate about potential causes for such longstanding distortions in political appointments and staffing at federal agencies. The study provides data indicating that although experience as a staffer in the Senate is a common element of the backgrounds of many political appointees, and that few Senate staffers are Black, this does not by itself explain the absence of African American regulators. The study consequently introduces other theories, and raises the need for more qualitative research and interviews with appointees and former nominees, as well as with relevant Senate decisionmakers and their aides.

Methodology: What is a “financial regulator”?

In order to conduct a study of financial regulators, one must define precisely what is a financial regulator. The Cambridge Dictionary offers a useful guide, describing a financial regulator as “a person or organization that has been given the official job of making sure that banks, financial businesses, etc. act in a responsible way and do not break the law.”

With this helpful conceptual starting point, we focus primarily on entities that we find to be most central to the task of banking and financial market regulation. Specifically, we focus on the following independent agencies: the Commodity Futures Trading Commission, Securities and Exchange Commission, Federal Reserve Board of Governors, National Credit Union

<https://www.brookings.edu/opinions/the-feds-striking-lack-of-diversity-and-why-it-matters>; *see also* The Urgent Need for a More Publicly Representative Fed: 2019 Diversity Analysis of Federal Reserve Bank Directors, at https://populardemocracy.org/sites/default/files/FedUp-Diversity-Data-Brief_2019_web.pdf.

Administration, and Federal Deposit Insurance Corporation. We also take into account appointments and hiring practices at the Office of the Comptroller of the Currency (OCC) given its federal chartering authority of national banks, and at the Consumer Financial Protection Bureau insofar as it assumed financial regulatory oversight from the Fed, FDIC and Federal Trade Commission with the passage of the Dodd Frank Act.⁷

Not all employees of these agencies are tabulated in our study. This study concerns itself with the policy leadership at financial regulatory agencies. Thus in Part I, we use as our study target those individuals who require nomination by the President of the United States and confirmation by the U.S. Senate.⁸ They are referred to throughout this paper as “political appointees.”

The data for Part I were first compiled by identifying every appointee to have served at each financial regulatory agency. Because the agencies publish their annual (and sometimes semiannual) reports to Congress on their respective websites, they retain an archive of historic reports.⁹ These documents list key officials and will generally provide photographs and short biographies of their leadership.¹⁰ Some agencies do not have complete records of these reports (for example, the CFTC only offers documents from through 1996). In these cases, names were recorded from historic lists of appointees maintained by the agency¹¹ and background information was obtained from individuals’ profiles on other employer websites or LinkedIn. Appointees’ political affiliations were not always readily accessible from their agency biographies; thus, data were collected from a variety of resources, including: obituaries, curriculum vitae, and archives of political contributions.

In Part II, given the wider availability of information available online concerning senior staff on agency websites and LinkedIn, we extend our analysis to senior staffers.¹² The structures of regulatory agencies are not the same, so we attempt to keep our analysis as simple and

⁷ Notably, we do not generally include in our study the demographic information of agencies that are no longer in existence, including the Office of Thrift Supervision, the Home Loan Bank Board, Office of Federal Housing Enterprise Oversight or the U.S. Department of Agriculture's Commodity Exchange Authority. However, we do include information relating to the OTS in Part I, where appropriate, because its directors have at varying points served on the board of the FDIC, which is still fully operational today.

⁸ As such, this approach excludes individuals working in the government, like the Presidents of the regional federal reserve banks, as well as the heads of top self regulatory agencies like Financial Industry Regulatory Authority, who are not political appointees, but are instead selected through other processes, at times involving private market participants.

⁹ See, e.g., *Annual Reports*, FEDERAL DEPOSIT INSURANCE CORPORATION, <https://www.fdic.gov/about/financial-reports/report/> (last updated June 8, 2020); see also SECURITIES AND EXCHANGE COMMISSION, *Annual Reports* <https://www.sec.gov/about/annrep.shtml> (last updated Dec. 16, 2019).

¹⁰ See, e.g., OFFICE OF THE COMPTROLLER OF CURRENCY, *Leadership* 24 (Nov. 7, 2019), <https://www.occ.gov/publications-and-resources/publications/annual-report/files/2019-annual-report.pdf>.

¹¹ See, e.g., *Terms of Office*, COMMODITY FUTURES TRADING COMMISSION, <https://www.cftc.gov/About/Commissioners/TermsOfOffice/index.htm> (last visited July 18, 2020).

¹² Identifying all actors is not straightforward since not all positions are public, however. As a result, we supplemented online searches with individuals with knowledge of the operation of the agencies to try to come up with as accurate picture as possible.

consistent as possible by only tabulating individuals directly chosen and approved by political appointees to serve either as their most senior advisors or as their senior most deputies in the formulation of policy or supervision. The study purposely excludes executive positions involving IT, Administration, Minority Affairs, Ombudsmen, Communications and Legislative Affairs as well as General Counsels and Inspector Generals, unless they held other formal policymaking titles or responsibilities.¹³

In limiting the search parameters this way, we are able to produce an overview of historical trends with regard to political appointees, as well as create a snapshot of the existing participation of African Americans in the very top tiers of federal policymaking as of July 4, 2020. These choices do, however, by definition impact our results. By focusing on policymaking, and limiting our study to the top two layers of decision making (e.g., the political appointee and deputies), this approach reduces dramatically the total number of jobs surveyed. Our conservative approach means that our data will present in many cases a significantly *rosier* picture of the overall diversity in the policy leadership of the financial regulatory ecosystem than is actually the case.¹⁴

Because of the extreme lack of African Americans over time and at present, the sample size for our results are small, which limits the inferences that we can make. Instead, the study takes steps to recount the data that have been culled, and draws comparisons and contrasts from the data. Theories deserving future inspection and research are identified at the end of the study.

I. The Absence of Black Financial Regulators: The Historical Data

Historical Analysis

- Total Number of African Americans Who Have Been Appointed to Financial Regulatory Posts
- Total Number of People Who Have Held Financial Regulatory Posts
- Political conditions under which African Americans were appointed

The federal government has conducted some form of oversight over financial and monetary activities since the founding of the first central bank in 1791. It then took a more dramatic step forward with the establishment of the OCC during the American Civil War and later the creation of the Federal Reserve in 1913. That said, most historians understand the birth of the modern

¹³ Notably, this approach is by definition imperfect insofar as many roles, especially General Counsel roles, can impact in very direct ways policymaking at agencies. However, this is not universally the case, and certainly not part of the official responsibilities associated with these positions. A further examination into the issue would nevertheless be fully supported by the author of this study.

¹⁴ In focusing on very specific roles, we are reducing the denominator in many instances relating to the number of positions and jobs surveyed in positions in which no African Americans at all were hired. We illustrate this data challenge in our analysis relating to the Federal Reserve in Part II and Table 2.2.

regulatory apparatus to lie in the New Deal, with the creation of federal regulators of U.S. securities markets, and the prohibitions aimed at curtailing the power of large financial conglomerates.

However, our analysis shows that even with the churn of varying political cycles since the 1930s, not to mention the coming of age of the Civil Rights movement in the 1960s, the participation of African Americans in leadership positions in financial regulatory agencies has been intermittent, at best.

The historical data indicate that there have been a total of 327 individuals who have been appointed to financial regulatory agencies. Of the total, 10 have been Black:

Table 1.1
Black Political Appointees to Financial Regulatory Agencies
(Historical Tally)

Name	Agency	Position and Years Served	Appointed By (President or Senator)	Political Party
Andrew Brimmer	Federal Reserve Board of Governors	Member, 1966–1974	President Lyndon Johnson (D)	Democrat
Harold A. Black	National Credit Union Administration	Member, 1979–1981	President Jimmy Carter (D)	Republican
Emmett John Rice	Federal Reserve Board of Governors	Member, 1979–1986	President Jimmy Carter (D)	Democrat
Aulana Peters	Securities and Exchange Commission	Commissioner, 1984–1988	President Ronald Reagan (R)	Democrat
Isaac Hunt	Securities and Exchange Commission	Commissioner, 1996–2001	President Bill Clinton (D)	Democrat
Yolanda T. Wheat	National Credit Union Administration	Commissioner, 1996–2001	President Bill Clinton (D)	Democrat
Roger Ferguson	Federal Reserve Board of Governors	Member, 1997–2006; Vice Chairman, 1999–2006	President Bill Clinton (D)	Democrat
Sharon Bowen	Commodity Futures Trading Commission	Commissioner, 2014–2017	President Barack Obama (D)	Democrat
Mel Watt	Federal Housing Finance Agency	Director, 2014–2019	President Barack Obama (D)	Democrat

Rodney Hood	National Credit Union Administration	Member, 2005–2009; Chairman, 2019–current	President George W. Bush (R) President Donald Trump (R)	Republican
-------------	--------------------------------------	---	--	------------

Thus overall, we find that only 3% of all financial regulators have been Black. No federal financial regulatory agency has had more than three African Americans participate as members over the course of its existence. Indeed, if an agency has had two African Americans in the course of its entire history, it is faring better than others. (See Table 1.2.)

Averaged out over the last 90 years, this translates to approximately one African American being appointed to a federal financial regulatory agency every 10 years. This in effect means that African Americans have been for the most part shut out in any given year from representation on any given financial regulatory body, whether or not it be in matters relating to banking, capital formation and allocation, interest rate policy setting, consumer protection and more.

Looking closer at the data, it is clear that Democrats have fared far better over time than Republicans when it comes to making Black political appointments to financial regulatory agencies, and are responsible for eight of the 10 Black regulators (and arguably nine of the 10).¹⁵ However, with the appointment of an African American Chairman of NCUA—the first time an African American has ever been placed in charge of a banking regulator—and the failure of Democrats to nominate any Black financial regulator over the last half decade, the current Republican record is, if dismal, superior to that of Democrats.

Are there any commonalities in these appointments? They are, for the most part, men, with only three of the 10 Black appointees being women.¹⁶ Furthermore, regulatory appointments have only twice involved vesting African Americans with leadership at a federal financial regulator (Mel Watts and Rodney Hood). And when they do, the regulator bodies are far less prominent than their regulatory counterparts at the Fed, FDIC, SEC and CFTC. Nevertheless, Black regulators have been on virtually every object measure well qualified. A brief tally of their background reflects not just terminal degrees at the most prestigious universities in the country, but also stints at top law firms, government and academia before assuming office.

Notably, only two Black regulators have ever worked as a Senate staffer, a common qualification for many White nominees. (For more, see Part III.)

Where are African American regulators appointed?

The data in Table 1.1 indicate a gradual decline and growing infrequency in Black regulatory appointments at the larger regulatory agencies (e.g., SEC, Fed, CFTC), and continued absence at

¹⁵ Though Harold A. Black was a Republican, his nomination was, as we discuss later, the product of an interest during the Carter administration to have more African Americans at Federal regulatory agencies.

¹⁶ Historically, only 12.84% of all appointees have been female.

the FDIC and OCC. This reflects less frequent Democratic appointments to major financial regulatory agencies, and the absence of Republican Black nominees altogether from 1981 until 2005. By contrast, the high point of Black appointments to the large agencies appears to have taken place in the 1990s under the Presidency of Bill Clinton. The 2010s, even with the presence of an African American president, compare relatively poorly. Notably, however, the Obama administration had made record numbers of nominations of African Americans overall to financial regulatory agencies, and had they been confirmed, the overall trend line would look very different, with three and perhaps four Black appointments.¹⁷

Table 1.2
Black Political Appointees per Financial Regulatory Agency
(Historical Tally)

Regulatory Agency	Total Black Financial Regulators (Political Appointees)	Total Financial Regulators (Political Appointees)	Percentage of Black Financial Regulators
CFPB	0	2	0.00%
CFTC	1	43	2.33%
FDIC	0	31	0.00%
FHFA	1	3	33.33%
Fed	3	95	3.16%
NCUA	3	21	14.29%
OCC	0	31	0.00%
OTS	0	6	0.00%
SEC	2	99	2.02%
Total	10	327¹⁸	3.06%

As seen above in Table 1.2, 60% of all Black political appointments cluster around the Federal Reserve and NCUA, with 20% of all Black political appointments at the SEC.¹⁹ Interpreting these results requires care. Some agencies might have more vacant slots available than others, given their comparatively larger governance structure (e.g., Commissions).²⁰ Also, the age of an agency might play an important role. And even then, the data must be read against the historical record.²¹

¹⁷ President Obama had made three nominations of African Americans to financial regulatory agencies during his presidency: former Latham & Watkins partner Sharon Bowen, George Washington University law professor Lisa Fairfax, and the author of this report, Georgetown University law professor Chris Brummer. Only Ms. Bowen was confirmed. Keir Gumbs, a partner at Covington & Burling, was also a leading candidate to the SEC though was not formally nominated.

¹⁸ To avoid double counting, this figure excludes regulators that have been appointed to positions in more than one agency.

¹⁹ We do not include in our tabulation former or current Acting Directors of agencies.

²⁰ From this perspective, the NCUA statistically “outperforms” its peers.

²¹ The SEC and CFTC have, for example, roughly identical degrees of participation by African Americans—two percent (2%)—which would seem to reflect the fact that although the SEC has had twice the appointments, the agency is

II. The Absence of Black Financial Regulators: A Snapshot from July 4, 2020

Contemporary Analysis

- Number of African Americans Who Currently Hold Financial Regulatory Posts
- Number of African American Directors and Senior Staff
- Correlation, if any, between race and Black appointments, and political party affiliation and Black appointments

In this section, we move beyond appointees nominated by the President to identify individuals whom current political appointees employ as their senior most personal advisors or as deputies in the formulation of policy or supervision. To do so, the study relies on the organizational charts of the financial regulatory agencies available online in July 2020, as well as information gathered from interviews with current and former officials at financial regulatory agencies. Extensive LinkedIn searches were then conducted to identify other relevant individuals and provide reasonable inferences about the racial identity of the director based on photographs and any available disclosed demographic data.

Adding an extra layer of analysis is useful for several reasons. First, it provides a fuller picture of the representation of African Americans in the formation of financial regulatory policy. Additionally, it begins the work of providing evidence as to the potential impact political ideology might (or might not) play in terms of race and hiring decisions. Finally, it allows for an analysis of potential repercussions that decisions around political appointments might have on the civil service and professional leadership at federal agencies.

What the Numbers Reveal

As indicated in Table 1.1, there is currently only one identifiable Black political appointee among all U.S. financial regulatory agencies (the NCUA's Chairman). There is no African American Commissioner or Chairman at the SEC, FDIC, CFTC, or the Federal Reserve, and the neither the OCC nor the CFPB is led by an African American.

Going an additional level deeper, the data indicate that the broad absence of Black financial regulators continues to the senior staff level:

also 42 years older than the CFTC. This explanation is not validated, by the historic record, however, insofar as both appointments made at the SEC occurred when the CFTC was in existence.

Table 2.1
Senior Policy Staff at Financial Regulatory Agencies on July 4, 2020
(counting only policy “Directors” from Fed Official Staff)

Agency	Total Senior Policy Staff (not including Political Appointees)	Total Black Senior Policy Staff	Percentage of Black Staff
CFPB	5	0	0.00%
CFTC	27	0	0.00%
FDIC	11	0	0.00%
FHFA	8	0	0.00%
Fed	14	0	0.00%
NCUA	10	2	20.00%
OCC	9	2	22.22%
SEC	36	1	2.78%
Total	120	5	4.17%

With the exception of the OCC, the absence of African Americans at senior staff levels mirrors the absence of diversity among political appointees. The NCUA, again, appears as a relatively successful agency, with one out of every five policy staff being African American. On the other hand, just as African Americans have made up 0% of all total CFTC Commissioners, they make up only 0% of senior policy staff. Similarly, just as no African American has been Chairman of the FDIC, none comprise the senior staff of the agency. Notably, these latter failures arise despite the fact that in many agencies, senior policy staffers and advisors are often (though not exclusively) chosen from federal civil servants, where highly qualified African Americans historically have been well represented.

However dismal these numbers might appear, it is worth observing that in many instances, these data are *rosier* than the overall structure of the senior policymaking apparatus. In order to achieve as much consistency as possible, we have restricted our data parameters considerably, and taken a conservative approach to tabulation, limiting the denominator of total jobs searched. Consequently, minor adjustments targeting a broader field of positions would prove less flattering. For example, in the case of the Federal Reserve Board, we have restricted our tabulation of the Board’s official staff to individuals with “Director” titles in policy divisions. However, technically the entire official staff of the Board is directly approved by the Board, an unusual feature of the agency. This means if we were to fully include the total number of senior policy staff ultimately hired through the approval of political appointees, our data for the Fed Board would look as follows, and impact our total numbers considerably:

Table 2.2
Senior Policy Staff at the Federal Reserve on July 4, 2020
(counting all policy members from Fed Official Staff)

Agency	Total Senior Policy Staff (not including Political Appointees)	Total Black Senior Policy Staff	Percentage of Black Staff
Fed	190	3	1.58%
Adjusted Total²²	296	8	2.70%

Similarly, although we exclude Minority Affairs offices from our analysis, which provide greater numbers (though not always) of African American representation, our focus on policymaking per se also excludes the executives from Ombudsmen, Inspector General and General Counsel offices where African Americans are overwhelmingly absent.

Political Ideology

By definition, this study's snapshot reflects decisions made under only one administration (the Trump administration). This in turn raises the question as to whether political ideology might somehow be responsible for the skewed result.

Comparing the raw numbers of current Black senior policy staff offers little insight, given that Republicans, as the holders of the White House, have more opportunities to name African Americans to posts.

Still, there are ways to shed light on the hypothesis. Because financial regulatory agencies that take the shape of Commissions are by law required to have a minimum of two parties represented in their membership, we can compare choices made by Democratic and Republican Commissioners at the SEC and CFTC in terms of their hiring of staff as per the July 2020 data. In order to provide more nuance, the data can further be disaggregated to account for hiring by Chairmen (who are allocated more staff positions within their offices) and Commissioners in theirs.²³

The results of the data can be categorized as follows:

²² Our adjusted total consists of Table 2.1 staff across all federal agencies, not including the Directors of the Board's official staff (120-14=106) *plus* all of the Board's official staff in policy divisions (190).

²³ These numbers do not include hirings by Chairs across the agency, but are limited to their personal Counsel. Also, as of July 4, 2020, there was only one Democrat at the SEC, not two. However, the results appear highly representative insofar as there were no African American staffers hired by the Democratic Commissioner who recently left the agency, either.

Table 2.3
Senior Policy Staff at the SEC and CFTC on July 4, 2020

Agency	Black Senior Policy Staffers appointed by Democratic Commissioners	Black Senior Policy Staffers appointed by Republican Commissioners	Black Senior Policy Staffers appointed by Chairman	Political affiliation of Chairman
CFTC	0	0	0	Republican
SEC	0	0	1	Independent

From this limited vantage point, there is little variance observed between Republican and Democratic appointments of Black senior staffers among Commissioners. In short, White Republican Commissioners have no African Americans on their staffs, and neither do White Democratic Commissioners. To the limited extent to which hiring is occurring within the offices of political appointees, it is happening in the office of an agency Chairman.²⁴

With this in mind, it is worth highlighting that the absence of appointments by Commissioners of either party has important future repercussions and offers insight as to the future demographic makeup of senior civil service employees. Tours on the staffs of political appointees are generally critical elements of professional staffers' progression at a regulatory agency, and senior policy staffers routinely receive promotions after their service that position them in the top ranks of agencies, as well as opportunities in the offices of agency Chairmen. In the case of one current nominee to the SEC, it can also offer a route to consideration as a political appointee as a Commissioner,²⁵ and Commissioner posts have served as stepping stones for elevation to Chairman later.²⁶ However, in the absence of such tours, routes to professional advancement for African American employees will be significantly curtailed.

Black leadership and senior African American staffers

Meanwhile, with only one data point available, the NCUA's Chairmanship, the significance of Black leadership on African American staff hires remains unclear.

²⁴ This outcome was sufficiently interesting that we back-tested this outcome, and found identical outcomes at the Federal Trade Commission, where Commissioners, Democrat and Republican, also failed to hire Black policy advisors.

²⁵ Trump Nominates Caroline Crenshaw to Democratic SEC Seat, available at <https://www.wsj.com/articles/trump-to-nominate-caroline-crenshaw-to-democratic-sec-seat-11592504357>.

²⁶ SEC Biography: Chairman Mary L. Schapiro, available at <https://www.sec.gov/about/commissioner/schapiro.htm>.

Table 2.4
Agency Head/Chair Race, Political Affiliation and Staff Hires

Agency	Race of Agency Head/Chair	Political Party of Agency Head/Chair	Total Senior Policy Staff	Total Senior Black Staff	
CFPB	White	Republican	5	0	0.00%
CFTC	White	Republican	27	0	0.00%
FDIC	White	Republican	11	0	0.00%
FHFA	White	Republican	8	0	0.00%
Fed	White	Republican	19	0	0.00%
NCUA	Black	Republican	10	2	20.00%
OCC ²⁷	White	Republican	9	2	22.22%
SEC	White	Independent	36	1	2.78%
Total			125	5	4.00%

When taking into account the total number of senior policy staff, the most significant presence of Black senior civil servants can be found at the NCUA, led by a Black political appointee—and at the OCC, which until recently was headed by a White political appointee. Conversely, the Federal Reserve, which has the largest number of staff chosen by political appointees, has the fewest. These results could suggest a higher demonstrable interest in promoting Black hiring decisions at the NCUA or the OCC, and/or either the OCC or NCUA being statistical outliers. Or yet still, other factors may be available to explain the outcomes, including the varying demographic makeup of the civil servants across regulatory agencies and the sector of the financial system a regulator oversees.²⁸ Nevertheless, a correlation of African American hires and African American bosses has been observed elsewhere in government, with African American senators far more likely to hire Black staffers than their White counterparts.²⁹

III. Causes: An overview of theories

The results of our survey are stark, and raise the natural question as to why Black appointments are so rare. In this final part, we provide an overview of how the available data may shed (limited) light on popular explanations.

²⁷ There is at present an Acting Comptroller of the Currency, though the senior executive decisions reflect those of his predecessor, and this row reflects those choices.

²⁸ The Fed has a particularly homogenous workforce, reflecting in part the homogeneity of the economics profession and the relative paucity of African American PhDs every year. This lay in contrast to the many African Americans who receive law degrees at some of the nation’s top law schools and constitute the primary target of employers at other market and banking regulatory agencies. Still, even these numbers do not explain the absence of African Americans in supervisory posts at the Federal Reserve, which largely require JDs.

²⁹ Hill Diversity, at <https://jointcenter.org/digging-deeper-2020-senate-democratic-caucus-diversity-numbers>.

The Staffer Pipeline Theory

Appointment to federal regulatory agencies is both harder and easier than it may appear. Technically, the President is formally responsible for nominating members of regulatory commissions and agencies, and the Senate is charged with providing its advice and consent in voting to push the nominee forward for confirmation. In practice, however, the appointment process can vary considerably. In instances like Federal Reserve nominations, the President (and White House staff) is indeed largely independently responsible for nominations. White House staff can devise a list, identify individuals on whom to perform background checks, and then circulate names with colleagues in the Senate for their input and review.

In other circumstances, the Senate itself can take the lead in generating names for nominations. By statute, the SEC and CFTC are required to limit the number of people of the same political party to three persons. This means in effect that generally the President is responsible for nominating (often in consultations with the ranking Republican member of the Senate) individuals to agencies. Meanwhile, the remaining two individuals are traditionally sponsored by the highest-ranking member of the opposing party in the Senate (e.g., the Senate Majority or Minority Leader) who likewise consults with the highest-ranking Democrat on the agency for which a nomination is sought.³⁰

Complicating things in either case is that most federal regulatory nominations must pass through Congress by unanimous consent. Otherwise, time must be taken on the floor of the Senate for a recorded vote by members. Taking votes to the Senate floor costs time, however, which is a precious commodity for policymakers who have multiple legislative priorities that themselves require floor time to debate. As a result, usually only the most high-profile nominations enjoy enough importance that Senators are willing to eat up floor time and a debate to push the nomination forward.

The way in which the process for many nominations has traditionally been lubricated is by Senators appointing members of their own staff to regulatory positions. By in effect taking turns nominating individuals, members can impact and influence Commissions beyond their appropriations and oversight responsibilities.

The reliance on Senate staffers for appointments to technocratic, independent agencies is highly debated. Whatever the merits, the importance of having been an aide in the Senate is especially evident in the current constellation of political appointees at financial regulatory agencies. According to the data, over half of all political appointments involve individuals who have served as Senate staffers earlier in their careers.

³⁰ Thus if there is a Republican president, at least two of the five seats on the Securities and Exchange Commission will be reserved for Democrats; similarly, if there is a Democratic president, two of the five seats of the Commodity Futures Trading Commission will be reserved for Republicans.

Table 2.5
Political Appointees with Senate Staffer Experience on July 4, 2020

	Total Number of Financial Regulators (Political appointees)	Number of Financial Regulators (Political appointees) with Senate staffer experience	Percent with Senate staffer Exper.	Total Black Regulators (Political Appointees)	Number of Black Financial Regulators (Political appointees) with Senate staffer experience	Percent with Senate staffer Exper.
CFPB	1	1	100.00%	0	0	0.00%
CFTC	5	5	100.00%	0	0	0.00%
FDIC	2	2	100.00%	0	0	0.00%
FHFA	1	1	100.00%	0	0	0.00%
Fed	5	0	0.00%	0	0	0.00%
NCUA	3	2	66.67%	1	0	0.00%
OCC ³¹	N/A	N/A	N/A	0	0	0.00%
SEC	4	2	50.00%	0	0	0.00%
Total	21	13	61.90%	1	0	0.00%

The historical record, by contrast, looks quite different. As seen below in Table 2.6, historically, fewer political appointees have served as congressional staffers—by our count, only 15.90%.

Table 2.6
Political Appointees with Senate Staffer Experience
(Historical Tally)

	Total Number of Financial Regulators (Political Appointees)	Total Number of Financial Regulators (Political Appointees) with backgrounds as Senate staffers	Percentage with Senate Backgrounds
CFPB	2	1	50.00%
CFTC	43	16	37.21%
FDIC	31	11	35.48%
FHFA	3	2	66.66%
Fed	95	3	3.16%
NCUA	21	5	23.81%
OCC	31	2	6.45%
OTS	6	1	16.67%
SEC	99	12	12.12%

³¹ We do not include the OCC for the purposes of this table since the agency is currently headed by the Acting Comptroller of the Currency, who was not put up for Congressional approval.

Total	327	52³²	15.90%
--------------	------------	------------------------	---------------

Disaggregating the data further, the numbers suggest that Black political appointees may be beneficiaries of systems based on Senate experience: 15.77% of non-Black political appointees have had experience as Senate aides, whereas 20% of Black appointees have had experience as Senate aides.

Table 2.7
Black Political Appointees with Senate Staffer Experience
(Historical Tally)

	Total Non-Black Regulators (Political Appointees)	Total Non-Black Financial Regulators (Political Appointees) with Senate Staffer Experience	Percent with Senate Staffer Exper.	Total Black Regulators (Political Appointees)	Number of Black Financial Regulators (Political Appointees) with backgrounds as Senate staffers	Percent with Senate staffer Exper.
CFPB	2	1	50.00%	0	0	0.00%
CFTC	42	16	38.10%	1	0	0.00%
FDIC	31	11	35.48%	0	0	0.00%
FHFA	2	1	50.00%	1	1	100.00%
Fed	92	3	3.26%	3	0	0.00%
NCUA	18	4	22.22%	3	1	33.33%
OCC	31	2	6.45%	0	0	0.00%
OTS	6	1	16.67%	0	0	0.00%
SEC	97	12	12.37%	2	0	0.00%
Total	317	50	15.77%	10	2	20.00%

Yet these data are deceptive. For one, the sample size is small, with only two African Americans ever having served with Senate backgrounds. Moreover, when one looks behind the data, and pulls out, once again, the smaller, and less powerful agencies where African Americans have historically been clustered—namely FHFA and NCUA—the number of African American political appointees that have had backgrounds as Senate staffers over the course of U.S. regulatory history drops to zero. Meanwhile, as seen in Table 2.8, the percentage of non-Black financial regulators drops only slightly to 15.15%.

³² To avoid double-counting, this figure excludes individuals with Senate staffing experience who served multiple agencies.

Table 2.8
Black Political Appointees with Senate Staffer Experience
(Historical Tally not including NCUA and FHFA)

	Total Non-Black Regulators (Political Appointees)	Total Non-Black Financial Regulators (Political Appointees) with Senate Staffer Experience	Percent with Senate Staffer Exper.	Total Black Regulators (Political Appointees)	Number of Black Financial Regulators (Political Appointees) with backgrounds as Senate Staffer Experience	Percent with Senate Staffer Exper.
CFPB	2	1	50.00%	0	0	0.00%
CFTC	42	16	38.10%	1	0	0.00%
FDIC	31	11	35.48%	0	0	0.00%
Fed	92	3	3.26%	3	0	0.00%
OCC	31	2	6.45%	0	0	0.00%
OTS	6	1	16.67%	0	0	0.00%
SEC	97	12	12.37%	2	0	0.00%
Total	297	45	15.15%	6	0	0.00%

These numbers may help explain, though only partially, one of the most salient observations of our data: that in the last 35 years, no African American has been nominated to a financial regulatory agency where Senate leaders have been positioned to suggest or sponsor names for appointments to the President (e.g., when a Commissioner must be nominated who is not a member of the Party of the presiding President). Aulana Peters, who was nominated to be an SEC Commissioner in 1984 while Robert C. Byrd was the Senate minority leader, was the last. (See Table 1.) This record departs sharply from that of non-Black nominees, of whom 28% have been chosen when the President was of a different party than themselves. Of these, 12% had been at one point or another Senate staffers.³³

Cognitive (and Racial) Bias

The data above provide strong evidence that African Americans have for two generations been almost invariably dependent on the Executive branch for mobilizing nominations resulting in political appointments. Neither party in the Senate, Democrat or Republican, has produced an African American appointment in the absence of being in control of the White House since the first term of the Reagan administration.

³³ As a methodological matter, however, we must caution that we have only been able to confirm as of the release of our white paper 274 of 327 political nominations.

The staffing theory does not fully explain the data, however. As demonstrated above, a majority of non-Black political appointees have not been Senate staffers, including recent agency nominees.³⁴ Meanwhile, other Black nominees or would-be nominees have not been Senate aides, and not been confirmed. This suggests that other factors or theories may play a helpful role in explaining the absence of Black regulators since policymakers are capable of reaching out beyond the Senate staffing pool, and in the case of non-Black nominees, often will.

Qualifications arguments are implausible. There are currently over 46,000 African American lawyers³⁵ in the United States today, and over 500 African American attorneys³⁶ working in the top ten³⁷ most esteemed law firms. As a group, they have prestigious credentials. Harvard Law alone has produced nearly 3,000 Black law school graduates. It is a near impossibility that no African American lawyers meet the academic and professional qualifications necessary for political appointments, or staff positions, especially when measured against the qualifications of past White regulators with far less selective credentials.³⁸

Other theories are offered in the literature of cognitive bias, which details varying ways in which patterns of judgment can systematically deviate from logic or reality.³⁹ Although beyond the scope of our empirical analysis, and worthy of future study, these theories traverse a spectrum of flawed, and ultimately racially biased decision making.⁴⁰

According to the theory of *endowment effect*, people tend to ascribe more value to objects or resources that they control (like Senate staff), or with which they have experience.⁴¹ Consequently, Senators may be more likely to place people with whom they are familiar in agency

³⁴ Trump to nominate lawyer Crenshaw to fill SEC Democratic commissioner slot, <https://www.reuters.com/article/us-usa-sec-nominations/trump-to-nominate-lawyer-crenshaw-to-fill-sec-democratic-commissioner-slot-idUSKBN23P30A>.

³⁵ *Household Data Annual Averages: 2008*, BUREAU OF LABOR, <https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/cpsaat11.pdf>.

³⁶ Estimated according to percentages available from the American Lawyer's *Diversity Scorecard* (2019), available at <https://www.law.com/americanlawyer/2019/05/28/the-2019-diversity-scorecard>.

³⁷ See VAULT, *Law 100* (2020), <https://www.vault.com/best-companies-to-work-for/law/top-100-law-firms-rankings>.

³⁸ In fact, our data indicate that since 1985, Black appointees have earned 12% more doctorate degrees and 23% more law degrees than White appointees. Further, 18% of White appointees only possess a single degree, as opposed to 11% of Black appointees. Meanwhile Black appointees outnumber White appointees with three degrees by 17%.

³⁹ See generally, Leaf van Boven et al., *Judgment and Decision Making*, in THE OXFORD HANDBOOK OF SOCIAL COGNITION, 375-401 (D.E. Carlston ed., Oxford University Press, 2013) (proposing several classic and contemporary explanations for the discrepancy between decisions individuals should make and the decisions that are actually made).

⁴⁰ See Joyce Ehrlinger, W. O. Readinger, & Bora Kim (*In Press*) *Decision Making and Cognitive Biases*. In H.S. Friedman (Ed.), *Encyclopedia of Mental Health*, 2E. Philadelphia, PA: Elsevier.

⁴¹ See Daniel Kahneman, Jack L. Knetsch, & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5(1) J. OF ECON. PERSP., 193, 197-98 (1991) ("One implication of loss aversion is that individuals have a strong tendency to remain at the status quo, because the disadvantages of leaving it loom larger than advantages.").

positions. Thus like employers who are most prone to promoting from within, they may draw from those staffers and other close associates to fill positions.⁴²

In highly politicized contexts, decisions may be tainted by *outsider bias*—the idea that if you are not already part of a known circle of allies and advisors, your values must be foreign to them.⁴³ Thus, where Senators consider candidates who are not part of their social circle, or are unknown to them, as is the case with most African American candidates, they and their staffs may have less interest in supporting or promoting their nominations.

A third theory holds that Senators may over-rely on prior beliefs or first impressions (e.g., race) when making decisions, in a cognitive act called *anchoring*.⁴⁴ According to this line of thought, a Senator begins with preconceived notions about what an “authentic” Conservative or Progressive should look like. Or they may have stereotypes about the intelligence or competence of Blacks. These anchors may serve as a guiding point of reference, even subconsciously, in evaluative judgments, leading Senators to more heavily scrutinize any deviations Black candidates take from party positions, or fail to revise their beliefs when confronted with new information.⁴⁵

Finally, in instances where a Senator has acted before to confirm a Black financial regulator, or—more likely given the paucity of confirmed Black financial regulators—the Senator has confirmed an African American for another position, that act could act as a “moral credential” allowing them to guiltlessly engage in ignoring well-qualified individuals in the future.⁴⁶ In this way, “a decision that favors one minority member (even if it is totally deserved) is sufficient to liberate people to act on a[] [prejudicial] attitude” in subsequent interactions.⁴⁷

These theories are overlapping with not only one another, but also the staffer pipeline theory described in the preceding section. The logic behind hiring staffers, for example, can be explained

⁴² See Amy Huber, *Exploring Hiring Practitioner Preferences for and Assessment Practices of Prospective Candidates*, 43(4) J. Interior Design 21, 25 (2018) (discussing how hiring decisions have life-altering consequences and scholars have long debated whether the use of heuristics—vulnerable to various biases—are good or bad, rational or irrational).

⁴³ See Samuelson, William, and Richard Zeckhauser, *Status Quo Bias in Decision Making*, 1, J. OF RISK AND UNCERTAINTY 7–59 (1988); see also Amy Kristof-Brown, Murray R. Barrick, & Melinda Franke, *Applicant Impression Management: Dispositional Influences and Consequences For Recruiter Perceptions of Fit and Similarity*, 28(1), J. MGMT. 33-40, (2002) (offering evidence that when making hiring decisions, interviewers will unconsciously favor candidates whom they see as similar to themselves).

⁴⁴ See, e.g. Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124, 1128 (1974).

⁴⁵ Gregory Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, UC DAVIS L. REV. pg. 1055. See Ward Edwards, *Conservatism in Human Information Processing*, in JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 359, 359 (Daniel Kahneman et al. eds., 1982) (finding that it takes “two to five observations to do one observation’s worth of work” to induce a person to change her opinion).

⁴⁶ See Anna C. Merritt et al., *Moral Self-Licensing: When Being Good Frees Us to Be Bad*, 4 SOC. & PERSONALITY PSYCHOL. COMPASS 344, 344 (2010).

⁴⁷ Gregory Parks, *Race, Cognitive Biases, and the Power of Law Student Teaching Evaluations*, UC DAVIS L. REV. pg. 1069.

by the psychological pitfalls of endowment and outsider bias. Similarly, the racial bias arising in anchoring could deter both the hiring of Black Senatorial staff and political nominees. As a result, empirical data are insufficient to provide any definitive insights beyond revealing widespread structural exclusion of African Americans from positions of financial regulatory influence. Instead, qualitative evidence—including interviews with Senators, staffers, past staffers, appointees and former nominees—is the best way to conclusively assess the applicability of any one or more theories and their explanatory force behind the data.

Conclusions

This study provides empirical evidence showing a systemic absence of African Americans in positions of leadership at financial regulatory agencies. It also shows that this absence is both a contemporary challenge, and a historic roadblock keeping African Americans from senior positions involving policy origination, development and supervision. The consequence is that African Americans have had little, and usually no direct say in the very shape and operation of finance, the lifeblood of capitalism and the U.S. economy.

The data demonstrate unambiguously that the contemporary deficit of African American regulatory representation is a bipartisan failure. Both parties, Republican and Democrat, have systematically failed to nominate African Americans to positions of power. And where African Americans do accede to positions of authority, an occurrence which averages once every decade, only narrow paths have made such opportunity possible. The data suggest that Senate committee chairs and top Senate officials of both parties have consistently failed to sponsor African Americans for financial regulatory roles, making appointments overwhelmingly dependent on White House action.

As a final note, the author believes that the data in this study deserve further attention, and more resource-intensive investigation beyond that of this Working Paper. At a minimum, the government should perform a thoughtful data-gathering exercise and analysis canvassing with particularity the overall racial and gender makeup, both currently and historically, of U.S. financial regulatory agencies in order to ascertain the degree of overall diversity and representativeness embedded in the policymaking process. Additionally, further research is warranted to examine adjoining areas of economic influence, including the Treasury Department's historical leadership and policy ranks, as well as those of the White House Council of Economic Advisors. Only with such data gathering, can policymakers be well positioned to curtail democratic deficits inhabiting economic rulemaking and ensure that communities affected by regulation are "in the room where it happens" when policy decisions are made on their behalf—and in their name.⁴⁸

⁴⁸ See Hamilton, *The Room Where it Happens*, at <https://www.youtube.com/watch?v=295zT92knl4>.