

# NOW & NEXT

DEI Alert

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## The evolution of DEI reporting and the 2022 proxy season

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Simple demographic data is a thing of the past — companies must also weigh the *effectiveness* of their DEI initiatives.



### What's the Impact?

- / Pressure is increasing on companies to make DEI commitments and evolving to include additional metrics and reporting requirements.
- / 2022 has already seen more than twice 2021's number of shareholder proposals requesting civil rights audits.

An early look at Proxy Season 2022 highlights a new trend of activism for public companies to navigate: shareholder requests for civil rights audits. These audits ask companies to go beyond environmental, social and governance (ESG) transparency of the past few years and ask them to also retain a third party to analyze the effectiveness of their diversity, equity and inclusion (DEI) initiatives and the civil rights impact of their programs, policies and products.

Over the two years since the murder of George Floyd, we have seen unprecedented demands for transparency about companies' progress on their DEI efforts. From customer requests to the "great resignation," companies have felt increased demand for clarity on their commitments to DEI. The SEC also joined the conversation, requiring public companies to disclose any human

capital measures or objectives, if material, that a company focuses on in managing its business, including employee development, attraction, engagement and retention. Companies, in turn, have increased their willingness to share information about diverse representation within their workforces. Companies have also made bold commitments to advancing DEI, ranging from representation goals for the workforce and leadership teams to promises of multi-billion-dollar investments in underserved communities and businesses of color.

Last year saw successful shareholder proposals requesting that companies increase the transparency of their DEI programs, including the process that a company's board follows for assessing the effectiveness of their efforts, and any goals, metrics and trends related to recruiting, retaining and developing diverse employees. In 2021, companies also saw the beginning of shareholder proposals requesting civil rights audits (sometimes also framed as racial equity audits), which shifted the asks from DEI transparency to impact assessments.

More specifically, these audits ask for third-party independent auditors to analyze and evaluate the civil rights impact of policies, practices and products. Several civil rights audit requests specifically target information about the effectiveness and impact of companies' sizable commitments to address economic and racial inequality. The SOC Investment Group (formerly CtW Investment Group), which is responsible for several of the shareholder proposals, regularly argued that the only way shareholders could be confident that a company's actions are contributing to its stated goals is through an objective evaluation of the effectiveness of its policies, practices and products in addressing the impact on marginalized stakeholders.

Others have asked companies to commission audits that analyze the impacts of DEI initiatives on non-diverse communities. The National Center for Public Policy Research, which is responsible for many of these shareholder proposals, argued that DEI efforts may have a negative impact on these populations and sought audits to assess the impact.

Nearly 10 shareholder proposals for civil rights audits came to a vote in 2021, averaging around 30% support. This year has already seen more than twice that number of shareholder proposals. The early returns show that many shareholders are interested in this information. Several companies, including Amazon, Citigroup, BlackRock, and JPMorgan Chase, recently agreed to conduct civil rights audits before shareholder voting. Shareholder proposals have also begun to pass, most notably at Apple and Maximus.

Pressure on companies to make DEI commitments is not only increasing — it is also evolving. Saying DEI is a priority and sharing your demographic data is not enough. The commitments of 2020 became the transparency reporting of 2021, which became the impact assessment audit requests of 2022. DEI initiatives have to continue to grow to meet the evolving demands of shareholders, employees and customers to analyze and articulate the effectiveness of these programs.

Nixon Peabody's DEI Strategic Services Team will continue to monitor developments. Learn more about our [three-phased approach to help clients](#) (1) assess current efforts, (2) address challenges and (3) guide long-term success.

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