



December 19, 2013

Robert E. Feldman

Executive Secretary

Attention: Comments

Federal Deposit Insurance Corporation

550 17<sup>th</sup> St. NW

Washington, DC 20429

[Comments@fdic.gov](mailto:Comments@fdic.gov)

**RE: Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment**

Dear Mr. Feldman:

The North Dakota Bankers Association (“NDBA”) is a trade association representing banks that offer financial services throughout North Dakota. NDBA is pleased to count two large banks among its membership; however, the majority of our bank members are small, community banks. And, please understand, in the world of North Dakota banking, a bank that 50 or more employees is a BIG bank. Frankly, there are only a few of them, although this is changing as small banks merge with larger banks in order to be able to bear the ever increasing regulatory burden that is being placed upon them, as the agencies bemoan the situation and ask how they can possible reduce that burden. The answer is “stop”.

Within the context of this proposal we suggest the inclusion of a straightforward and clear exemption for any bank that is not required to file the EEO-1. For banks that are required to file the EEO-1, we suggest a clear and straightforward provision that the agencies will assess their diversity policies and practices by reviewing a copy of the EEO-1 or, at most, requiring a bank to report the filing of a complaint of unlawful discrimination against the bank. If the agencies conclude the EEO-1 or notice of a complaint does not provide sufficient information, the agencies themselves can use currently available data bases and research resources to determine whether a particular institution appears to be violating applicable federal or state laws for equal opportunity in light of area demographics and the population of qualified applicants for employment.

North Dakota banks realize substantial value and benefit from a diverse workforce, especially as the diversity of North Dakota and the pool of qualified job applicants expands. North Dakota is a state with extremely low employment and high competition for employees. North Dakota banks cannot afford to to turn away qualified applicants or employee for any reason, much less reasons that are prohibited by law; indeed, our banks do not turn away qualified persons at all; they hire them and work diligently to retain them.

Again, we must repeat: when the agencies impose mandates for banks to use their time and resources complying with “guidance” or regulations such as those proposed, the resultant diversion of resources to compliance reduces the resources banks have available to service their customers and communities and to perform the functions necessary for a safe and sound bank operation. This is particularly galling when the “guidance” goes way beyond the requirements of laws enacted by Congress as the proposal does. Federal anti-discrimination laws have established a line to exempt most small employers. The proposal steps over that line when it should not.

Despite the recognition that small banks, in particular, have no meaningful way to influence the employment practices of their vendors and suppliers, under the proposal they are required to determine and assess those practices. For what purpose? So that the bank will buy products and services from a different supplier or vendor? So banks will be coerced to act as enforcers of anti-discrimination laws even though they are neither law enforcement nor experts in the requirements of those laws? On behalf of our membership, we object.

The focus of the proposal on metrics suggests there is some quota by which compliance will be measured. This focus appears to be directly contrary to case law which has repeatedly rejected the imposition of quotas in the context of generalized anti-discrimination efforts where illegal discrimination has not been shown to have occurred. The holding of those cases applies to government action even if that action is by “guidance” instead of a more direct form of compulsion such as a regulation.

**The approach we are suggesting – reliance by the agencies on currently existing resources, including reports and filings will provide information by which the agencies may assess the diversity practices of regulated institutions without imposing significant new burdens upon those institutions. As such the approach we suggest far better comports than the proposal with the directive of section 342(b)(2)(C) that it “may not be construed to mandate any requirement on or otherwise affect the lending policies and practices of any regulated entity, or to require any specific action based on the findings of the assessment.”**

We appreciate the agencies’ sensitivities to the burdens which small banks will bear if the proposed guidance is adopted and implemented, but contend the proposed guidance does not balance those burdens appropriately, especially in light of section 342(b)(2)(C). Accordingly, we respectfully request that the proposed guidance not be adopted and that the agencies reconsider alternative methods by which to assess the diversity practices of regulated entities.

Thank you for consideration of these comments.

Sincerely yours,

NORTH DAKOTA BANKERS ASSOCIATION

A handwritten signature in cursive script that reads "Marilyn Foss".

Marilyn Foss

General Counsel