National Association of Securities Professionals

February 7, 2014

BY ELECTRONIC MAIL TO: rule-comments@sec.gov
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE.
Washington, D.C. 20549-1090

RE: SEC File Number S7-08-13

The National Association of Securities Professionals ("NASP") is hereby responding to the request for comment issued by the SEC, OCC, NCUA, FDIC, Board, and CFPB (singularly "Agency", collectively "Agencies") regarding the proposed Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies (hereafter "Joint Standards") in order to implement Section 342 of the Dodd-Frank Act.

Founded in 1985, NASP is the largest trade association comprised of minorities and women in the financial services industry with over 600 members and 10 local chapters across the United States. NASP connects members to industry leaders and business opportunities; advocates for policies that create equal representation and inclusion; provides educational opportunities; and works to build awareness about the value of ensuring that minorities and women are included in all aspects of the financial services industry.

NASP is headquartered in Washington, D.C. and is the premier organization in assisting minorities and women to achieve inclusion and equality in the financial services industry. NASP members represent a broad spectrum of professionals within the financial services industry. Our members include asset managers, broker dealers, investment bankers, bond counsel, public finance consultants, commercial bankers, institutional investors, the pension plan community and other finance professionals. Currently over 150 companies support NASP through fiscal sponsorship and general membership including approximately 45 small minority and/or women owned (M/WOB) emerging companies.

NASP has been involved in legislative and advocacy efforts at both the state and federal level on various minority and women diversity and inclusion matters in the financial services industry particularly in reference to business contracting and workforce diversity, including Section 342 of the Dodd-Frank Act. As such, we respectfully submit the following response to the Request for Comment from the Agencies.

Respectfully Yours,

Orim Graves, CFA
Executive Director, NASP

<u>Introduction</u>

The National Association of Securities Professionals (NASP) appreciates the opportunity to comment on the Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Request for Comment. (NASP has been at the forefront of advocating for the meaningful inclusion of minorities and women and minority and women owned firms in the financial services industry for over 25 years. Specifically, through data submissions to the GAO, oral and written testimony before Congressional committees, and advising Ranking Member Maxine Waters and other members of the Congressional Black Caucus on specific language regarding diversity and inclusion in the financial services industry, NASP has had an impact on several laws regarding diversity and inclusion. They include Section 107b of the Emergency Economic Stabilization Act, Section 1116 of the Housing and Economic Recovery Act and most recently Section 342 of the Dodd Frank Wall Street Reform and Consumer Protection Act. In each instance, these laws sought to require the utilization "to the maximum extent possible" of minority and women owned professional services firms in the business of the respective government agency or department. The experience of our members in their efforts to participate in the business of the economic recovery through the effective implementation of these laws however, provides an important vantage point for consideration regarding the Joint Standards.

NASP and its members were actively involved in the legislative process leading to the passage of Dodd Frank and thus were privileged to know the legislative intent of Section 342. Minorities and women and minority and women owned firms continue to be greatly underrepresented and underutilized in the financial services industry despite the changing demographics of the United States. According to U.S. Census Data, our nation will be "majority-minority" by 2043. In fact, *today,* ethnic minorities and women together *are* the new majority. The implications of these facts are staggering as it relates to the evolving workforce and consumer base in the financial services industry. Section 342 intended to highlight minority and women owned professional services firms including investment banking firms, asset management firms, mortgage banking firms, investment consultants, accountants and providers of legal services among others and require their inclusion "to the maximum extent possible in all of the business of the agency." The goal regarding workforce diversity was to encourage the recruitment, hiring, advancement and ultimate promotion to the highest levels of the agency of minorities and women.

As Section 342 speaks only to ethnic minorities and women in its discussion of diversity, we believe that the Joint Standards should likewise follow the law. For example, to date, there has never been a woman CEO of any major investment banking firm, asset management firm or money center bank. Likewise, there is a paucity of ethnic minority males who have risen to the CEO position within the aforementioned institutions. Section 342 intended to give minorities and women and minority and women owned firms a chance to compete effectively for contracts and jobs across the hierarchy of the governmental agency or department. The ability to "develop standards for assessing the diversity policies and practices of entities regulated by the agency" sought to extend this opportunity to compete to the over 70,000 institutions affected by the Joint Standards.

NASP met several times with the OMWI officers both individually and in organized roundtable discussions in 2011 and 2012. Members discussed impediments to the effective implementation of Section 342 as experienced by our members and gave input regarding the Joint Standards. Overall, we generally agree with the Joint Standards and applaud the OMWI officers for their efforts in this regard. NASP remains concerned however, that the Joint Standards as written are too vague to meaningfully evaluate the diversity practices of Regulated Entities.

1) *Are the proposed Joint Standards effective and appropriate to promote diversity and inclusion? Why or why not? If not, what standards would be appropriate and why? How would such standards support or hinder the objectives of Section 342?*

Recommendation: Assessments should be mandatory and performed by the primary regulator of the entity in the supervision or examination process with standardized questionnaires necessary to collect data comparable amongst institutions.

The assessment of diversity and inclusion at Regulated Entities should be conducted under the current examination/supervisory structure of the primary regulating Agency. Failing to do so, will signal to the Regulated Entities that diversity and inclusion is not a regulatory matter. In addition, mandatory assessment is necessary, even if self-assessment is required or there will be little to no information or useless information. As Commissioner Aguilar stated, "the Agency should use site visits along with surveys to obtain diversity data". Failing to include diversity assessments under the examination or supervisory authority signals to Regulated Entities that the Agency does not consider diversity and inclusion to be a strategic objective. NASP understands and acknowledges that the term "assessment" in Section 342 encompasses many different types of assessment including self assessment, but does not believe that the legislative intent of Section 342 was to allow the Regulated Entities to choose their own format of self assessment. In fact, nothing in the language of Section 342 requires voluntary self assessments. Section 342(b)(2)(C) requires each OMWI officer to "develop standards to assess the diversity policies and practices of entities regulated by the agency". Even 342(b)(4) does not limit the ability of the Agency to offer a strict assessment of the diversity of a Regulated Entity. Accordingly, a targeted standardized questionnaire will provide for appropriate data collection that can be analyzed and compared amongst institutions.

Recommendation: The Joint Standards language should specifically target the types of financial services firms explicitly stated in the statute as well as the level of business activities, i.e. race, gender, industry sector, etc.

Section 342(c)(1) states that "the Director of each Office shall develop and implement standards and procedures to ensure to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority owned and women owned businesses in all business and activities of the agency at all levels, including in procurement, insurance and all types of contracts." 342(d) further states that "this section shall apply to all contracts of an agency for services of any kind, including the services of financial institutions, investment banking firms, mortgage banking firms, asset management firms, brokers, dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services." Each OMWI officer is required to submit an annual report on the activities of their respective agency or department. A careful analysis of the reports from each agency except, perhaps the FDIC and to a lesser extent, the U.S. Treasury shows that minority and women owned financial services firms as stated in Section 342 did not participate in the vast majority of contracts in each such agency. Rather, the number of minority and women owned firms juxtaposed against the dollar amount of the contracts executed in 2012 clearly conclude that each contract was of a nominal amount and therefore couldn't be for the higher value professional services fees normally earned by investment banks, asset management firms and the like.

For example, the Federal Reserve Bank of New York, Office of Minority and Woman Inclusion, 2012 Annual Report to Congress states on page 11 that 112 minority and women owned firms collectively earned $9,062,001 or $80,911 per firm. They also stated that all fees earned from activities with the three Maiden Lane funds totaled $27,036,091 and none of the vendors were either minority or woman owned firms. During 2012, the Total Reportable Spend by the New York Federal Reserve Bank was $196,399,466 which translates to minority and women owned firms earning 4.6% of all fees paid. It is important for the Joint Standards to emphasize the types of minority and women owned professional services firms that were explicitly mentioned in the statute as opposed to basic services which were being counted toward compliance with Section 342.

The language, in Section 342 regarding "inclusion in all levels of business activities", should be carried forward to the Joint Standards. Given the proposed voluntary nature of the Policy, firms will take the opportunity to comply to the "minimum extent possible". Emphasis must be added to ensure full compliance with the spirit of the legislation.

Recommendation: The Policy should take steps to promote partnerships across minority and women owned firms and majority/large firms. As we have already seen with Section 342, these laws provide a very important access point for small firms to enter into federal government and other large contracts and transactions. The Joint Standards should emphasize the power of diverse supplier chains and partnerships (i.e. mentor-protégé programs and joint ventures etc).

The disclosure of these successful partnerships would have a favorable impact on diverse financial services firms as well as the Regulated Entities.

2) *Are the proposed joint standards sufficiently flexible but still effective to allow meaningful assessments of entities with a wide range of particular characteristics or circumstances (for example, asset size; number of employees; contract volume; income stream; and number of members and/or customers)? Are there other ways to approach the standards for smaller entities, such as those with small contracting dollar volumes or those not required to file EEO-1 reports? What other approaches or characteristics would be appropriate for any such alternative, modified or scaled approach? How would such modification or scaling support or hinder the objectives of section 342?*

Recommendation: Create a modified EEO-1 Report that encompasses details about the management hierarchy of the Regulated Entity workforce.

The Proposed Joint Standards suggest that Regulated Entities should use the EEOC's EEO-1 Report format. This report collects information but does not analyze the data and the associated trends. Also the document is not sufficiently detailed for obtaining management and specifically senior management data. A stronger template needs to be provided to Regulated Entities in order to obtain useful data to directly assist in evaluating whether diversity activities and inclusion programs are effective. As the vast majority of minorities and women in the financial services industry are concentrated in entry level and middle management positions, the production of specific data around the dearth of diverse senior management by Regulated Entity should further illuminate the problem. NASP believes what gets specifically measured and published can provide the baseline for future improvement. Smaller entities can use the EEO-1 format with agency-specific modifications. This level of specificity along with qualitative information allows sufficient flexibility.

Recommendation: Strengthen the Joint Standards regarding supplier diversity by requiring annual reports on "metrics and analytics related to: annual contract spending by entity; percentage spent with minority owned and women owned business contractors by race, ethnicity and gender; percentage of contracts with minority owned and women owned business sub-contracts; and demographics of the workforce for contractors and subcontractors."

The Joint Standards suggest that there is "limited public information available on supplier diversity at Regulated Entities and it may be more challenging to compare supplier diversity policies and practices among Regulated Entities". NASP strongly disagrees with this statement. Middle Market and Global Financial Services Firms currently collect the data necessary to meaningfully assess the diversity of their suppliers and service providers. For example, the National Minority Supplier Development Council (NMSDC) is an organization that advances business opportunities for certified ethnic minority business enterprises and connects them to its over 3,500 corporate members since 1972. These members include America's top publically owned, privately owned and foreign owned companies. The Financial Services Roundtable for Supplier Diversity is a subset of the NMSDC and is comprised of approximately 50 regional, national and global financial services organizations with formal supplier diversity initiatives. The corporate financial institutions collect supplier diversity metrics routinely and report these metrics to the NMSDC. The group's annual benchmarking survey also addresses a comprehensive range of issues and provides an invaluable assessment of a member corporation's supplier diversity initiative.

3) *What other factors, if any, would be useful in assessing the diversity policies and practices of the regulated entities, and why should such factors be considered? How would such factors support or hinder the objectives of section 342?*

Recommendation: The Joint Standards must emphasize its specific focus on the financial services, legal and other professional service industries.

Section 342 of the Dodd-Frank Act was originally written by members of the House Financial Services Committee to emphasize the need for greater diversity and inclusion in these industries. For example, the self assessment of a mutual fund company should spell out its diversity and inclusion metrics not just in hiring IT vendors or employing minority clerical employees, but show its metrics in hiring diverse senior leadership and utilizing M/WOB professional services firms such as lawyers, broker-dealers and or asset managers.

Recommendation: Require Regulated Entities to disclose diversity and inclusion assessment data to the public.

The transparency of the U.S capital markets is the foundation of our robust financial services industry. Timely disclosure of relevant information is critical to the fair and efficient manner in which our markets operate. Likewise, disclosure of comparable metrics regarding both workforce and supplier diversity of Regulated Entities will allow investors, employees, prospective employees, customers and the general public to be informed as to the utilization of minorities and women and minority and women owned firms. Transparency breeds competition within the industry which would result in improved outcomes for diverse populations.

Additionally, another aspect of transparency would be for the Regulated Entities to provide descriptions of any claims where a court has found the Regulated Entity guilty or liable for discriminatory activities in the last five years. If so, a further description of whether the Regulated Entity's position on such finding and any post finding actions to remediate or address underlying facts regarding such claims should be illuminated.

4) *Is the proposed model approach to assessment effective and appropriate to promote diversity and inclusion? Why or why not? If not, what approach would be appropriate and why? How would such approach support or hinder the objectives of Section 342?*

Recommendation: Agencies should standardize evaluation criteria in order to assess institutional performance.

In order to assess if Regulated Entities are utilizing minorities, women, and minority-owned and women-owned businesses "to the maximum extent possible…in all business and activities of the agency at all levels", the assessment must include metrics and a basis for inclusion of metrics. Too much flexibility exists in this section to promote consistency. Implementation of the Joint Standards must be reflected in appropriate metrics.

Similar to the Sarbanes Oxley Act statement by the institution and their senior management, a statement of diversity and inclusion assessment being supported by senior management is extremely important to the success of diversity and inclusion programs of the Regulated Entity. It is necessary to ensure that a culture of diversity is not delegated to a diversity officer, but rather permeates from the top down and throughout the Regulated Entity. The Joint Standards should tie supplier diversity and inclusion success to compensation.

Improve outreach to minority and women organizations, outreach to educational institutions and participation in conferences, workshops, and other events to attract minorities and women and inform them of employment and promotion opportunities as indicated in the proposed Joint Standards should be encouraged. We believe that a database of diverse candidates similar to one created by the late Mickey D. Collins, former OMWI Director of the FDIC, should be an integral practice to encourage workforce diversity and inclusion. A means of evaluating the effectiveness of programs to increase diversity and inclusion should be developed.

While laudable, the summary statements (i.e., pages 14-19 of the Proposed Joint Standards, prior to the enumeration of standards for each section: Organizational Commitment to Diversity and Inclusion; Workforce Profile and Employment Practices; Procurement and Business Practices – Supplier Diversity; etc.) under this section are not useful until we have actual data about current diversity and inclusion practices of suppliers.

Below are examples of metrics and specific information that should be collected:

- The template should ask the question whether the Regulated Entity has a diversity and inclusion policy and to describe the policy in the report to its agency.
- Metrics noted in this section are helpful but demographics should be stated clearly, i.e., African-Americans, Hispanics, Asians, etc.
- With respect to outreach, the Regulated Entity should provide metrics, e.g., how many outreach activities to NASP, how many bids from NASP member firms, how many contracts did NASP member firms obtain during a specified time period. It is important to conduct and asses outreach in order to determine if the activities are producing effective results.
- There is a need for more specific information about the pool of prospective employees and suppliers. Without this information we cannot determine whether the percentage of MWBE suppliers is meaningful, i.e., is the available pool of prospective employees and potential suppliers being utilized?

5) *Would there be potential advantages or disadvantages of the proposed model approach to assessment? If so, what would they be?*

Recommendation: Utilize a similar approach to the standard general regulation process. For example, require submission of the data, in a specified format, and for a specified period. An Agency-led assessment will ensure adequate collection and submission of relevant data.

The tangible advantages are very limited as Regulated Entities are not required to do anything specific due to the nature of this policy being a voluntary self-assessment. While the proposed standards are a good start to give an opportunity to Regulated Entities to highlight efforts undertaken to increase diversity and inclusion in the manner consistent with their own plans, goals and actions, it does not have the necessary requirements, quantifiable results and potential consequences for not following legislation that has already been passed. Having measures to enforce the law and gain information on a wide basis would be a huge advantage for diversity and inclusion efforts.

Collecting meaningful data would allow Regulated Entities to highlight their successes, which gives a positive view to Section 342 compliance. Benchmarking and progress tracking would be a huge advantage; however, this model approach to assessment does not provide the standards necessary for enforcement of diversity metrics.

Without a standardized collection of diversity and inclusion data the result will be the receipt of fairly useless information with the lack of specific uniform data collection. We believe that given business pressures, a limited number, if any, Regulated Entities will take the collection and submission of data and other information seriously unless it perceives that its regulator can enforce consequences as a result of failure to submit required information.

Recommendation: Improve transparency for the public to review data and metrics. Agencies must also provide a template for disclosing aggregate data/metrics on the Regulated Entities web site or risk disclosure of information without meaning.

There is limited transparency with this model approach. There should be a specific level of detail and data collected that the Regulated Entities would publish on their web sites.

In conclusion, the final policy should maintain minimum standards in three areas:

- Metrics - Both workforce and supplier diversity and inclusion must be measured in granular detail to show specific progress, goals and steps taken.

- Accountability - The Board and/or senior management must be held accountable for the organizational success with diversity and inclusion. Using the Sarbanes-Oxley Act of 2002 as a precedent, CEO's should certify/sign their self assessment and senior executives must take individual responsibility for the accuracy and completeness of corporate diversity self assessments. Diversity and inclusion should be one of the goals of the Regulated Entities' strategic plan.

- Transparency - The public must be made aware of the assessment via the firm and/or Agency's website. Diversity and inclusion numbers will prove to become vital statistics to investors, employees, potential employees and customers.