

To: [Comments](#)
Subject: Comments
Date: Friday, February 07, 2014 2:33:30 PM

RE: Docket No. OP-1465

Joint Standards for Assessing Diversity Policies and Practices of Banks

Dear Sir or Madam:

The Minnesota Bankers Association (MBA) is pleased to provide comments on the proposed joint standards referenced above. The MBA is the largest trade group representing Minnesota banks, with ninety-five percent of the Minnesota banks part of the association. Our membership includes large national banks and regional banks, but the vast majority of our member banks are small community banks. Minnesota's median-sized institution is \$95 million in assets. We have 76 banks under \$50 million in assets and 45 banks under \$30 million in assets.

We urge you to simplify your joint standards. As proposed, they are broader than they need to be, given the very limited purpose of the language in the Dodd-Frank Act's authorizing statute. There is no reason to create a whole new regulatory framework, as the agencies can do an adequate assessment with information that is currently available to you. The banks in our association, especially the very small banks, are gravely concerned that this simple statutory language will become yet another large regulatory paper chase, adding to the banks' ever-increasing regulatory burden. Our small banks have seen suggested regulatory guidance morph into industry best practices, which then is enforced as if it was a regulation.

The Dodd-Frank Act statutory requirement prompting this Policy Statement is very simple. Each agency must establish an Office of Minority and Women Inclusion (OMWI), and each agency's OMWI must have a Director. The Director will mostly focus on the agency's internal diversity practices, but there is one small requirement with respect to banks. The Director also must develop standards for "assessing the diversity policies and practices of entities regulated by the agency." Somehow that one line of text has turned into a six-page Policy Statement, with four separate components, dozens of suggested actions and several new required actions.

The Agencies recognize that Congress set several very significant limits on this statutory language. We appreciate that the Agencies acknowledge those limitations because they show that Congress did not intend to create a huge regulatory framework. The three limits are: first, nothing can be construed to mandate practices or otherwise affect the lending policies or practices of the banks; second, nothing can be construed to require any specific actions based on the findings of the assessment; and third, the agencies agree that they will not use the examination or supervision process in connection with these proposed standards.

Because of these significant limitations, the MBA urges you to simplify these joint standards. Congress clearly intended that this assessment be as non-intrusive as possible. In fact, the legislative history to this section shows that Congress purposely scaled back the requirement. The Agencies should not require banks to produce any new reports or documents. They should not require banks to do significant ongoing monitoring, and they should not require banks to provide new public disclosure statements.

The law requires that you assess the banks' diversity practices. So, we urge you to use all the readily available information you have to assess those practices. Review bank EEO-1 reports. Contact the Equal Employment Opportunities Commission and ask if the banking industry is generally compliant with all federal anti-discrimination laws and regulations. Contact the state agencies in charge of enforcing state anti-discrimination laws and regulations. Find out if the banks are the subject of an inordinate number of complaints. When you find out that the banking industry is doing an acceptable job, end your assessment. The banking industry has a good record of diversity practices, meaning we do a fine job of reflecting our communities. Allow that good record speak for itself, rather than forcing us to comply with a whole new laundry list of regulatory requirements.

While we oppose the general approach taken by the Agencies, we also specifically question whether the third and fourth sections of this Policy Statement are supported by the limited statutory language in the Dodd-Frank Act. In the third section, you propose assessing the banks' "Procurement and Business Practices—Supplier Diversity." The statutory language makes no mention of assessing the banks' record with respect to supplier diversity. The agencies appear to be expanding their assessment beyond the statutory language.

In the fourth section, you want to assess the banks' "Practices to Promote Transparency of Organizational Diversity and Inclusion." This section, too, is beyond the scope of the statutory language. The Background section of the Proposed Standards says that the "Agencies *believe* that a goal of section 342 is to promote transparency of diversity policies and practices within the entities regulated by the Agencies." Italics added. The agencies have taken this "belief" and turned it into a separate assessment section, with a full set of new public disclosures. Including this separate assessment in this Policy Statement is completely inappropriate. When implementing a statutory requirement, it does not matter what the Agencies "believe." What matters is the statutory language. If Congress wanted you to expand your assessment to include this information, they would have written the law to reflect their intent. They did not do so, which means the agencies should eliminate this whole fourth section.

Furthermore, through this fourth section of the Policy Statement, the Agencies are requiring banks to make public disclosures that are not required by federal law. Once again, the Agencies are clearly exceeding their statutory authority. From an administrative law standpoint, using a policy statement in this manner is wrong. Congress has never mandated this type of disclosure, so the Agencies should not use this Policy Statement to require new banking industry disclosures.

Including this fourth section in the Policy Statement begs a broader, philosophical question. This fourth section is based on the Agencies' assumption that banks must take additional actions to "promote" diversity. How have the Agencies already made that assumption? Without even beginning their assessment, the Agencies have concluded that additional promotional information is needed. The banking industry's record of diversity is strong, so why are the regulators requiring banks to spend time and resources on additional promotions? We are very concerned that this section is an example of a government entity saying, "We don't know what the problem is, but we will tell you how to solve it."

The statutory authority for this Policy Statement is severely limited. Congress has said that the Agencies cannot change a bank's lending operations, cannot conduct these assessments

through the bank examination process and cannot require specific action based on the findings from these assessments. We urge you to scale back your proposed assessment to a more appropriate level. Do not make this assessment process, which was specifically limited by Congress, into another large regulatory paper chase.

Sincerely,

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