International Bancshares Corporation

December 16, 2013

Via email Rulemaking Portal: www.regulations.gov and Comments@fdic.gov

Mr. Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 205551

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW.
Washington, DC 20552

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies. Board of Governors of the Federal Reserve System Docket No. OP-1465; Bureau of Consumer Financial Protection Docket No. CFPB-2013-0029; U.S. Securities and Exchange File Number S7-08-13.

Ladies and Gentlemen:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds four state nonmember banks serving Texas and Oklahoma with each bank having less than $10 billion in assets. With over $11.6 billion in total consolidated assets, IBC is the largest Hispanic-owned financial holding company in the continental United States. IBC is a publicly-traded financial holding company. We appreciate the opportunity to comment on this proposal.

On October 23, 2013, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Securities and Exchange Commission ("SEC") (collectively, the "Agencies") proposed joint standards for assessing the diversity policies and practices of each agency's respective regulated entities ("Proposal"). The Proposal implements Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which requires each agency to establish an Office of Minority and Women Inclusion and directs each to develop diversity assessment standards for all of the entities under the Agencies' jurisdiction.

The Agencies' Proposal proposes uniform standards in the following four areas: (1) organizational commitment to diversity and inclusion, (2) workforce profile and employment practices, (3) procurement and business practices (supplier diversity), and (4) practices to promote transparency of organizational diversity and inclusion.

I. Overview of the Proposed Standards

A. *Organizational Commitment to Diversity and Inclusion.*

The Agencies recommend the following:

- The regulated entity includes diversity and inclusion as part of its strategic plan for employment and contracting, such as hiring, recruiting, retention, and promotion;

- The regulated entity's diversity and inclusion policy is approved and supported by the senior leadership of the organization, including senior management and the board of directors. The organization appoints a senior official to direct and manage diversity efforts, such as a Chief Diversity Officer;

- The regulated entity regularly and periodically conducts educational programs and training on equal employment opportunity, diversity, and inclusion; and

- The entity takes proactive steps to promote a diverse pool of candidates, including its selection of board members, senior management, and other senior leadership positions.

B. *Workforce Profile And Employment Practices*

The Agencies have proposed the following standards to evaluate diversity efforts:

- Regulated entities that are required to file an annual EEO-1 Report pursuant to Title VII of the Civil Rights Act of 1964 or to prepare annual Affirmative Action Plans under Executive Order 11246 for the Office of Federal Contract Compliance Programs ("OFCCP") (or those entities who track workforce data using other methods), which generally includes consolidated banking companies that have at least 100 employees or banks with at least 50 employees that issue U.S. Savings Bonds, are encouraged to use the data and plans to assess its workforce diversity and inclusion efforts;

- The entity should utilize metrics to evaluate its workplace diversity and inclusion efforts, such as recruitment, applicant tracking, hiring, promotions, separations, career development support, coaching, executive seminars and retention across all levels and positions of the organization;

- The regulated entity should hold management accountable for workplace diversity and inclusion efforts; and

- The entity should implement policies and procedures that create diverse applicant pools, such as outreach to minority and women organizations and educational institutions that serve significant diverse populations.[1]

C. *Procurement and Business Practices -Supplier Diversity*

The Agencies proposed the following standards:

- The entity has a supplier diversity policy that provides minority-owned and women-owned businesses with a fair opportunity to compete in the procurement of business and services;

- The entity develops methods to assess and evaluate its supplier diversity policy, which may include the following metrics: annual contract spending by the entity, percentage of contracts with minority-owned and women-owned sub-contracts, percentage of funds spent with diverse contractors, and the demographics of a contractor's or sub-contractor's workforce; and

- The regulated entity has practices and policies to promote diversity among suppliers, such as outreach to diverse contractors and representative organizations, participation in conferences and other events to attract firms owned by minorities and women and to inform them of contracting opportunities, and ongoing publication of procurement opportunities.

---

[1] In order to do so, the proposed standards suggest that an entity participate in conferences and other events to attract minorities and women and inform them of career opportunities.

D. *Practices to Promote Transparency of Organizational Diversity and Inclusion*

An entity will meet the Agencies' transparency standard if it makes the following information available to the public on an annual basis through its website or other appropriate methods (such as promotional materials or annual reports): its diversity and inclusion strategic plan, its commitment to diversity and inclusion, and its progress in achieving its diversity and inclusion goals.

II. Comments

A. *Self-Assessment Plan*

We agree with the Agencies' view that self-assessment, coupled with voluntary disclosure, will be a more effective and appropriate methodology for promoting diversity than would traditional examination or other supervisory assessment. We also commend the Agencies' recognition that entities should have flexibility to tailor their diversity policies and practices to take into account their individual circumstances. We strongly disagree with any suggestion that the Proposed Standards should have included traditional examination, mandatory disclosure and/or a more rigid, "one-size-fits-all" approach. Such a suggested approach would, in our view, not only exceed the Agencies' legal authority, but also would be counter-productive to the goal of promoting diversity. Further, such an approach would ignore the significant differences between banks and between the branches of a specific bank. The significant differences between branches are evidenced by the branches of our IBC banks. For example, we have branches in very small rural communities and in some of the largest cities in Texas and Oklahoma. Such communities vary from areas with 98% Hispanic population to Houston—one of the most ethnically diverse cities in the United States to our branches in Oklahoma, where the markets also include Native American populations.

According to the Proposal's release, the Agencies seek comment on how and by what means will the Agencies determine whether an institution has adopted standards and engaged in assessments that meet the requirements of the Proposal. We also believe that underlying this question is the premise the Agencies should utilize their examination authority in connection with the diversity assessment.[2] We do not believe that such a process would be an appropriate exercise of the Agencies' authority and would actually exceed its statutory authority. We do not believe that the Agencies have statutory authority to impose any specific diversity requirements on regulated entities.

[2] *See* separate statement issued by Commissioner Luis. A. Aguilar of the SEC in connection with the Proposal's release.

The statutory mandate for the Proposal under Section 342(b)(2)(C) of the Dodd-Frank Act, authorizes the Agencies only to develop standards for assessing diversity and does not authorize the imposition of *any* requirements. To the contrary, as the Proposal correctly notes, Section 342(b)(4) states expressly that nothing in Section 342(b)(2)(C) "may 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."

Furthermore, we believe the self-assessment and voluntary disclosure process contemplated by the Proposal is much more likely to be more effective than examination or other supervisory assessment in promoting diversity. Regulated entities themselves are far better positioned than financial regulators to assess the entities' own diversity policies and practices. Most financial institutions entities already have well considered diversity policies and a proven track record of implementing, applying and developing those policies. All financial institutions, moreover, have vast experience addressing the day-to-day challenges of dealing with employee and supplier relations and complying with federal civil rights laws (such as Title VII of the Civil Rights Act of 1964 or Section 1981 of the Civil Rights Act of 1866) and analogous state and municipal laws. Financial institutions, in short, have considerable relevant expertise which makes them well-suited to develop, enhance and assess their own diversity policies and practices. By contrast, the Agencies, though they have expertise in the areas of financial regulation within their respective statutory purviews, have no particular experience or expertise that would make them well-suited to assess diversity policies and practices of financial institutions.

We note that at least one financial regulator, the OCC, has informally indicated that it does not plan to check a national bank's diversity policy during the examination process. For purposes of clarity, we believe the Agencies should expressly state this position in the final Proposal.

The flexibility afforded under the Proposal's is also more likely to be effective than a "one-size-fits-all" approach. We believe the Agencies are correct to recognize that the goal of promoting diversity will be better advanced if regulated entities have sufficient autonomy to create diversity and inclusion policies tailored to their unique circumstances. Diversity policies and practices which may be effective in certain circumstances may be ineffective in others. A "one-size-fits-all" approach involving rigid benchmarks, for example, is therefore *not* the answer and would likely be counter-productive. We believe that the flexibility afforded under the Proposal will result in the most robust and meaningful response from the regulated entities possible, without curtailing the financial institution's commercial freedom.

Any regulatory process which expressly, impliedly or effectively imposes specific quotas, benchmarks or requirements that benefit certain demographic groups to the possible detriment of others would also be of questionable legality under the civil rights laws.

The Proposal's standards are more effective and appropriate than any alternative system including examination or other supervisory assessment, mandatory disclosure, and/or more rigid benchmarks which would be ineffective, inappropriate and contrary to law.

B. *Procurement and Business Practices—Supplier Diversity*

We are greatly concerned with the proposed requirement that financial institutions develop methods to assess and evaluate its supplier diversity policy, including the utilization of metrics and that they implement practices and policies to promote diversity among suppliers, such as outreach to diverse contractors and representative organizations, participation in conferences and other events to attract firms owned by minorities and women and to inform them of contracting opportunities, and ongoing publication of procurement opportunities. We believe that most financial institutions do not have the financial resources and time to develop internal systems to assess and evaluate suppliers and vendors. In fact, the availability of such programs and diverse personnel is doubtful since many institutions may be located in smaller cities or more rural areas. Furthermore, most regional and community banks do *not* have sophisticated information technology systems, comprehensively maintained, to obtain the data required to assess and evaluate suppliers, including the use of metrics. Regional and community banking organizations may be required to rely on outside, third party service providers to perform the analysis, which will further increase already high compliance costs. We believe that the Proposal's supplier diversity requirements will impose additional staffing and operational costs on the already over-burdened U.S. banking industry. Regional and community banking organizations already have strong programs that do their best to promote diversity. We, and most regional and community banks, do not have the large scale to spread high compliance costs over a broad base and are required to bear these costs more disproportionately than the large mega-banks.

The banking industry is currently struggling to comply with the numerous and complex Dodd-Frank Act mandated regulations, many of which have not yet been promulgated by the federal agencies. In addition, we already face stringent expectations with regard to our vendor due diligence programs to assure that critical safety and soundness issues are addressed—including safeguarding of customer records and regular oversight of core service providers. Layering on additional reviews and requirements relating to a vendor's employment policies could significantly add to the cost of vendor management programs at the very time that community banks are increasingly dependent on such vendors for core activities.

We strongly recommend that the Agencies' final supplier diversity standards, at most, solely require that a financial institution have a supplier diversity policy that provides minority-owned and women-owned businesses with a fair opportunity to compete in the procurement of business and services, and that it not include burdensome requirements to develop methods to assess and evaluate its supplier diversity policy, including the utilization of metrics, nor mandate specific outreach activities to contractors. We do not believe that the Agencies have statutory authority to require more than this. Section 342(b)(2)(C) of the Dodd-Frank Act merely requires each Agency to develop standards for "assessing policies and practices of entities regulated by the agency." It does *not* grant the Agencies statutory authority to require financial institutions to develop methods to assess and evaluate its supplier diversity policy, including the utilization of metrics, nor mandate outreach activities to contractors.

The proposed requirement that financial institutions utilize contractors that are minority-owned and women-owned businesses is typically imposed by federal and state governments when private businesses obtain contracts for goods or services. The imposition of this proposed requirement on financial institutions engaged in providing banking products and services to private individuals and businesses is completely unacceptable and greatly impedes their commercial freedom. Furthermore, the proposed requirement represents a significant departure from current legal requirements. And, critically, as previously noted, this proposed requirement exceeds the statutory authority granted the Agencies under the Dodd-Frank Act.

C. *Need for Greater Protection for Disclosed Information*

We believe the Agencies' goal "to promote transparency and awareness of diversity policies and practices" should be balanced with the entities' competing need to protect sensitive information which they may voluntarily disclose to the Agencies. The best way to do so is to afford them adequate protection from broader disclosure. If information voluntarily disclosed to the Agencies is not adequately protected from broader disclosure, many financial institutions may be reluctant to conduct a truly rigorous self-assessment and/or to voluntarily disclose the self-assessment. We therefore believe that the final standards promulgated by the Agencies should explicitly provide a safe-harbor protecting self-assessments and data voluntarily submitted to the Agencies from disclosure to the public or other federal or state government entities, including as a result of requests made under the Freedom of Information Act ("FOIA").

The need to incorporate explicit privacy protections into the final standards is particularly critical because the Agencies are not invoking their supervisory or examination powers. Thus, the voluntarily disclosed self-assessments arguably would not be protected from disclosure to the public pursuant to FOIA exemption 8.[3]

[3] 5 U.S.C. § 552(b)(8) (involving bank examinations).

Some of the data and information included in entities' self-assessments may fall within FOIA exemptions 4 ("trade secrets and commercial or financial information obtained from a person and privileged or confidential") and 6 ("personnel....files the disclosure of which would constitute a clearly unwarranted invasion of privacy").[4]

EEO-1 reports, which the Proposal's standards view as a "valuable model" for analysis and assessments of diversity efforts, are protected from public disclosure. The Equal Employment Opportunity Commission ("EEOC") is prohibited by federal statute from making public the employment data included in EEO-1 reports and the EEOC FOIA regulations limit the diversity and inclusion data that the EEOC can make public to aggregate compilations, prohibiting the disclosure of any data that could reveal the identity of an individual entity.[5] Any self-assessment and/or supplemental diversity and inclusion data submitted by the regulated entities should be entitled to at least as much protection as EEO-1 reports.

Additionally, we strongly urge the Agencies to further protect the materials voluntarily submitted by incorporating an anti-waiver provision into the final standards to ensure that privileged materials generated during an entity's self-assessment remain privileged and will not be shared beyond the Agency receiving the submission. Incorporating an anti-waiver provision similar to that found in 12 U.S.C. § 1828(x) will enhance the impact of the Proposal's standards by providing regulated entities the freedom to incorporate privileged materials in their submissions without risk of waiver.

D. *Submission of Self-Assessments to One Federal Prudential Regulator*

The Proposal states that "[l]egal responsibility [with respect to the standards] for insured depository institutions, credit unions, and depository institution holding companies shall be with the primary prudential regulator." However, the Proposal does not specify whether self-assessments and other data are to be submitted voluntarily to multiple Agencies.

We believe the final standards should clarify that each financial institution will have one "lead Agency" to which the entity may submit diversity and inclusion data. Establishing a "lead Agency" will enable a regulated entity to make a single submission of its diversity and inclusion data, thus alleviating the need for duplicative, unnecessary or overly taxing filings. Establishing a "lead Agency" will also ensure that each individual entity understands what is expected of it in terms of conformance with the standards, and that such expectations are based on the consistent guidance of a single agency.

---

[4] 5 U.S.C. §§ 552(b)(4), (6).
[5] 29 C.F.R. § 1610.18.

E. *Timing of Self-Assessments*

The Proposal does not specify a date by which self-assessments are to be completed or the frequency with which self-assessments should be conducted. We believe the final standards should encourage entities to aim to conduct self-assessments every four years. A four-year assessment period would allow regulated entities to conduct meaningful data gathering and analysis, and develop and implement improved diversity and inclusion policies and practices. A shorter time period likely would be insufficient to enable entities to evaluate meaningfully the state of their diversity policies or to make responsible, thoughtful plans for improvement. A shorter time period would also impose a greater regulatory burden on financial institutions, particularly regional and community banks which are already greatly burdened with complying with ever-increasing regulations implementing the Dodd-Frank Act. Finally, we believe the assessment schedule should begin in the first calendar year following promulgation of the final standards and not retroactive, to ensure that it is fairly based on the guidance in the final standards.

Thank you for your consideration.

Respectfully,

Dennis E. Nixon
President