KBA Kentucky Bankers Association
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January 29, 2014

Mr. Robert deV.Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Docket No. OP-1462

Re: *Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies, referenced today.*

On behalf of the Kentucky Bankers Association ("KBA"), which represents banks and thrifts doing business in the Commonwealth of Kentucky, I am providing these comments in response to the October 23, 2013 proposal as referenced above on Diversity Policies and Practices.

There are 213 banks with a physical presence in Kentucky--87% of those banks are headquartered in Kentucky representing both national and state chartered banks as well as thrifts. More than 86% of the banks headquartered in Kentucky have assets ***less*** than $500 million in assets. More than 50% of the banks headquartered in Kentucky have been in continuous operation for more than 100 years.

Kentucky is a regionally diverse Commonwealth and many areas are rural. Our demographics have resulted in many local banks being the primary employer and the civic cornerstone of their local communities. In the aggregate, Kentucky's banks directly offer diverse employment opportunities to more than 25 ***thousand*** individuals across the Commonwealth. The number that they support indirectly through small business loans, economic development and civic services is exponentially larger than that. Local, community banks offer opportunities and assistance to the entire community in any number of ways—some related directly to the financial services they offer and some in less bank related ways, but just as significant to the lives touched.

Kentucky is truly a community banking state with a proud legacy of community service and commitment.

The KBA's members are not in the business of refusing to serve their community. These banks comply with all diversity and equal opportunity policies and practices applicable under state and federal law, both because it is required and it is the right thing to do.

Because of the importance of community banks to the very survival of rural and non-MSA regions, it is imperative to express our industry's commitment to responsibly serving without regard to an individual's race, gender or other protected characteristics. But, it is equally imperative to protect our industry from unnecessary and unauthorized regulatory burden, which may result in distracting our members from their mission and, instead, focus their limited resources on duplicative compliance efforts and paper pushing. For the same reason, we must object to the proposal referenced above, as unnecessary, unauthorized and in violation of the directives contained in Section 342 of the Dodd-Frank Act.

Section 342 of the Dodd-Frank Act provides, in relevant part (emphasis added):

OFFICE OF MINORITY AND WOMEN INCLUSION

(a) Office of Minority and Women Inclusion—...

(b) DIRECTOR—

(1) IN GENERAL.—...

(2) DUTIES.—Each Director shall develop standards for—

(A) equal employment opportunity and the racial, ethnic, and gender diversity of the workforce and senior management *of the agency*;

(B) increased participation of minority-owned and women-owned businesses in the programs and contracts *of the agency*, including standards for coordinating technical assistance to such businesses; and

(C) *assessing the diversity policies and practices of entities regulated by the agency*.

(3) OTHER DUTIES.—Each Director shall advise the agency administrator on the impact of the policies and regulations *of the agency* on minority-owned and women-owned businesses.

(4) RULE OF CONSTRUCTION.—*Nothing in paragraph (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*.

(c) INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.—

(1) IN GENERAL.—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.

(2) CONTRACTS.—...

(3) TERMINATION.—

(A) DETERMINATION.—The standards and procedures developed and implemented under this subsection shall include a procedure for the Director to make a determination whether *an agency contractor*, and, as applicable, a subcontractor has failed to make a good faith effort to include minorities and women in their workforce.

(B) EFFECT OF DETERMINATION.—

(i) RECOMMENDATION TO AGENCY ADMINISTRATOR.— Upon a determination described in subparagraph (A), the Director shall make a recommendation *to the agency* administrator that the contract be terminated.

(ii) ACTION BY AGENCY ADMINISTRATOR.—Upon receipt of a recommendation under clause (i), the agency administrator may —

(I) terminate the contract;

(II) make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor; or

(III) take other appropriate action.

(d) APPLICABILITY.—
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. The contracts referred to in this subsection include all contracts for all business and activities of an agency, at all levels, including contracts for the issuance or guarantee of any debt, equity, or security, the sale of assets, the management of the assets of the agency, the making of equity investments by the agency, and the implementation by the agency of programs to address economic recovery.
(e) REPORTS.—
Each Office shall submit to Congress an annual report regarding the actions taken *by the agency* and the Office pursuant to this section, which shall include—

(1) a statement of the total amounts paid *by the agency* to contractors since the previous report;
(2) the percentage of the amounts described in paragraph (1) that were paid to contractors described in subsection (c)(1);
(3) the successes achieved and challenges faced *by the agency* in operating minority and women outreach programs;
(4) the challenges *the agency may face* in hiring qualified minority and women employees and contracting with qualified minority-owned and women-owned businesses; and
(5) any other information, findings, conclusions, and recommendations for legislative or agency action, as the Director determines appropriate.

(f) DIVERSITY IN AGENCY WORKFORCE.—
Each agency shall take affirmative steps to seek diversity in the workforce *of the agency* at all levels *of the agency* in a manner consistent with applicable law. Such steps shall include—...
(g) DEFINITIONS.—...

Every mandate in this Section 342 is directed at the agencies and the agencies' internal operations. Subsection (b)(2)(C) is not inconsistent with that purpose, when viewed in light of the entirety of the Section 342.

Subsection (b)(2)(C) is, simply put, a mandate on the agencies to establish an internal process for the agencies to use when evaluating contractual relationships, not for the banking entities to use as a standard for the banks' internal practices. That assessment is necessary when the agency goes on to read that the agency's mandate it to apply these considerations to all contracts of any kind (see subsection (d)).

Banks are currently bound by state and federal equal opportunity laws in areas of employment, government contracting, housing and other specific activities. The agencies should assess a bank's policies and procedures, when necessary to mandates contained in Section 342, against the unrelated mandates already imposed on banks.

You cannot read Section 342, given the restrictive power and authority assigned to the agencies pursuant to its provision, to mean anything other than the meaning described above. The agencies are directed to develop standards for assessing the diversity policies and practices of entities regulated by the agency. Any assessments must be viewed against the agencies' authority. The agencies' authority on assessment is specifically limited by the section and implicitly limited by exclusion of language, which appeared in the original House version of the Dodd-Frank Act, which would have required each Director to "conduct an assessment, *as part of the examination process.*"

The removal of this key language takes away any general, oversight authority that the agencies may have had in this area and limited it to the more restrictive purpose of the statute as adopted.

If the agencies are interested in providing guidance to the entities regulated. Guidance to establish what the agencies may be looking for when determining if the agencies are able to enter into a contractual relationship with that entity, it would seem that a more appropriate method would be through an informal guidance, rather than as a regulation. A regulation must be backed by appropriate statutory authority, which is lacking here. Guidance, on the other hand, may be offered to assist even if enforcement authority is not present.

Towards that direction, the KBA respectfully suggests that the proposal be withdrawn and, if offered as guidance, the following concerns be considered:

13. Vendor, supplier or procurement diversity should not be included because of the potentially conflicting restriction already in place regarding bank use of third party vendors.
14. "Commitment" to diversity is an ambiguous term, subject to misinterpretation and subjective evaluation. Thus, any guidance should provide specific assistance on standards rather than subjective evaluation of attitude.
15. Banks should be encouraged to establish their own diversity standards and complexity of "policies and procedures" which are tailored to the needs of their operations and communities and evaluated against policies, procedures and mandates by law and regulations already in existence.
16. Transparency should not be incorporated into any guidance and should not be used as a replacement term for "public" disclosure. There is no benefit to be gained by publicizing diversity policies and procedures, so long as the implementation of the established standards incorporated in such policies and procedures are consistent.

Again, Kentucky banks are committed to every community and every citizen in our Commonwealth. We look forward to discussing this issue further should you have questions.

Sincerely,

Ballard W. Cassady, Jr.
President & Chief Executive Officer