Massachusetts Bankers Association

February 7, 2014

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552
Docket No. CFPB-2013-0029

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

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street, SW
Washington, DC 20219
Docket ID OCC-2013-0014

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

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
File Number: S7-08-13

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

To Whom It May Concern:

During October 2013, the Directors of the Offices of Minority and Women Inclusion of the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC) [the Agencies] published the proposed standards on diversity policies and practices of entities regulated by the Agencies. The MBA appreciates the opportunity to provide commentary and feedback on behalf of our 175 member banks located throughout the Commonwealth of Massachusetts and New England.

MBA and our member institutions strongly believe in the goal of a diverse workforce in the banking industry. In order to further these goals, the Association and our members participate in numerous events to recruit new employees, including employment fairs at local colleges, universities and community colleges. In addition, MBA has established and promoted a college internship program for eligible undergraduates to obtain experience in commercial lending and credit analysis. In recent years, the Association has also sponsored *Women in Banking* events, all designed to promote diversity in our workforce and encourage opportunities for advancement for existing bank personnel.

Our review and interpretation of the Dodd-Frank Act's statutory mandate finds some ambiguity relative to the proposal and its impact on our member banks. It is not clear if Section 342 of Dodd-Frank compels the Agencies to develop standards for their <u>own evaluation</u> of financial institution's diversity policies and practices or the proposed standards for self-assessment. In large part, Section 342 discusses requirements for the Agencies and their own internal operations. Therefore, when read in context, the intent of subsections 342(b)2(C) and 342(b)4 is unclear at best.

Within the proposed standards themselves, it is clear that the Agencies recognize the many different types of financial institutions and the very unique and distinct communities they serve. For the community and regional banks within the Commonwealth, we believe a one-size-fits-all approach would not serve them well and we welcome the flexibility the Agencies have included in the proposal and believe that will benefit banks not just within New England, but around the country as well.

Furthermore, MBA agrees with the specific details of the proposal that discuss voluntary self-assessment and the exclusion of the review of these self-assessments from the examination and supervision process. A voluntary self-assessment process will allow institutions to tailor the assessments to reflect their own unique characteristics and the changing demographics within the areas and communities they service. Additionally, as noted above, this proposal is the result of a limited statutory mandate contained within the Dodd-Frank Act. Excluding the self-assessment from the examination and supervision process falls into line with the limitations set forth in the Act.

MBA does have several suggestions for changes to the proposal, specifically as it relates to the expectations for model evaluations for employment, third-party contracts and public disclosure of the self-assessment results. These will be discussed in greater detail below.

Discussion

Our member banks have a long history of serving their local communities. The Commonwealth of Massachusetts is comprised of several distinct geographic areas and all of our members serve these areas by directly providing deposit and loan services. Additionally, they employ diverse workforces and hire qualified staff without regard to gender, race, or ethnicity. In the vast majority of cases, institutions hire a workforce from their local area, which reflects the diversity of the communities they serve.

It is this basis that supports most strongly the argument for a self-assessment approach. A self-assessment approach (one removed from the examination process) gives the financial institutions, both large and small, the requisite leeway to address the very real challenges and differences in their circumstances – whether demographically, economically or geographically based. Therefore, each institution may present its commitment to diversity in whichever fashion they deem the best fit - so long as our members and other financial institutions across the country do so in a manner that reflects their own communities and workforce needs.

Within Section 2 of the proposal, *Workforce Profile and Employment Practices*, the Agencies suggest that entities not already subject to the annual Employer Information Report (EEO-1) may want to model their own assessments against such forms. While this suggestion may be well intended, it could be argued that this represents a manner to regulate institutions already exempted from a certain legal requirement. These forms are not intended for smaller companies and we therefore recommend removal of this suggestion from the proposal.

Regarding Section 3, *Procurement and Business Practices – Supplier Diversity*, the MBA has significant concerns with the proposed standards due to their direct conflict with subsection 342(b)4 of the Dodd-Frank Act, which explicitly states that nothing related to the diversity assessment process "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." The regulatory emphasis on third party risk management has become a critical component of a financial institution's information technology examination process – a key factor for safety and soundness. By attempting to impart new directives related to supplier procurement, the proposal conflicts with other regulatory mandates for due diligence and vendor review.

Furthermore, both limited information and supply chains exist in particular areas of vendor services. The reality is that many third party companies do not have readily available information as to the diversity of their workforce. Regarding the supply chain, the largest contract for nearly all MBA member banks is related to core processing provider services. Our members select a core processor from an already small pool. The small pool exists due to not only the high cost of entry into core processing but the regulatory requirements for these data providers. Such a small pool of potential service providers leaves many of our members with little clout at the negotiating table and few choices to select competing providers. We strongly encourage the Agencies to remove these provisions from any final standards.

Finally, the Joint Standards deal with the issue of transparency in Section 4, *Practices to Promote Transparency of Organizational Diversity and Inclusion*. MBA again has serious concerns with many of the objectives within this section. There is no authority granted by Section 342 of Dodd-Frank to require public disclosure of the diversity self-assessment, its diversity policy and strategic plans for inclusion as well as any progress toward achieving greater diversity. Again, in making reference to subsection 342(b)4 of the Dodd-Frank Act, financial institutions are not bound to alter lending policies or enact any other specific actions as a result of the assessment process. Public disclosure or transparency as discussed within the Joint Standards could lead not only to agency directives but unfair public criticism.

Conclusion

MBA believes these self-assessments will, in time, provide value to boards and senior management as worthwhile, voluntary exercises in gaining a greater understanding of corporate character and culture. As stated previously, a one-size-fits-all approach would be detrimental to the industry due to the vast differences in geography, demographics and workforce needs for financial institutions around the country. As we stated above, the Association does have concerns regarding the depth of the Joint Standards as proposed. In particular, community banks already provide vital services to the communities within their footprint and in many cases, they employ a significant percentage of the local populace.

We realize the difficulty inherent in drafting this proposal, particularly due to the vague intent within the Dodd-Frank Act. Particular attention should be paid to the issues of supplier diversity and transparency. There appear to be too many logical conflicts either within the law itself or other previous regulatory promulgations. It is for that reason that we recommend changes to Sections 3 and 4 of the Joint Standards prior to finalization.

Should you have any questions or concerns relative to this letter, please do not hesitate to contact me via phone (617-502-3820) or email (bcraigie@massbankers.org).

Sincerely,

Ben Craigie
Director of Compliance and Training