



Credit Union National Association

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February 7, 2014

Mr. Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

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

Dear Mr. Poliquin:

This letter reflects the views of the Credit Union National Association (CUNA) on the proposed interagency policy statement regarding joint standards for assessing the diversity policies and practices of regulated entities, which was issued jointly by the Consumer Financial Protection Bureau, Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, the National Credit Union Administration Board (NCUA), and the Securities and Exchange Commission (referred to collectively as the "Agencies"). By way of background, CUNA is the largest advocacy organization in the country for state and federal credit unions, which serve over 98 million members.

Reflective of our members, CUNA strongly supports diversity in the workplace. As addressed below, however, we have a number of concerns about specific aspects of the proposal.

Congress Did Not Authorize New Rules or Enforcement Authority for the Agencies Regarding Diversity Assessments

The Agencies initiated the proposed standards because they are required to address diversity assessment issues under Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under that section, Congress directed the regulators to establish an Office of Minority and Women Inclusion (OMWI Office) and to develop standards for assessing diversity policies and practices of the institutions they each regulate under subsection 342(b)(2)(C) of the Act.



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However, Congress provided only very narrow authority to the Agencies under the Dodd-Frank Act regarding diversity issues at financial institutions. To impose new requirements or seek to enforce new standards under the Act would be contrary to the directives of Congress.

Subsection 342(b)(4) of the Act states that nothing in subsection 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.”

Thus, we feel an overall approach that does not result in new regulations, additional enforcement powers for the Agencies, or provide further support for private causes of action against covered entities is the only approach consistent with the intent and language of the Dodd-Frank Act.

The Agencies Should Limit the Standards to EEOC-Reporting Entities

The Supplementary Information notes that entities with 100 or more employees, or federal contractors with 50 or more employees that meet criteria necessitating the filing of an Employer Information Report EEO-1 with the Equal Employment Opportunity Commission (EEOC) should utilize those reports to assist in assessing their diversity policies and practices. The Supplementary Information further states that:

“For entities not subject to the EEOC ... reporting requirements, these tools may serve as valuable models for data analysis to evaluate and assess diversity efforts.” 78 Fed. Reg. 64052, 64055.

We have serious concerns about that statement, as it would likely mean that a number of credit unions would be required to gather employee-related diversity data manually. For credit unions, this would likely require significant resource expenditures when many are already struggling to comply with the onslaught of recent and forthcoming regulations, including those under the Dodd-Frank Act.

In light of these factors, including the lack of rulemaking and enforcement authority on the part of the Agencies, we urge NCUA and the other regulators to limit the applicability of the standards under Section 342 to EEOC-reporting institutions.¹

¹ During a February 29, 2012 roundtable, NCUA’s OMWI Office noted that approximately 550 credit unions report diversity data to the EEOC.

Additional Concerns, Including Tailoring Standards, Responsibilities regarding Contractors, and Publishing Diversity Information

The Supplementary Information to the proposal indicates that the Agencies have determined that “an assessment” of diversity policies and practices need not be “one of a traditional examination or other supervisory assessment, ... the Agencies will not use the examination or supervision process in connection with these proposed standards.” 78 Fed. Reg. 64054. In addition, the Office of the Comptroller of the Currency has included the following statement in its official summary of the proposed standards:

“The proposed standards are not mandates, nor do they require any action based on the findings of an assessment.” OCC Bulletin 2013-32.

We urge the Agencies to include both statements in the introduction to the final standards.

In addition, we urge the Agencies to clarify at the beginning of the document that private litigants may not rely on the document as a whole or on individual provisions in their efforts to challenge employment practices at a financial institution.

The Agencies provide that the proposed standards:

“may be tailored to take into consideration an individual entity’s size and other characteristics (for example, total assets, number of employees, governance structure, revenues, number of members and/or customers, contract volume, geographic location, and community characteristics).” 78 Fed. Reg. 64055.

We think this is extremely important and should be included in the final standards. For example, where an entity is located and the demographics in that locale may determine the entity’s pool of employment applicants and contractors.

The standards should also reflect that some covered entities may have real difficulties in achieving diversity, despite their best efforts, because the community in which they operate and from which their applicant pool is drawn is simply not diverse, such as in certain Midwestern states or more rural areas.

Moreover, the standards should acknowledge that employers may give appropriate weight to the qualifications of individuals for a job or contract, as they promote diversity in their practices and procedures.

We have serious concerns regarding the third proposed standard, which would require regulated entities to assess diversity practices in their relationships with their suppliers and contractors. Specifically, we are concerned because credit

unions often have no meaningful way of measuring diversity at their contractors and/or suppliers, as such information is generally not readily available or easily obtainable. While such information could be requested from the contractor or supplier, most credit unions generally have little leverage to require the information be shared and may have few other choices for contractors or suppliers. We urge the Agencies to be mindful of the practical difficulties of this provision and remove it or revise it to exclude references to data regarding contractor and supplier relationships from the assessment standards.

We also have concerns with the fourth proposed standard, which addresses transparency of entities' diversity and inclusion programs, including by displaying such information on an entity's website and in other promotional material. We question how requiring an entity to disclose its diversity policies publicly would aid the performance of diversity assessments. Further, depending on where the entity is located, it may be difficult to achieve diversity—especially for a smaller entity—based solely on the area's demographics.

In addition, making public the information described in this proposed standard may be of little use—and possibly confusing—to the public. Public disclosure of information regarding an entity's current workforce and supplier demographic profiles could also be misinterpreted, to the detriment of the employer. Therefore, we ask the Agencies to exclude from the final diversity standards any requirement or recommendation regarding public disclosure of entities' diversity policies and practices.

Concerns Raised by Members of the U.S. Civil Rights Commission

Four members of the U.S. Civil Rights Commission have filed comments with the Agencies raising concerns that under the proposed standards, covered entities could be required to use “goals, metrics, or percentages regarding diversity in hiring or contracting.”

While CUNA does not associate itself with the views of these particular commissioners, we do feel it would be appropriate for the Agencies to address the concerns raised in the commenters' letter dated November 4, 2013 and then reissue the proposed standards for comments.

We realize that the Agencies already extended the original comment deadline from December 24, 2013 to February 7, but we feel it would be useful to covered entities if the Agencies would clarify their intent in a revised proposal and then provide another opportunity for all stakeholders to comment.

Conclusion

Congress directed the Agencies to develop standards for assessing diversity at the entities they regulate but did not authorize the Agencies to issue rules or enforce any new standards.

We urge the Agencies, while considering the limits of their authority, to be cognizant of the regulatory burdens that smaller financial institutions such as credit unions face and to limit the scope of the standards to those entities that are currently required to report to the EEOC.

We also urge the Agencies to change and clarify the standards in a number of areas and to reflect in the standards the importance of developing a well-qualified workforce within the context of promoting diversity in the workplace.

While we strongly favor a self-assessment approach over an examination-based approach, as discussed above, even self-assessment under the proposed standards is likely to be quite burdensome for many credit unions, including those already reporting diversity data to the EEOC.

We would welcome the opportunity to talk with NCUA further about our views. In the meantime, if you have any questions about our comments, please do not hesitate to contact me at (202) 508-6736.

Sincerely,

A handwritten signature in cursive script that reads "Mary Mitchell Dunn".

Mary Mitchell Dunn
CUNA Deputy General Counsel