

**JOINT SUPPORTING STATEMENT
FOR THE PAPERWORK REDUCTION ACT SUBMISSION FOR A NEW
INFORMATION COLLECTION**

“Joint Standards for Assessing the Diversity Policies and Practices”

A. JUSTIFICATION.

1. Legal and Administrative Requirements

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) required the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (together, Agencies and separately, Agency) each to establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters of the Agency relating to diversity in management, employment, and business activities. The Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the Agency. The Agencies worked together to develop joint standards (Joint Standards) and, on June 10, 2015, they jointly published in the Federal Register¹ the “Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies” (Policy Statement).²

The Policy Statement contains a “collection of information” within the meaning of the Paperwork Reduction Act of 1995 (PRA). The Policy Statement includes Joint Standards that cover “Practices to Promote Transparency of Organizational Diversity and Inclusion.” These Joint Standards contemplate that a regulated entity is transparent about its diversity and inclusion activities by making certain information available to the public annually on its Web sites or through other appropriate communications methods, in a manner reflective of the entity’s size and other characteristics. The specific information referenced in these standards is: (a) the entity’s diversity and inclusion strategic plan; (b) its policy on its commitment to diversity and inclusion; (c) its progress toward achieving diversity and inclusion in its workforce and procurement activities (which may include the entity’s current workforce and supplier diversity demographic profiles); and (d) opportunities available at the entity that promote diversity. The individual entity would determine the type and extent of information that demonstrates its progress toward achieving diversity and inclusion. The information supplied would be commensurate with the size and complexity of the entity. No specific information is required by the Agencies. In addition, opportunities that promote diversity would vary by entity and, therefore, would not be specified by the Agencies. Examples of such opportunities could be current employment and procurement opportunities; forecasts of potential employment and

¹ 80 Fed. Reg. 33016.

² The National Credit Union Administration (NCUA) joined the Agencies in issuing the Policy Statement. However, the NCUA has not joined in this request for approval under the PRA of the information collection contained in the Policy Statement. NCUA intends to submit a separate request for PRA approval.

procurement opportunities; and the availability of mentorship and developmental programs for employees and contractors.

In addition, the Policy Statement includes Joint Standards that address “Entities’ Self-Assessment.” The Joint Standards for Entities’ Self-Assessment envision that a regulated entity, in a manner reflective of its size and other characteristics, (a) conducts annually a voluntary self-assessment of its diversity policies and practices; (b) monitors and evaluates its performance under its diversity policies and practices on an ongoing basis; (c) provides information pertaining to its self-assessment to the OMWI Director of its primary federal financial regulator; and (d) publishes information pertaining to its efforts with respect to the Joint Standards.

2. Purpose and Use of the Information Collection

The Agencies will use the information provided to them to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities, as well as to identify and highlight those policies and practices that have been successful. The primary federal financial regulator will share information with other agencies, when appropriate, to support coordination of efforts and to avoid duplication. The Agencies may publish information disclosed to them, such as best practices, in any form that does not identify a particular entity or individual or disclose confidential business information.

This is a new collection; therefore, there is no current collection.

3. Consideration Given to Information Technology

An entity may use any available automated, electronic, mechanical or other technological collection technique to submit information to the Agencies.

4. Duplication of Information

Entities that are subject to certain recordkeeping and reporting requirements, such as those required by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, currently collect and maintain data and supporting documentation that may assist in evaluating and assessing their policies and practices related to workforce diversity and inclusion. Entities also are encouraged to use other analytical tools that they may find helpful. In addition, the primary federal financial regulator will share information with other agencies, when appropriate, to support coordination of efforts and to avoid duplication.

5. Reducing the Burden on Small Entities

When drafting these standards, the Agencies focused primarily on institutions with more than 100 employees in an effort to minimize the impact on smaller entities. In addition, in order to make clear how the standards are relevant to and may be used

by small entities, the Policy Statement encourages each entity to use the standards in a manner appropriate to its size and unique characteristics. This also should minimize burden on smaller institutions. Finally, we note that the standards are voluntary.

6. Consequences of Not Conducting Collection

If the information is not collected or is collected less frequently, the Agencies may not be able to monitor progress and trends in the financial services industry with regard to diversity and inclusion in employment and contracting activities or identify and highlight those policies and practices that have been successful.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The information is collected in a manner consistent with 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The Agencies requested comments on the collection of information contained in the Policy Statement at the time of the publication of the Policy Statement. During the 60-day comment period, the Agencies collectively received four comment letters: two from industry trade associations,³ one from an advocacy organization,⁴ and one from an individual.⁵⁶ The comments addressed the collection of information under the Joint Standards that address “Entities’ Self-Assessment.” (These Joint Standards envision that a regulated entity should “provide information pertaining to the self-assessments of its diversity policies and practices to the OMWI Director of its primary federal financial regulator.”) The commenters also commented on aspects of the Policy Statement unrelated to the collection of information; these views are not relevant to this Supporting Statement and, accordingly, they are not addressed below.

a. Practical Utility of Information Collection

Two commenters addressed whether the collection of information pertaining to self-assessments will have practical utility. One commenter asserted that it is premature to gauge how useful information will be without knowing precisely what information the Agencies will request.⁷ This commenter assumed that the Agencies would provide details about the information to be submitted or develop an information collection instrument.

³ See letters from Mortgage Bankers Association (MBA), dated August 10, 2015, and Securities Industry and Financial Markets Association (SIFMA), dated August 10, 2015.

⁴ See letter from The Greenlining Institute, dated August 10, 2015.

⁵ See letter from William Johnson (undated).

⁶ NCUA joined in issuing the 60-day **Federal Register** notice and request for comments on the information collection. The National Association of Federal Credit Unions (NAFCU) submitted a comment letter to NCUA during the comment period, which was shared among the Agencies. Accordingly, the comment letter from NAFCU is included in the discussion of comments below.

⁷ See letter from SIFMA.

The other commenter maintained that the information collection request in the Policy Statement will yield large variations in the information submitted and predicted that the information received will have little practical utility.⁸ The commenter noted that the information submitted should be standardized in order for the Agencies to accurately assess the state of diversity and inclusion across the industry. The commenter’s view is that standardization of the data request would enhance quality, utility, and clarity of the collected information.

Although the Agencies have not specified the content or format for the information collection described in the Policy Statement, they anticipate that the information submitted to them will be similar in content, if not in form. This is because they contemplate that regulated entities will organize their information collection around the categories in the Joint Standards. The Agencies also expect that the information they receive will help achieve the purpose of the collection: to allow the Agencies to monitor progress and trends in the financial services industry regarding diversity and inclusion in employment and contracting and to identify and highlight those policies and practices that have been successful.

b. Specific Collection Instrument

Three commenters requested that the Agencies be more specific about the information collection.⁹ One commenter asked the Agencies to send questions that “comport with how its member firms operate” and that the information collection request allow entities to submit qualitative information to add context to quantitative submissions.¹⁰

Another commenter asked the Agencies to provide a “robust” example or template of how best to submit information.¹¹ The commenter also recommended that the Agencies provide a non-exhaustive list of materials that respondents can use to compare against what they are planning to submit.

The third commenter recommended that the Agencies develop a standardized collection instrument.¹² The commenter stated that the comment letter it submitted in response to the proposed Policy Statement recommended questions for a standardized

⁸ See letter from Greenlining Institute.

⁹ See letters from Greenling Institute, SIFMA, and MBA.

¹⁰ See letter from SIFMA.

¹¹ See letter from MBA.

¹² See letter from Greenlining Institute.

survey.¹³ The commenter urged the Agencies to adopt a thorough framework for collecting specific and consistent data.

The Agencies appreciate receiving collection instrument recommendations and offers to assist in developing an instrument. At this time, however, the Agencies have not developed a joint information collection instrument. The Agencies believe that the Policy Statement encourages regulated entities to provide information regarding their self-assessments in a manner reflective of the Joint Standards and that any such information received will be useful.

c. Assurance of Confidentiality

The Joint Standards addressing Entities' Self-Assessments provide that the entities submitting information may designate such information as confidential commercial information, where appropriate. Three commenters expressed concerns about whether this information submitted would remain confidential. One commenter indicated that its members are concerned that information submitted to their primary regulator might be sent, without context, to other regulators or to the U.S. Congress and lead to confusion or the disclosure of competitive information.¹⁴ This commenter asked the Agencies to provide a clearer confidentiality policy and suggested that the Agencies make clear that submissions will remain confidential unless the submitting entity expressly waives confidentiality.

Similarly, another commenter stated that its members are concerned that third parties may have access to information they submit and could use this information to the disadvantage of the submitters.¹⁵ The commenter requested additional clarification regarding how the Agencies will use and protect submitted information, as well as a written statement providing assurance that information would not be shared with third parties.

The third commenter expressed concern that designating information as confidential will not guarantee protection from disclosure.¹⁶ The commenter observed that, if the public requests information under the Freedom of Information Act (FOIA), the regulated entity will be notified of the request and provided the opportunity to argue against disclosure. In the event that the entity's argument does not prevail, a regulated entity could potentially have its voluntarily submitted information released to the public under FOIA.

¹³ The comment letter submitted by Greenlining Institute in response to the proposed Policy Statement recommended that the Agencies ask regulated entities to respond to a series of questions grouped under the categories found in the Joint Standards and that entities complete data tables similar to those found in the Equal Employment Opportunity Commission's Management Directive 715. See the Greenlining Institute's letter dated February 6, 2014, available at <https://www.fdic.gov/regulations/laws/federal/2013/2013-diversity-assessment-c-32.pdf>.

¹⁴ See letter from SIFMA.

¹⁵ See letter from MBA.

¹⁶ See letter from NAFCU.

Two commenters recommended that regulated entities be allowed to submit information anonymously. One commenter said its members might support the use of a third-party vendor that could capture and potentially anonymize submissions as a way to minimize information collection burden.¹⁷ The other commenter asserted that by giving respondents the option to submit information anonymously, the Agencies would enhance the quality, utility, and clarity of information submitted, minimize burden, and address confidentiality concerns.¹⁸ This commenter recommended that respondents be allowed to classify themselves through general categories, such as approximate asset size, number of employees, and geographic location.

The Agencies understand that regulated entities want assurances that the information submitted will be considered confidential and sensitive and will not be disclosed unless confidentiality is expressly waived. To the extent the submissions include confidential information, the Agencies will keep such information confidential to the extent allowed by law. The Agencies advise regulated entities submitting sensitive or information they consider confidential to follow their primary federal financial regulator's regulations implementing FOIA with respect to designating information as confidential business information or seeking confidential treatment.

With respect to anonymity, the Agencies are concerned that anonymous submissions would be less useful than submissions in which the submitting entity is identified. As indicated in the Policy Statement, the OMWI Directors plan to reach out to regulated entities to discuss diversity and inclusion practices and methods of assessment, and these contacts will be more informative for both the Agencies and the entities if the Agencies know which submission came from which entity. However, the Agencies will reassess this matter over time.

d. Accuracy of Burden Estimate

The Agencies estimated that it would take an entity 12 burden hours, on average, to publish information pertaining to its diversity policies and practices on its Web site and to retrieve and submit self-assessment information to its primary federal financial regulator. One commenter stated that the Agencies underestimated the time it would take to collect, categorize, and submit this information.¹⁹ The commenter asserted that retrieving diversity data is a time-consuming and labor-intensive task, particularly for entities with hundreds or thousands of employees throughout the country and the world. In addition, the commenter maintained that an entity's submission would have to undergo a time consuming review by legal counsel and others to assure accuracy and clarity before it is submitted to the primary federal financial regulator.

¹⁷ See letter from SIFMA.

¹⁸ See letter from NAFCU.

¹⁹ See letter from SIFMA.

The Agencies note that the commenter did not provide an alternative estimate or formula for calculating the burden hours. In the absence of any alternative estimates or formulas, the Agencies are not changing the burden estimate at this time. If, however, future feedback indicates that the current estimate of burden hours needs further refinement, the Agencies will consider adjusting their estimates accordingly.

e. **Estimate of Start-Up Costs**

One commenter asserted that it would take substantial information technology, legal, and operational resources to put diversity data into a format appropriate for submission to a regulator.²⁰ The commenter said that it could not provide an exact estimate of capital or start-up costs for submitting this information until an actual information request is available.

To address the commenter's concern about start-up costs, however, the Agencies have estimated the possible burden to an entity associated with preparing (a) to publish this information on its Web site or in other appropriate communications and (b) to retrieve and submit this information to its primary federal financial regulator. The Agencies anticipate that 4 hours will be sufficient to prepare for these activities. (This is in addition to the 12 hours estimated to be expended by entities actually publishing the information pertaining to diversity policies and practices on the entity's Web site or in other appropriate communications and retrieving and submitting information pertaining to a self-assessment to a regulated entity's primary federal financial regulator.) For entities regulated by the OCC, Board, FDIC, and CFPB, the cost of the burden associated with this preparation would be \$101 per hour, with an average response time per respondent of 4 hours. For entities regulated by the SEC, the estimated cost of the associated burden would be \$104 per hour. (See Item #12 of this Supporting Statement for the calculation method).

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

The Policy Statement states that the Agencies may publish information disclosed to them provided they do not identify a particular entity or individual or disclose confidential business information in an effort to balance concerns about confidentiality of information with the importance of sharing information. Any entities submitting information may designate such information as confidential, as appropriate, and the Agencies will keep this information private to the extent allowed by law. The Agencies note that the Freedom of Information Act, 5 U.S.C. 552(b)(4), permits non-disclosure of trade secrets and commercial or financial information.

11. Sensitive Questions

²⁰ See letter from SIFMA.

Not applicable: no sensitive information is collected.

12. Estimate of Information Collection Burden

The collection of information contemplated by the Joint Standards imposes no new recordkeeping burdens as regulated entities will only publish or provide information pertaining to diversity policies and practices that they maintain during the normal course of business.

The Agencies estimate that it will take a regulated entity approximately 12 burden hours, on average, to (a) to publish annually information pertaining to diversity policies and practices on the entity's Web site or in other appropriate communications and (b) to retrieve and submit information pertaining to the entity's self-assessment of its diversity policies and practices to its primary federal financial regulator.

The Agencies estimate the total burden for all regulated entities as follows:

Estimated Number of Respondents:

OCC: 215.
Board: 488.
FDIC: 398.
CFPB: 750.
SEC: 1,250.

Frequency of Collection: Annual.

Average Response Time per Respondent: 12 hours.

Estimated Total Annual Burden Hours:

OCC: 2,580 hours.
Board: 5,856 hours.
FDIC: 4,776 hours.
CFPB: 9,000 hours.
SEC: 15,000 hours.

Total: 37,212 hours.

Cost of Hour Burden:

OCC: \$260,580
Board: \$591,456

<u>FDIC:</u>	\$482,376
<u>CFPB:</u>	\$909,900
<u>SEC:</u>	\$1,560,000
<u>Total:</u>	\$3,804,312

To estimate average hourly wages for entities regulated by the OCC, Board, FDIC, and CFPB, we reviewed data from May 2014 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for Depository Credit Intermediation (NAICS 522100). To estimate compensation costs associated with the collection of information under the Joint Standards, we use \$101 per hour. This is based on the average of the 90th percentile for seven occupations²¹ adjusted for inflation (at 2 percent), plus an additional 30 percent to cover private sector benefits (30 percent represents the average private sector costs of employee benefits).

For entities regulated by the SEC, the estimated cost of the burden hours is based on BLS May 2014 wages for Securities and Commodity Contracts Intermediation and Brokerage (NAICS 523100). We use \$104 per hour as the estimated compensation costs for the collection of information. This estimate reflects the mean hourly wage of \$78 per hour for human resources managers adjusted for inflation (at 2 percent), plus an additional 30 percent to cover the average private sector costs of employee benefits.

13. Estimate of Total Annualized Start-up and Capital Cost Burden

For entities regulated by the OCC, Board, FDIC, and CFPB, the estimate of total annualized start-up costs, based on \$101 per hour compensation costs and an average response time per respondent of 4 hours, is \$404. For entities regulated by the SEC, the estimate of total annualized start-up costs is \$416, which is based on \$104 per hour compensation cost. There are no capital costs.

14. Estimate of Cost to Federal Government

None.

15. Explanation of Changes in Burden

This is a new information collection.

16. Information Collections Planned for Statistical Purposes

As stated in the Policy Statement, the Agencies may publish information disclosed to them, such as best practices, in any form that does not identify a particular entity or individual or

²¹ The occupations are accountants and auditors, compliance officers, financial analysts, lawyers, management occupations, software developers, and statisticians.

disclose confidential business information. At the current time, no further plans have been made with respect to publication.

17. Display of OMB Expiration Date

The Agencies do not seek approval to not display the expiration date for OMB approval for the information collection. The OMB control number and expiration date will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov.

18. Exceptions to Certification

The Agencies certify that this collection of information is consistent with the requirements of 5 C.F.R. 1320.9 and the related provisions of 5 C.F.R. 1320.8(b)(3), and they are not seeking an exemption to these certification requirements.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.