

**Supporting Statement for the
Joint Standards for Assessing Diversity Policies and Practices
(FR 2100; OMB No. 7100-to be assigned)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to implement the voluntary interagency Joint Standards for Assessing Diversity Policies and Practices (Policy Statement) (FR 2100; OMB No. 7100-to be assigned). Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) requires the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Bureau of Consumer Financial Protection (CFPB), and Securities and Exchange Commission (SEC) (the agencies) 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 Policy Statement includes Joint Standards that cover “Practices to Promote Transparency of Organizational Diversity and Inclusion.” These Joint Standards expect a regulated entity to be transparent about its diversity and inclusion activities by making certain information available to the public annually on its websites or through other appropriate communications methods, in a manner reflective of the entity’s size and other characteristics. In addition, the Policy Statement includes Joint Standards that address “Entities’ Self-Assessment” and that a regulated entity, in a manner reflective of its size and other characteristics, is encouraged to publish information pertaining to its efforts with respect to the Joint Standards. The Federal Reserve’s annual reporting burden is estimated to be 5,856 hours and a one-time implementation burden of 1,952 hours.

Background and Justification

Section 342(c)(1) of the Dodd-Frank Act requires each OMWI Director to “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.” The Dodd-Frank Act also instructed each OMWI Director to develop standards for assessing the diversity policies and practices of entities regulated by the agency.

The agencies would 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.

Description of Information Collection

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 websites 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 (1) the entity’s diversity and inclusion strategic plan; (2) its policy on its commitment to diversity and inclusion; (3) 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 (4) 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 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, (1) conducts annually a voluntary self-assessment of its diversity policies and practices; (2) monitors and evaluates its performance under its diversity policies and practices on an ongoing basis; (3) provides information pertaining to its self-assessment to the OMWI Director of its primary federal financial regulator; and (4) publishes information pertaining to its efforts with respect to the Joint Standards.

Time Schedule for Information Collection and Publication

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.

Legal Status

The Board’s Legal Division has determined that the FR 2100 is authorized by section 342 of the Dodd-Frank Act, which requires the Board’s OMWI director to develop standards for assessing regulated entities’ diversity policies and practices and is voluntary.

The Standard regarding transparency, and a portion of the self-assessment Standard, call for regulated entities to provide information to the public, so confidentiality is not an issue with respect to those aspects of the Policy. A regulated entity may provide self-assessment material to the Board that contains confidential commercial information protectable under exemption 4 of the Freedom of Information Act (5 U.S.C. § 552(b)(4)), and may request that the information be kept confidential on a case-by-case basis. The Board will determine whether the information is

entitled to confidential treatment on an ad hoc basis in connection with such a request. As noted in the Policy Statement, an entity's primary federal regulator may share information obtained from regulated entities with other agencies, but will publish information disclosed to them only in a form that does not identify a particular entity or individual or disclose confidential business information.

Consultation Outside the Agency

On October 25, 2013, the agencies jointly published a notice on the proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices in the *Federal Register* (78 FR 64052). The agencies determined that the Policy Statement contained no collections of information requiring approval by the OMB. In response to comments received, the agencies amended the Policy Statement. On June 10, 2015, the agencies jointly published a notice on the final Policy Statement in the *Federal Register* (80 FR 33016) requesting public comment for 60 days, as the final Policy Statement contained new collections of information requiring approval by the OMB. The comment period for this notice expired on August 10, 2015.

The agencies collectively received four comment letters; two from industry trade associations, one from an advocacy organization, and one from an individual.¹ 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.

Detailed Discussion of Public Comments

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. This commenter assumed that the agencies would provide details about the information to be submitted or develop an information collection instrument. The commenter offered to meet with OMWI Directors to discuss any draft information collection documents.

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. The commenter noted that the information submitted should be standardized in order for the agencies to accurately assess the state of

¹ 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.

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.

Specific Collection Instrument

Three commenters requested that the agencies be more specific about the information collection. 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.

Another commenter asked the agencies to provide a “robust” example or template of how best to submit information. 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. The commenter stated that the comment letter it submitted in response to the proposed Policy Statement recommended questions for a standardized survey. 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.

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. 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. 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 remaining commenter expressed concern that designating information as confidential will not guarantee protection from disclosure. 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.

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. 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. 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. A regulated entity may provide self-assessment material to the Federal Reserve that contains confidential commercial information protectable under exemption 4 of the Freedom of Information Act and may request that the information be kept confidential on a case-by-case basis. The Federal Reserve will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with such a request.

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.

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 website and to retrieve and submit self-assessment information to its primary federal financial regulator. One commenter stated that the agencies grossly underestimated the time it would take to collect, categorize, and submit this information. 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.

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.

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. 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.

In response, there are no capital costs associated with the collection of information, such as new information technology, legal, and operational resources. With regard to start-up costs, the agencies note that the self-assessment is designed for entities with 100 or more employees, which already have systems in place to track and report diversity data in order to comply with Title VII of the Civil Rights Act of 1964. Best practices indicate that successful organizations recognize and are attentive to diversity and inclusion. The agencies held roundtables with regulated entities and industry trade associations prior to drafting the joint standards. In addition, they met with a number of regulated entities following the issuance of the standards to address questions. The agencies clarified that entities would conduct their self-assessments and voluntarily provide information to the agencies and the public. The information provided would be commensurate with the size and complexity of the entity. Lastly, the agencies are considering the development of a voluntary template or guidance to assist entities with their self-assessments.

To address the commenter's concern indicated above, the agencies are estimating burden for possible preparation activities that could be performed prior to conducting the self-assessment. The agencies anticipate that 4 hours will be sufficient to prepare to conduct the self-assessment.

On November 6, 2015, the agencies published a final notice in the *Federal Register* (80 FR 68901).

Estimate of Respondent 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 12 burden hours, on average, to (1) to publish annually information pertaining to diversity policies and practices on the entity's website or in other appropriate communications and (2) to retrieve and submit information pertaining to

the entity’s self-assessment of its diversity policies and practices to its primary federal financial regulator. In addition, the agencies estimate a one-time implementation burden of 4 hours. The total annual burden for the FR 2100 represents less than one percent of the total Federal Reserve System paperwork burden.

FR 2100	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Policy Statement	488	1	12	5,856
One-time implementation	488	1	4	<u>1,952</u>
<i>Total</i>				7,808

The total cost to the public for this information collection is estimated to be \$788,608.²

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System is negligible.

² To estimate average hourly wages for entities regulated by the OCC, Board, FDIC, and CFPB, the agencies 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, the agencies used \$101 per hour. This is based on the average of the 90th percentile for seven occupations (accountants and auditors, compliance officers, financial analysts, lawyers, management occupations, software developers, and statisticians) 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).