

**Regulators Issue Final Dodd-Frank Standards for Assessing  
Diversity Policies and Practices of Covered Entities  
in the Financial Services Industry**

July 23, 2015

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On June 9, 2015, six federal agencies (“Agencies”) subject to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Act”) issued much-anticipated [joint final standards](#) (“Final Standards”) in accordance with Section 342 of the Act for assessing the diversity policies and practices of the entities that they regulate (“Covered Entities”). The Final Standards were published in the *Federal Register* and became effective on June 10, 2015. In issuing the Final Standards, the Agencies stated that their goal is to provide a framework for an entity “to create and strengthen its diversity policies and practices . . . and to promote transparency of organizational diversity and inclusion.”

The Agencies include the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission.<sup>1</sup> Each of these Agencies was required, pursuant to Section 342 of the Act, to establish an Office of Minority and Women Inclusion (“OMWI”), headed by a Director responsible for all Agency matters concerning diversity in management, employment, and business. In turn, each Director was required to establish standards for assessing the diversity policies and practices of the entities regulated by the Agency. The Covered Entities include 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.<sup>2</sup>

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<sup>1</sup> Three other federal agencies that are also subject to the Act—the Federal Reserve Banks, the Department of Treasury, and the Federal Housing Finance Agency—did not participate in crafting the Final Standards.

<sup>2</sup> The Act also amended Section 7 of the Commodity Exchange Act (“Designation of boards of trade as contract markets”) by, in part, adding new core principles, including the core principle on “diversity of board of directors.” That core principle provides, “DIVERSITY OF BOARD OF DIRECTORS. The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies . . . of the board of trade from among, and to have the composition

As we previously reported, on October 25, 2013, the Agencies published [joint proposed standards](#) (“Proposed Standards”), which were available for public comment for over three months. The Final Standards track the Proposed Standards in large part, although some changes were made to address comments received by the Agencies.

### **Changes from Proposed Standards to Final Standards**

The changes in the Final Standards include additional language clarifying certain provisions, including the following:

- **Definition of “Diversity” and “Inclusion.”**
  - A number of comments sought a definition of “diversity,” as the Proposed Standards did not have one. Suggested definitions ranged from a narrow definition to one including individuals with disabilities, veterans, and/or LGBT individuals.
  - The Final Standards define “diversity” to include “minorities,” as defined in Section 342(g)(3) of the Act (i.e., Black Americans, Native Americans, Hispanic Americans, and Asian Americans), as well as women.
  - The Final Standards provide that Covered Entities may choose to apply a broader definition and note that a broader definition may include categories referenced by the U.S. Equal Employment Opportunity Commission in its EEO report.<sup>3</sup>
  - The Final Standards also provide a definition of “inclusion” (which the Proposed Standards did not contain) as a “process to create and maintain a positive work environment that values individual similarities and differences, so that all can reach their potential and maximize their contributions to an organization.”
  
- **Applicability to Small Entities/Extraterritorial Application.**
  - In order to clarify what size entities were covered, the Final Standards state that they focus primarily on institutions with more than 100

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of the bodies reflect, a broad and culturally diverse pool of qualified candidates.” All boards of trade designated as contract markets are required to demonstrate compliance with each core principle as a condition of obtaining and maintaining designation as such.

<sup>3</sup> The EEO-1 Report defines race and ethnicity categories as Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino), Asian (Not Hispanic or Latino), American Indian or Alaska Native (Not Hispanic or Latino), and Two or More Races (Not Hispanic or Latino). The EEO-1 Report is available at <http://www.eeoc.gov/employers/eeo1survey/2007instructions.cfm>.

employees, but the Agencies encourage each Covered Entity to use the standards in “a manner appropriate to its unique characteristics.”

- The Final Standards specifically limit applicability to an entity’s U.S. operations, as this was not clear in the Proposed Standards.
- **Frequency and Structure of Assessment and Reporting.**
  - As the Proposed Standards did not explain how often self-assessments should occur, the Final Standards state that a self-assessment should be performed annually, with ongoing monitoring.
  - The Final Standards also clarify that an entity may choose to share its self-assessment with the OMWI Director of the entity’s primary federal financial regulator, rather than submitting it to every relevant Agency.
- **Impact of Standards.**
  - The Final Standards address concerns about the legal impact of the standards by adding the following language: **“This document is a general statement of policy under the Administrative Procedure Act, 5 U.S.C. 553. It does not create new legal obligations. Use of the Standards by a regulated entity is voluntary.”** (Emphasis added.)

### **Final Standards**

Consistent with the Proposed Standards, the Final Standards are divided into five general categories: (i) organizational commitment to diversity and inclusion, (ii) workforce profile and employment practices, (iii) procurement and business practices (or supplier diversity), (iv) practices to promote transparency of organizational diversity and inclusion, and (v) entities’ self-assessment.

- **Organizational Commitment to Diversity and Inclusion.** Recognizing that the commitment to diversity and inclusion must come from a Covered Entity’s leaders, including its board of directors, senior officials, and managers, the Agencies set the following standards to “inform how an entity promotes diversity and inclusion both in employment and contracting, and how an entity fosters a corporate culture that embraces diversity and inclusion”:
  - Include considerations of diversity in employment and contracting, including hiring, recruiting, retention, and promotion, as important elements of the Covered Entity’s strategic plan.
  - Establish a diversity and inclusion policy that is approved and supported by senior leadership, including the board of directors.

- Provide regular progress reports to senior leadership.
  - Conduct equal employment opportunity and diversity education and training on a regular basis.
  - Designate a senior level official with dedicated resources to support strategies and initiatives and to oversee and direct the Covered Entity's diversity efforts. (Notably, the Final Standards state that this person should have relevant knowledge and experience for the role.)
  - Take proactive steps to attract and/or promote a diverse pool of candidates, including women and minorities, in the Covered Entity's hiring, recruiting, retention, and promotion, as well as in its selection of board members, senior management, and other senior leadership positions.
- **Workforce Profile and Employment Practices.** Finding that many Covered Entities promote the fair inclusion of minorities and women in their workforce by different means, including the use of various analytical tools, the Agencies set the following standards to evaluate and assess, on an annual basis, a Covered Entity's diversity and inclusion efforts:
    - Use metrics to track and analyze personnel activity, such as recruitment, applicants, hires, promotions, terminations, career development support, coaching, executive seminars, and retention. (The Final Standards emphasize the importance of **both** quantitative and qualitative measurements.)
    - Hold management accountable for diversity and inclusion efforts. (The Final Standards clarify that this applies to all levels of management.)
    - Establish action-oriented programs and practices to create a diverse pool of candidates for employment, including outreach to organizations and educational institutions serving minorities and women as well as participation in conferences, workshops, and other events attracting minorities and women participants.
  - **Procurement and Business Practices.** Based on their understanding that there is a competitive advantage to working with minority-owned and women-owned businesses, the Agencies set the following standards to evaluate and assess, on an annual basis, a Covered Entity's supplier diversity program:
    - Establish a supplier diversity policy that provides a fair opportunity for minority-owned and women-owned businesses to compete in the procurement of goods and services.

- Use metrics and analytics to track and analyze supplier diversity activity, including tracking annual contract spending, the percentage of spending allocated to minority/women-owned businesses, and the demographics of contractors' and subcontractors' workforces. (The Agencies specifically refused to set quantifiable targets, although a number of comments suggested them.)
- Establish action-oriented programs and practices to create a diverse supplier pool, including outreach to minority/women-owned contractors and representative organizations; participation in conferences, workshops, and other events attracting minority/women-owned businesses; and publicizing its procurement opportunities.
- **Practices to Promote Transparency of Organizational Diversity and Inclusion.** Believing that transparency and publicity can be an important aspect of assessing diversity policies and practices, the Agencies set as a standard that a Covered Entity make available to the public annually, through its public website or other appropriate communication methods, the following information:
  - the Covered Entity's diversity and inclusion strategic plan;
  - the Covered Entity's commitment to diversity and inclusion;
  - opportunities available at the entity that promote diversity; and
  - the Covered Entity's progress toward achieving diversity and inclusion in its workforce and procurement activities, which may include workforce and supplier demographic profiles, employment and procurement opportunities, forecasts of potential employment and procurement opportunities, and the availability and use of mentorship and developmental programs for employees and contractors.
- **Entities' Self-Assessment.** The Final Standards include a self-assessment approach to assessments, rather than assessments conducted by the Agencies. The Final Standards include considerations for self-assessment, disclosure, and reporting by Covered Entities. For example, Covered Entities should do the following:
  - Conduct self-assessments of diversity policies and practices annually.
  - Monitor and evaluate performance under diversity policies and practices on an ongoing basis.
  - Provide information pertaining to the self-assessments of diversity policies and practices to the OMWI Directors of their primary federal financial regulator.

- Designate submitted information as confidential commercial information.
- Publish information pertaining to efforts made with respect to the standards.

### **What Employers Should Do Now**

The Final Standards note that their use by Covered Entities is “**voluntary**.” Use of the standards, however, is strongly encouraged, and compliance will be viewed favorably both by the public and regulating agencies. The Agencies may choose to revisit their voluntary approach in the future, and entities that have been in compliance will be better prepared for any mandatory standards that may be issued or any review undertaken by the Agencies. Therefore, Covered Entities should consider taking the following actions:

- Identify a person/committee responsible for diversity and inclusion.
- Create diversity and inclusion policies for employees and suppliers.
- Incorporate diversity considerations into strategic plans for hiring, retention, and promotion.
- Establish action-oriented programs and practices to create both a diverse supplier pool and a diverse pool of candidates for employment.
- Determine a method to hold management accountable for diversity/inclusion efforts (through performance appraisals, compensation decisions, or otherwise).
- Identify and review accessible information to internally assess the diversity of employment and suppliers.
- Consider what initiatives, efforts, or other information will be disclosed to the public and the methodology of such disclosure.

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