

# CLIENT UPDATE

## FINANCIAL REGULATORS ISSUE PROPOSED STANDARDS FOR ASSESSING DIVERSITY POLICIES AND PRACTICES OF REGULATED ENTITIES

### NEW YORK

Eric R. Dinallo  
edinallo@debevoise.com

Jyotin Hamid  
jhamid@debevoise.com

Mary Beth Hogan  
mbhogan@debevoise.com

Gregory J. Lyons  
gjlyons@debevoise.com

Last week, pursuant to a statutory mandate included in the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), six federal financial regulatory agencies issued proposed standards for assessing the diversity policies and practices of regulated entities. The proposed standards are open for public comment for a 60-day period, and final standards are likely to be promulgated early in 2014. All companies regulated by the agencies should be aware of the proposed standards and may wish to start evaluating their existing diversity policies and practices in light of them. Once the final standards are promulgated, it is likely that regulated entities will need to adjust their existing policies and practices to conform.

### BACKGROUND

A provision of Dodd-Frank which initially received little attention, Section 342, created an Office of Minority and Women Inclusion (“OMWI”) within each of six federal financial regulatory agencies: the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (collectively, the “Agencies”). The OMWI offices were created to monitor and promote diversity and inclusion within the Agencies and the entities they regulate.

Section 342(b)(2)(C) of Dodd-Frank required each Agency's OMWI Director to develop standards for "assessing the diversity policies and practices of entities regulated by the agency." Several years later, pursuant to that statutory mandate, the Agencies have now issued a joint release announcing proposed standards for assessing the diversity policies and practices of the institutions that they regulate ("Proposed Standards"). The Proposed Standards are intended to "promote transparency and awareness of diversity policies and practices," and provide guidance to the entities and the public for assessing the entities' diversity policies.

The Agencies have invited public comment on the Proposed Standards for a 60-day period. It is expected that final standards will be adopted early next year.

### **OVERALL APPROACH TO ASSESSMENT**

Four aspects of the overall approach to assessment contemplated by the Proposed Standards are noteworthy:

*First*, the Proposed Standards contemplate that regulated entities will perform "self-assessment" of their diversity and inclusion policies and practices. Therefore, the assessment envisioned by the Proposed Standards expressly will *not* involve any examination or supervisory assessment by the Agencies.

*Second*, the Proposed Standards contemplate "voluntary" disclosure of a regulated entity's self-assessment and any other information the entity deems relevant to the appropriate Agency.

*Third*, the Proposed Standards reflect the Agency's apparent view that regulated entities should have flexibility to tailor their efforts to promote diversity in light of their individual circumstances and characteristics. Therefore, the Proposed Standards eschew hard-and-fast requirements or specific benchmarks.

*Finally*, the Proposed Standards do not address what actions the Agencies may take if an entity's diversity and inclusion policies and practices are found to be unsatisfactory. As the Proposed Standards note, the statute itself provides that nothing in Section 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." The Proposed Standards also indicate that the Agencies may use information voluntarily disclosed by regulated entities "as a resource in carrying out their diversity and inclusion responsibilities."

## PROPOSED STANDARDS

The Proposed Standards provide guidance in the following four areas:

- **Standards for Organizational Commitment to Diversity:** Proposed Standards in this area include that regulated entities should consider diversity and inclusion in employment and contracting; adopt a diversity and inclusion policy; provide updates to the board and/or senior management on diversity efforts; conduct diversity training on a periodic basis; maintain a senior official to oversee diversity efforts; and take proactive steps to promote a diverse pool of applicants.
- **Standards for Workforce Profile and Employment Practices:** Proposed Standards in this area include that regulated entities which already are required to file EEO-1 Reports or Affirmative Action Plans (as federal contractors) should use data from such reports to assess diversity efforts; that other regulated entities should use metrics to evaluate and assess workforce diversity; and that regulated entities should establish policies to create diverse applicant pools for internal and external opportunities.
- **Standards for Procurement and Business Practices:** Proposed Standards in this area include that regulated entities should adopt a supplier diversity policy; methods and practices to evaluate supplier diversity; and practices to promote a diverse supplier pool.
- **Standards for Promoting Transparency of Organizational Diversity:** Proposed Standards in this area include that regulated entities should release information on entity websites or through other public communications about their diversity plans, commitment to diversity, and progress towards achieving diversity and inclusion in workforce and procurement activities.

## NEXT STEPS

The Agencies are seeking comments on the Proposed Standards until late December. Regulated entities and others may wish to consider submitting comments.

In addition, although the standards have not yet been finalized, it may be prudent for regulated entities to begin the process of evaluating their existing diversity policies and practices and making adjustments that may be necessary to comport with the standards. For several reasons, including that self-assessments contemplated by the standards could be discoverable in litigation, regulated entities may wish to consult legal counsel to assist in evaluating and possibly adjusting their diversity policies and practices.

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Please do not hesitate to contact us with any questions.

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