

Memorandum to: The Board of Directors

From: Doreen R. Eberley
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Mark Pearce
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Subject: Final Statement of Policy Regarding Minority Depository Institutions

Recommendation

Staff recommends that the FDIC Board (Board) approve the publication in the Federal Register of the attached Statement of Policy Regarding Minority Depository Institutions. The Board approved the proposed Statement of Policy for publication in the Federal Register on August 21, 2020.¹ The final Statement of Policy enhances the FDIC's efforts to encourage and preserve minority-owned and minority-led financial institutions. The Statement of Policy updates, strengthens, and clarifies the FDIC's policies and procedures related to the existing framework for preservation and promotion of minority depository institutions (MDIs). The Statement of Policy also: describes for the public the initiatives the FDIC has taken and will take to promote the preservation of MDIs and enhance communication between the FDIC and MDIs; defines the program terms for *technical assistance*, *training*, *education*, and *outreach*; and explains how the FDIC applies examination standards in assessing the performance of MDIs.

Background

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)² established several goals related to MDIs: (1) preserving the number of minority depository institutions; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now

¹ 85 FR 60466 (Sept. 25, 2020).

² Pub. L. 101-73, title III, § 308, Aug. 9, 1989, 103 Stat. 353, as amended by Pub. L. 111-203, title III, § 367(4), July 21, 2010, 124 Stat. 1556, *codified at* 12 U.S.C. 1463 note.

Concur:

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insolvent; (4) promoting and encouraging creation of new minority depository institutions; and (5) providing for training, technical assistance, and education programs.

On April 3, 1990, the Board adopted the Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions (1990 Policy Statement), which provided information to the industry regarding the FDIC's efforts in achieving the goals of Section 308.

During the 1990s, many MDIs continued to underperform industry averages for profitability and experienced failure rates that were significantly higher than those of the industry overall. In order to discuss the challenges that MDIs faced, and identify best practices and possible ways the regulatory agencies could promote and preserve MDIs, the FDIC and other banking regulatory agencies – with assistance from several minority bank trade associations – invited officers from 156 MDIs to participate in a “Bankers and Supervisors Regulatory Forum” held in March of 2001. Approximately 70 bankers attended.

The FDIC also formed an Interdivisional Working Group to consider measures to modernize the policies and procedures related to MDIs. The working group incorporated many suggestions from the March 2001 forum into the revised Statement of Policy Regarding Minority Depository Institutions, adopted by the Board on April 2, 2002 (2002 Policy Statement), which detailed the framework by which the FDIC implements the goals set forth in FIRREA and administers its MDI program to meet those goals.

Over the years, the FDIC has continued to modify and enhance its MDI program to better carry out the FDIC's efforts to meet the goals in Section 308 of FIRREA. The revisions in the proposed Statement of Policy are intended, in part, to strengthen and improve the various aspects of the MDI program and how each component of the MDI program is carried out. The proposed revisions to the 2002 Policy Statement reflected in the proposal emphasized the FDIC's enduring and strengthened commitment to, and engagement with, MDIs in furtherance of its goal of preserving and promoting MDIs.

In 2019, the FDIC established a new MDI Subcommittee of the Advisory Committee on Community Banking (CBAC), which held its inaugural meeting in December 2019. There are nine executives serving as members of the MDI Subcommittee, representing African American, Native American, Hispanic American, and Asian American MDIs across the country. The MDI Subcommittee provides advice and recommendations regarding the FDIC's MDI program to the CBAC for consideration. The MDI Subcommittee serves as a source of feedback with regard to the FDIC's efforts to fulfill its statutory goals to preserve and promote MDIs; provides a platform for MDIs to promote collaboration, partnerships, and best practices; and identifies ways to highlight the work of MDIs in their communities.

In 2019, the FDIC also published an MDI research study, which explores changes in MDIs, their role in the financial services industry, and their impact on the communities they

serve.³ The study period covered 2001 to 2018 and looked at the demographics, structural change, geography, financial performance, and social impact of MDIs.

Additionally, in June of 2019, in order to discuss the challenges that MDIs face, provide information on best practices, and collaborate on possible ways the regulatory agencies can promote and preserve MDIs, the FDIC hosted the Interagency MDI and Community Development Financial Institution (CDFI) Bank Conference, *Focus on the Future: Prospering in a Changing Industry*, in collaboration with the Office of the Comptroller of Currency and the Board of Governors of the Federal Reserve System. More than 80 MDI and CDFI bankers, representing 61 banks, attended the two-day conference.⁴

All of these various efforts by the FDIC to enhance its MDI program have informed the revisions to the Statement of Policy. The FDIC has received suggestions from bankers at outreach and trade association meetings as well as feedback from the June 2019 conference. The MDI Subcommittee has also provided feedback to the CBAC for consideration and recommendation to the FDIC. Many of these suggestions and feedback have been incorporated into the Statement of Policy.

The FDIC published the Statement of Policy in the Federal Register for public comment on September 25, 2020. The comment period closed on November 24, 2020. The following sections summarize the significant changes from the 2002 Policy Statement and the FDIC's responses to comments received.

Comments on the Proposed Statement of Policy

The FDIC sought comment generally on the proposed revisions to the Statement of Policy and asked six specific questions regarding aspects of the proposal. Seven comment letters were received.⁵ The comments came from an insured financial institution, a financial institution trade organization, a non-profit organization, a service provider that serves minority depository institutions, and individuals. Commenters generally supported the proposed revisions to the Statement of Policy, however, some commenters also recommended specific changes to the proposed Statement of Policy. These comments are discussed in more detail below. The FDIC is making one change to the Statement of Policy in response to comments received.

³ See FDIC MDI research study, published June 2019, *Minority Depository Institutions: Structure, Performance, and Social Impact* available at <https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf>

⁴ See Chairman Jelena McWilliams Keynote Remarks, MDI and Community Development Financial Institution bank conference, *Focus on the Future: Prospering in a Changing Industry* (Mar. 3, 2020), available at <https://www.youtube.com/watch?v=o0H6Ko00qTk&feature=youtu.be>.

⁵ See Comments submitted for the Statement of Policy Regarding Minority Depository Institutions, available at <https://www.fdic.gov/regulations/laws/federal/2020/2020-statement-of-policy-minority-depository-institutions-3064-za19.html>.

Technical assistance and other engagement.

One commenter suggested that additional technical assistance could be provided to MDIs in danger of failing. One commenter requested that the Statement of Policy more explicitly state that outreach will include national and state banking industry trade associations. Another commenter suggested that collaboration with state banking agencies might enhance program content, delivery, and reach. One group of academics suggested that MDI resources be centralized in a single location. This group of commenters further recommended that the burden of requesting services should be transferred from the MDIs to FDIC staff in Regional and Field offices. The same commenter suggested more could be done to reach out to MDIs and those in the process of organizing *de novo* MDIs, specifically recommending an annual informational conference for entrepreneurs seeking to enter the industry.

One commenter suggested expanding the training and educational programs portion of the *Engagement with MDIs* section of the Statement of Policy to specifically include virtual environments and the services of private organizations in order to ensure that MDIs have a wide variety of solutions to meet their needs. One commenter suggested the FDIC facilitate training and education through written materials, such as manuals or whitepapers. Finally, one commenter urged the FDIC to play a larger role in addressing the challenges facing minority communities, including racial gaps in financial and economic opportunity.

The Statement of Policy focuses on strategies to facilitate the viability of MDIs to enable MDIs to serve their communities. Staff recognizes the importance of the broader societal issues and, indeed, the FDIC is taking steps to address them, but staff suggests that revisions to the rules implementing the Community Reinvestment Act, enforcing the law against predatory lenders, and bank staff diversity are beyond the scope of the Statement of Policy.

Collaboration with national and state banking industry trade associations already is contemplated by the Statement of Policy, so no changes are necessary. However, the staff agrees that it would be useful to explicitly include national and state bankers associations among the various external organizations with whom the FDIC will discuss opportunities to collaborate, the challenges faced by MDIs, and other topics, and recommends making a change to the Statement of Policy to reflect such outreach.

In staff's view, the remainder of the comments raise issues that already are addressed by the proposed Statement of Policy. The current structure of the MDI program, with a National Director and staff in the FDIC's Washington Office, Regional Coordinators in each of the FDIC's six Regional Offices, and additional staff in 82 Field Offices spread across the country, all being available to respond to questions and to provide technical assistance, works well to provide resources to MDIs. The FDIC also assigns to every FDIC-supervised institution, of any size or ownership form, a case manager and a senior review examiner who are knowledgeable about minority bank issues and are available to answer questions.

Regional Directors and their staff work with MDI organizers to help them understand application requirements and processes, and provide technical assistance throughout the process. This work includes the National Director's office and senior Regional management in the MDI

organizer's respective region, hosting conference calls with the organizer addressing questions regarding MDI designation and other topics. Moreover, the FDIC is currently planning the development of videos targeted at entrepreneurs and others seeking to establish an MDI.

Definitions.

The Statement of Policy adds definitions for terms used in the MDI program: technical assistance, training and education, and outreach.

Two commenters suggested that the FDIC should broaden MDI eligibility in the Statement of Policy to include women-led institutions. One of these commenters specifically recommended that the FDIC should consider implementing a requirement that in order for an institution to obtain MDI status, they must have at least a minimum of two women on their executive leadership boards. The FDIC also received comments specifically relating to the definitions assigned to technical assistance, education, and outreach. One commenter suggested the FDIC use the term "professional consultation" in place of "technical assistance" to encourage working relationships with MDI executives. Another commenter recommended that the FDIC define the term "predominantly minority" in the context of a community the institution serves.

The FDIC has closely followed the definitions used in Section 308 of FIRREA, which does not include women in the definition of "minority." If Congress chooses to add women-owned or women-led institutions to the definitions established in FIRREA, then staff would recommend that the FDIC also adopt this change. In the meantime, staff does not recommend changes to terms defined in the Statement of Policy. Staff has developed MDI Designation Procedures that are expected to be included in the publicly available Application Procedures Manual. These procedures detail the criteria an institution seeking the MDI designation must meet and steps FDIC staff will take when performing an assessment of the community served by the institution.

FDIC outreach.

The Statement of Policy was updated to provide additional outreach opportunities, including with the Chairman's office and the National Director for Minority and Community Development Banking. Additional comments on the proposed Statement of Policy's outreach provisions are addressed under other headings.

MDI Subcommittee.

The Statement of Policy describes the newly established FDIC MDI Subcommittee, which serves as source of feedback on FDIC strategies to fulfill statutory goals to preserve and promote MDIs. The MDI Subcommittee may also make recommendations or offer ideas to the CBAC for consideration and presentation to the FDIC. The MDI Subcommittee provides a platform for MDIs to promote collaboration, partnerships, and best practices. The MDI Subcommittee also identifies ways to highlight the work of MDIs in their communities. In response to comments, staff will continue to seek the Subcommittee's ideas on topics and alternative methods of providing training and education material.

Reporting.

The Statement of Policy updates the reporting requirements of the FDIC under the FDIC's MDI program, including the Annual Report to Congress on the Preservation and Promotion of Minority Depository Institutions pursuant to Section 367 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Section 308 of FIRREA. The Section 367 requirements were enacted since the Statement of Policy was last updated in 2002.

One commenter suggested, to encourage MDIs to more fully use resources offered by the FDIC, that the FDIC's annual report should highlight the FDIC's efforts in establishing new MDIs, success stories with growing MDIs, how the FDIC has assisted struggling MDIs, and, in the event of a failure, how the minority focus of the failed MDI has been retained by the acquiring institution. The FDIC does, and will continue to, highlight achievements made by MDIs within the Annual Report to Congress and other publications featuring the activities of MDIs. These publications also will capture supervisory activities promoting the creation of new MDIs, including the support provided during the *de novo* application process. Staff does not recommend that any changes to the Statement of Policy be made to respond to these comments.

One commenter suggested the FDIC clarify whether the intended use of the results from periodic surveys and discussions with bank management will be shared with the MDI Subcommittee, the FDIC's Board, and the general public. Staff notes that the results of the effectiveness survey and comments provided by institution management informs the MDI program on key areas where the MDI program has been successful and areas where the FDIC can improve program delivery. These findings and discussions strengthen the MDI program by identifying key resources that have been or could be beneficial to institutions. The findings of the survey are shared with the MDI Subcommittee, CBAC, and the FDIC Board. Staff may consider including summary survey information in the Annual Report to Congress.

Measurement of effectiveness.

The Statement of Policy establishes new requirements to measure the effectiveness of the MDI program. The national director and the regional office staff will routinely solicit feedback from MDIs to assess the effectiveness of the FDIC's technical assistance, training and education, and outreach efforts and the MDI program in general. The FDIC will track instances of technical assistance, training and education, and outreach and solicit feedback on the effectiveness of these activities by administering periodic surveys and holding discussions with bank management.

One commenter suggested the FDIC research the potential impact of MDIs on rural areas and how to successfully scale MDIs in rural areas. The FDIC regularly prioritizes its research efforts and continuously considers the most pertinent studies for MDIs and the banking industry as a whole, as well as the timing of such research.

Examinations.

The Statement of Policy adds a description about how the FDIC applies rating systems at examinations of MDIs. Specifically, the proposed Statement of Policy describes how the Uniform Financial Institutions Rating System (UFIRS) and the Uniform Interagency Consumer Compliance Rating System (UICCR) are designed to reflect an assessment of the individual institution, including its size and sophistication, the nature and complexity of its business activities, and its risk profile, rather than a comparison to peer institutions.

The Statement of Policy clarifies that technical assistance is not a supervisory activity and is not intended to present additional regulatory burden. Further, the Statement of Policy adds assurances that examination teams will not view requests for, or acceptance of, technical assistance negatively when evaluating institution performance or assigning ratings. A commenter requested that a similar clarification be made regarding outreach activities. Staff is not aware of any reluctance to communicate freely during outreach activities, therefore staff does not recommend the clarification sought by the commenter.

Conclusion:

Staff recommends that the Board approve the publication of the attached Statement of Policy titled “Statement of Policy Regarding Minority Depository Institutions” in the *Federal Register*.

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