consumer financial law. The analysis under section 1025(b)(1)(C) of the CFPA is otherwise similar to that under section 1024(b)(1)(C) of the CFPA, and so there is no need to repeat it here.[47]

The Bureau recognizes the role of the prudential regulators in conducting MLA supervision, including examinations, at very large banks and credit unions. Applicable statutes grant the prudential regulators broad supervisory and examination powers, which they use for various purposes, including assuring the safety and soundness of supervised institutions, assuring compliance with laws and regulations at those institutions, and other purposes. By contrast, the Bureau's authority under section 1025(b)(1)(C) concerns a targeted purpose: Detecting and assessing those ''risks to consumers'' that are ''associated'' with ''activities subject to'' Federal consumer financial laws, such as TILA. Conducting examinations for that particular purpose is distinct from the prudential regulators' authority to conduct examinations for the purpose of assessing compliance with the MLA (or for safety and soundness or other purposes) —including the fact that the prudential regulators' purposes are not based on the association with Federal consumer financial law discussed above. Even though some of the activities in Bureau examinations may be similar to activities in prudential regulators' examinations, they are for a different purpose. Nothing in the CFPA or in this interpretive rule limits in any way, or should be deemed to limit in any way, the prudential regulators' consumer compliance examinations of very large banks or credit unions, or their subsidiaries, for the purpose of assessing compliance with the MLA.

Section 1025 has a number of provisions that promote coordination and efficiency among the Bureau and the prudential regulators. The agencies work with each other to minimize regulatory burden that may result from their complementary authorities, while ensuring the efficient and effective protection of covered borrowers.

## V. Regulatory Matters

This is an interpretive rule issued under the Bureau's authority to interpret the CFPA, including under section 1022(b)(1) of CFPA, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws, such as the CFPA.[48]

As an interpretive rule, this rule is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[49] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[50] The Bureau has also determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[51]

Pursuant to the Congressional Review Act,[52] the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: June 16, 2021.

**David Uejio,**

*Acting Director, Bureau of Consumer Financial Protection.*

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BILLING CODE 4810–AM–P

[47] The Bureau's previous concerns that it lacked authority under section 1024(b)(1)(C) were also applicable to section 1025(b)(1)(C). But for the reasons already discussed in the context of section 1024(b)(1)(C), the Bureau no longer finds those arguments persuasive.

[48] 12 U.S.C. 5512(b)(1).

[49] 5 U.S.C. 553(b).

[50] 5 U.S.C. 603(a), 604(a).

[51] 44 U.S.C. 3501–3521.

[52] 5 U.S.C. 801 *et seq.*

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# FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Chapter III

## RIN 3064–ZA19

# Statement of Policy Regarding Minority Depository Institutions

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final statement of policy.

**SUMMARY:** The FDIC is issuing its Statement of Policy Regarding Minority Depository Institutions. Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 established several goals related to encouraging, assisting, and preserving minority depository institutions. The FDIC has long recognized the unique role and importance of minority depository institutions and historically has taken steps to preserve and encourage minority-owned and minority-led financial institutions. The Statement of Policy updates, strengthens, and clarifies the agency's policies and procedures related to minority depository institutions.

**DATES:** The Statement of Policy is effective August 23, 2021.

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**SUPPLEMENTARY INFORMATION:**

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## I. Background

Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)[1] established several goals related to minority depository institutions (MDIs): (1) Preserving the number of MDIs; (2) preserving the minority character in cases of merger or acquisition; (3) providing technical assistance to prevent insolvency of institutions not now insolvent; (4) promoting and encouraging creation of new MDIs; and (5) providing for training, technical assistance, and education programs.

On April 3, 1990, the Board of Directors of the Federal Deposit Insurance Corporation (FDIC Board and FDIC, respectively) adopted the Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions (1990 Policy Statement). The framework for the 1990 Policy Statement resulted from key provisions contained in Section 308 of FIRREA. The 1990 Policy Statement provided information to the public and minority banking industry regarding the

[1] Public Law 101–73, title III, § 308, Aug. 9, 1989, 103 Stat. 353, as amended by Public Law 111–203, title III, § 367(4), July 21, 2010, 124 Stat. 1556, *codified at* 12 U.S.C. 1463 note.

agency's efforts in achieving the goals of Section 308.

During the 1990s, many MDIs continued to underperform industry averages for profitability and experience 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 a revised Policy Statement Regarding Minority Depository Institutions, issued by the FDIC, after notice and comment, in April of 2002 (2002 Policy Statement).[2] The FDIC issued the 2002 Policy Statement to provide additional information regarding the FDIC's initiatives related to Section 308. The 2002 Policy Statement provided a more structured framework that set forth initiatives of the FDIC to promote the preservation of, as well as to provide technical assistance, training, and educational programs for, MDIs by working with those institutions, their trade associations, and the other federal financial regulatory agencies.

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 by various responsible entities that are part of the MDI program. The proposed revisions to the 2002 Policy Statement reflected in the proposed Statement of Policy describe 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). The MDI Subcommittee 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 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.

The FDIC published, also in 2019, 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, 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, in June of 2019, 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 proposed 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 revised Statement of Policy. The following section summarizes the significant changes from the 2002 Policy Statement.

## II. The Revised Policy Statement

### *A. Proposed Revisions*

On September 25, 2020, the FDIC published in the **Federal Register** proposed revisions to its MDI Policy Statement.[5] The FDIC proposed changes in the following seven areas:

*Technical assistance and other engagement.* The proposed Statement of Policy clarified that technical assistance is not a supervisory activity and is not intended to present additional regulatory burden. Further, the proposed Statement of Policy stated that examination teams will not view requests for, or acceptance of, technical assistance negatively when evaluating institution performance or assigning ratings.

*FDIC outreach.* The proposed 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.

*MDI Subcommittee.* The proposed Statement of Policy described the newly established FDIC MDI Subcommittee of the CBAC, 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.

*Definitions.* The proposed Statement of Policy added definitions for terms used in the MDI program: Technical assistance; training and education; and outreach. Technical assistance is defined as individual assistance that a regulator will provide to a MDI in response to an institution's request for assistance in addressing specific areas of concern. The proposed Statement of Policy also noted that technical assistance is a tool to provide on-going support to institutions in an effort to facilitate timely implementation of recommendations, full understanding of regulatory requirements, and in some instances, the viability of the institution. Training and education programs consist of instruction designed to impart proficiency or skills related to a particular job, process, or regulatory policy. This training and education can be provided in person, through webinars or conference calls, or in a

[2] 67 FR 18618 (Apr. 16, 2002).

[3] *See* FDIC MDI research study, published June 2019, *Minority Depository Institutions: Structure, Performance, and Social Impact, 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), *https://www.youtube.com/watch?v=o0H6Ko00qTk&feature=youtu.be.*

[5] 85 FR 60466 (Sept. 25, 2020).

conference setting. Outreach consists of FDIC representatives meeting with financial institutions with a primary focus of building relationships and open communication and providing information and resources. Outreach is generally offered by the FDIC and can include meetings between financial institution management and senior FDIC management.

*Reporting.* The proposed Statement of Policy reflects updated reporting requirements applicable to the FDIC, 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.

*Measurement of effectiveness.* The proposed Statement of Policy also established 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.

*Examinations.* The proposed Statement of Policy added a description of how the FDIC applies rating systems to examinations of MDIs. Specifically, the proposed Statement of Policy described how the Uniform Financial 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

*B. Comments*

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.[6] 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 made specific recommendations to the 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.

The FDIC received several comments on the methods described in the Statement of Policy that would be used to identify and provide useful engagement opportunities. One commenter suggested that additional technical assistance could be provided to MDIs in danger of failing. After consideration of this comment, the FDIC has decided not to make any related changes to the Statement of Policy. The FDIC already seeks to preserve the minority character of failing institutions before and during the resolution process, as required by Section 308 of FIRREA. Further, the FDIC provides ongoing supervisory oversight of institutions prior to failure through regular on-site examinations, visitations, off-site monitoring, and various offers to provide technical assistance.

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. Such collaboration already is contemplated by the Statement of Policy, so no changes are necessary. However, the FDIC 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 has made a change to the Statement of Policy to reflect such outreach.

One group of academics suggested that MDI resources be centralized in a single location. This commenter further recommended that the burden of requesting services should be transferred from the MDIs to FDIC staff in Regional and Field offices. The FDIC suggests that 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 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 review examiner who are available for all supervisory activities or inquiries. The FDIC believes it is better to meet the needs of MDIs where they are, rather than in a central location, and has not made a change in response to these comments.

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. The FDIC has in place a number of initiatives to assist existing and potential future MDIs. 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. The FDIC currently is developing videos targeted at entrepreneurs and others seeking to establish an MDI. The Statement of Policy is intended to provide general principles and commitments from the FDIC regarding the MDI program. In order for the Statement of Policy to be a living document that allows the FDIC to prioritize different initiatives and to move away from unsuccessful efforts, the Statement of Policy does not include many details about specific initiatives. The FDIC takes notice of the commenter's suggestion, but has not revised the Statement of Policy.

The FDIC received several comments on the definitions included within the Statement of Policy. 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, in response, notes that the Statement of Policy closely follows the statutory definitions of ''minority depository institution'' and ''minority'' set forth in Section 308 of FIRREA, which does not include

[6] *See* Comments received for proposed revisions to 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.*

women-owned or women-led institutions. Minority depository institutions have very unique challenges and serve distinct communities. The primary purpose of the FDIC's MDI program is to promote and preserve these institutions and develop resources specific to the needs of these institutions.

Another commenter recommended that the FDIC define the term ''predominantly minority'' in the context of a community the institution serves. The FDIC has established MDI Designation Assessment Procedures, which will be published and included in the publicly available Application Procedures Manual. These procedures provide the criteria that must be met by institutions seeking the MDI designation. The procedures also describe the FDIC's process for assessing an institution's eligibility for the designation. These procedures include steps for performing an assessment of the community served by the institution, consisting partly of a review of the minority population in the institution's target area.

The FDIC also received comments specifically relating to the definitions assigned to technical assistance, education, and outreach. One commenter recommended that the FDIC interpret as broadly as possible the specific instances within each category (technical assistance, training and education, outreach) which will likely benefit MDIs. In measuring the effectiveness of the MDI program, the FDIC regularly solicits comments from MDIs regarding the usefulness and quality of technical assistance, outreach, and education and training efforts of the FDIC. The FDIC thus has developed an understanding of, and will continue to assess, the most beneficial resources made available to institutions. The definitions in the Statement of Policy provide the FDIC with the flexibility to meet the evolving needs of the MDI program and will not be changed.

Regarding the term ''technical assistance,'' the FDIC received a comment suggesting that the FDIC use the term ''professional consultation'' in place of ''technical assistance'' to encourage working relationships with MDI executives. The FDIC responds that the term ''technical assistance'' is widely used throughout the banking industry and specifically set forth in Section 308 of FIRREA. The FDIC has not received any comments from institutions indicating they have any concerns with the term itself. Many institutions use the technical assistance and other resources, such as outreach, made available by the FDIC and have found the resources beneficial as they address challenges or require clarification on supervisory recommendations and processes as well as laws and regulations.

The same commenter noted that the proposed Statement of Policy provides a statement regarding the supervisory impact of requests for, or acceptance of, technical assistance. The commenter noted that, while its member institutions did not perceive a negative impact that served as a barrier to seeking technical assistance, the proposed clarification is laudable.

One commenter recommended that the FDIC consider whether MDIs might benefit from a clearly stated supervisory impact from participating in outreach activities similar to the statement included in the technical assistance definition, noting that technical assistance is not a supervisory activity. The FDIC has not received any feedback from MDI management indicating any perceived reluctance to communicate freely during outreach activities. Further, the FDIC understands the importance of developing strong working relationships with institution management, the development of which requires open communication. The FDIC encourages participants of all outreach activities to communicate any recommendations, questions, or concerns without worry of repercussion.

The FDIC received several comments on the types of information regarding the MDI program that would be useful to include in annual reports or the MDI program website. One commenter suggested, to encourage MDIs to use resources offered by the FDIC more fully, 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 will also capture supervisory activities promoting the creation of new MDIs, including the support provided during the *de novo* application process.

One commenter suggested the FDIC research the potential impact of MDIs on rural areas and how to successfully scale MDIs in rural areas. While not described in the proposed Statement of Policy, the FDIC considers the most pertinent studies for MDIs and the banking industry as a whole, as well as the timing of such research. The commenter also suggested the FDIC's website organization should be designed for users such as entrepreneurs, new managers of MDIs, growing MDIs, and faltering MDIs. The FDIC is updating the MDI program website to expand the scope of information contained therein. The FDIC will develop informational videos promoting the creation of MDIs and providing education on applying for deposit insurance and obtaining the MDI designation. As noted above, the FDIC is developing videos specifically for entrepreneurs and other parties interested in establishing a *de novo* MDI.

One commenter recommended 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. The FDIC 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. The FDIC may consider including summary survey information in the Annual Report to Congress.

The FDIC received comments on methods to identify and provide technical assistance, outreach, and training education and resources that would be beneficial to minority depository institutions. 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. The FDIC develops training material on laws, regulations, and guidance pertinent to the financial institutions it supervises. Any private companies interested in providing training to MDIs can contact trade associations or institutions directly.

One commenter suggested the FDIC facilitate training and education through written materials, such as manuals or whitepapers. The FDIC is evaluating options for additional training and education resources. The FDIC will engage the MDI Subcommittee to seek its ideas on topics and alternative methods of providing training and education material.

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. As noted above, the FDIC recognizes the importance of the broader societal issues and, indeed, is taking steps to address them, but 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.

## III. Final Statement of Policy Regarding Minority Depository Institutions

The text of the Statement of Policy follows:

The FDIC has long recognized the importance of minority depository institutions in the financial system and their unique role in promoting the economic viability of minority and under-served communities. The FDIC historically has implemented programs to preserve and promote these financial institutions. This Statement of Policy describes the framework the FDIC has put into place and the initiatives the FDIC will undertake to fulfill its statutory goals with respect to minority depository institutions (MDI Program).

*Statutory Framework*

In August 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Section 308 of FIRREA established the following goals:

- Preserve the number of minority depository institutions;
- Preserve the minority character in cases of merger or acquisition;
- Provide technical assistance to prevent insolvency of institutions not now insolvent;
- Promote and encourage creation of new minority depository institutions; and
- Provide for training, technical assistance, and educational programs.

*Definitions*

Section 308 of FIRREA defines ''minority depository institution'' as any federally insured depository institution where 51 percent or more of the voting stock is owned by one or more ''socially and economically disadvantaged individuals.'' ''Minority,'' as defined by Section 308 of FIRREA, means any ''Black American, Native American, Hispanic American, or Asian American.'' Therefore, for the purposes of this Statement of Policy, ''minority depository institution'' is defined as any federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. This includes institutions collectively owned by a group of minority individuals, such as a Native American tribe. Ownership must be by U.S. citizens or permanent legal U.S. residents to be counted in determining minority ownership. In addition to the institutions that meet the ownership test, for the purposes of this Statement of Policy, institutions will be considered minority depository institutions if a majority of the Board of Directors consists of minority individuals and the community that the institution serves is predominantly minority.

*Identification of Minority Depository Institutions*

To ensure that all minority depository institutions are able to participate in the MDI program, the FDIC will maintain a list of federally insured minority depository institutions. Institutions that are not already identified as minority depository institutions can request to be designated as such by certifying that they meet the above definition. For institutions supervised directly by the FDIC, examiners will review the appropriateness of their inclusion on the list during the examination process. In addition, case managers in regional offices will note changes to the list while processing deposit insurance applications, merger applications, change of control notices, or failures of minority depository institutions. The FDIC will work closely with the other federal banking regulators to capture accurately on the list institutions not directly supervised by the FDIC. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding the accuracy of the list. Inclusion in the FDIC's MDI program is voluntary. Any minority depository institution not wishing to participate in the MDI program will be removed from the official list upon request.

*Organizational Structure*

The FDIC has designated a national director for the FDIC's MDI program in the Washington Office and a regional coordinator in each Regional Office. The national director will consult with officials from the following FDIC Divisions to ensure appropriate personnel are involved and resources are made available with regard to MDI program initiatives: Division of Risk Management Supervision, Division of Depositor and Consumer Protection, Division of Resolutions and Receiverships, Division of Insurance and Research, Legal Division, and the Office of Minority and Women Inclusion. The national director will also consult with other organizations within the FDIC as appropriate.

As the primary federal regulator for State nonmember banks and State savings associations, the FDIC will focus its efforts on minority depository institutions with those charters. However, the national director will meet periodically with the other federal banking regulators to discuss each agency's outreach efforts, to share ideas, and to identify opportunities where the agencies can work together to assist minority depository institutions. Representatives of other divisions and offices may participate in these meetings.

*Engagement With Minority Depository Institutions*

The FDIC's MDI program will provide for continual engagement with minority depository institutions through ongoing interaction with the Washington, Regional, and Field Office staff. This interaction includes providing technical assistance to share information and expertise on supervisory topics, outreach initiatives to provide opportunities for open dialogue with senior FDIC staff, and training initiatives to offer opportunities to gain additional knowledge about specific regulatory requirements.

Further, trade associations affiliated with minority depository institutions serve as a significant resource in identifying specific interests or concerns for those institutions. The national director will regularly contact minority depository institution trade associations to seek feedback on the FDIC's efforts under the MDI program, discuss possible training initiatives, and explore options for promoting and preserving minority depository institutions. The national director and the regional coordinators also will solicit information from trade associations, including national and state bankers' associations, and other organizations about groups that may be interested in establishing new minority depository institutions. FDIC representatives will be available to address such groups to discuss the application process, the requirements of becoming FDIC insured, and the various programs supporting minority depository institutions. The regional coordinators will contact all new minority state nonmember banks and state savings associations identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the resources available through the MDI program.

Technical Assistance

Technical assistance, as defined by the FDIC's MDI program, is individual assistance that a regulator will provide to a minority depository institution in response to an institution's request for assistance in understanding supervisory topics or findings. At any time, the FDIC will share information and expertise with bank management on various topics including, but not limited to, understanding bank regulations, FDIC policies, examination procedures, accounting practices, supervisory recommendations, risk management procedures, and compliance management procedures. In providing technical assistance, FDIC staff will not actually perform tasks expected of an institution's management or employees. For example, FDIC staff may explain Call Report instructions as they relate to specific accounts, but will not assist in preparing an institution's Call Report. FDIC staff may provide information on community reinvestment opportunities, but will not recommend a specific transaction.

An institution can contact its field office representatives, case manager, or review examiner to request technical assistance. In addition, the regional coordinators and the institution's assigned case manager and review examiner are knowledgeable about minority bank issues and are available to answer questions or to direct inquiries to the appropriate FDIC office or staff member with expertise on the subject for response. Case managers can explain the application process and the type of analysis and information required for different applications. Field office representatives also serve as a significant resource to minority depository institutions by readily answering examination related questions and explaining regulatory requirements. Other staff members within the FDIC with expertise in various regulatory topics will also be available to share knowledge to assist minority depository institutions in complying with regulations or implementing supervisory recommendations.

During examinations, the FDIC expects examiners to fully explain supervisory recommendations and offer to help management understand satisfactory methods to address such recommendations. At the conclusion of each examination of a minority depository institution directly supervised by the FDIC, the FDIC will be available to return to the institution to provide technical assistance by reviewing areas of concern or topics of interest to the institution. The purpose of return visits is to assist management in understanding and implementing examination recommendations, not to identify new problems.

Technical assistance is a tool to provide on-going support to institutions in an effort to ensure timely implementation of recommendations, full understanding of regulatory requirements, and in some instances, the viability of the institution. Technical assistance is not a supervisory activity and is not intended to present additional regulatory burden. Further, examination teams will not view requests for, or acceptance of, technical assistance negatively when evaluating institution performance or assigning ratings.

Outreach

Outreach, as defined by the FDIC's MDI program, consists of FDIC representatives meeting with financial institutions with a primary focus of building relationships and open communication and providing information and resources. Outreach is generally offered by the FDIC and can include meetings between financial institution management and senior FDIC management.

The FDIC maintains an MDI Subcommittee of its Advisory Committee on Community Banking (CBAC) composed of executives of minority depository institutions. The MDI Subcommittee serves as a source of feedback on FDIC strategies to fulfill statutory goals to preserve and promote minority depository institutions. 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 minority depository institutions to promote collaboration, partnerships, and best practices. The Subcommittee will also identify ways to highlight the work of minority depository institutions in their communities.

Executives and staff in the FDIC's regional offices will communicate regularly with each minority depository institution to outline the FDIC's efforts to promote and preserve minority depository institutions; will offer annually to have a member of regional management meet with the institution's board of directors to discuss issues of interest, including through roundtable discussions and training sessions; and will seek input regarding any training or other technical assistance the institution may desire.

The FDIC will explore opportunities to facilitate collaboration and partnering initiatives among minority depository institutions or between minority depository institutions and non-minority depository institutions. The FDIC recognizes that by facilitating these collaborative relationships, institutions can have opportunities to better meet the needs of their communities.

Training and Educational Programs

Training and educational programs, as defined by the FDIC's MDI program, consist of instruction designed to impart proficiency or skills related to a particular job, process, or regulatory policy. The FDIC will work with other banking regulatory agencies and trade associations representing minority depository institutions to periodically assess the need for, and provide for, training and educational opportunities. The FDIC will partner with other federal banking agencies and trade associations to offer training programs. This training and education can be provided in person, through webinars or conference calls, or in a conference setting.

*Reporting*

The regional coordinators will report regional office activities related to the MDI program to the national director quarterly. The national director will develop a comprehensive report on all MDI program activities and submit the report quarterly to the Chairman. The FDIC's efforts to preserve and promote minority depository institutions will also be highlighted in the FDIC's Annual Report and 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.

*Measuring Program Effectiveness*

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

*Examinations*

All insured institutions must be operated in a safe and sound manner, in accordance with FDIC's regulations. Likewise, all examinations must be conducted within the parameters of FDIC exam policies and should consistently measure the risk an institution poses to the FDIC's deposit insurance fund. Notwithstanding, and consistent with the Uniform Financial Institutions Rating System (UFIRS) and the Uniform Interagency Consumer Compliance Rating System (UICCR), examiners are expected to recognize the distinctive characteristics and differences in core objectives of each financial institution and to consider those unique factors when evaluating an institution's financial condition and risk management practices.

Under the UFIRS and UICCR, each financial institution is assigned a composite rating based on an evaluation of specific components, which are also rated. For UFIRS, these component ratings reflect an institution's capital adequacy, asset quality, management capabilities, earnings sufficiency, liquidity position, and sensitivity to market risk (commonly referred to as the CAMELS ratings). Likewise, the UICCR is organized under broad components that assess the institution's board and management oversight, compliance program, violations of law, and consumer harm. The uniform rating systems and evaluation and rating criteria are specific to the examination types performed. Further, the assignment of the rating is based solely on the subject institution's individual performance under the specific components.

Management practices, particularly as they relate to risk management, vary considerably among financial institutions depending on size and sophistication, the nature and complexity of business activities, and risk profile. Each institution must properly manage risks and have appropriate policies, processes, or practices in place that management follows and uses. Activities undertaken in a less complex institution engaging in less sophisticated risk-taking activities may need only basic management and control systems compared to the detailed and formalized systems and controls used for the broader and more complex range of activities undertaken at a larger and more complex institution.

Peer comparison data are not included in the rating systems. The principal reason is to avoid over reliance on statistical comparisons to justify the component rating being assigned. Avoiding such overreliance is very important when evaluating minority depository institutions due to their unique characteristics. For example, many minority depository institutions were established to serve an otherwise under-served market. High profitability may not be as essential to the organizers and shareholders of the institution. Instead, community development, improving consumer services, and promoting banking services to the unbanked or under-banked segment of its community may drive many of the organization's decisions. The UFIRS allows for consideration of the characteristics by considering not only the level of an institution's earnings, but also the trend and stability of earnings, the ability to provide for adequate capital, the quality and sources of earnings, and the adequacy of budgeting systems.

Examiners are instructed to consider all relevant factors when assigning a component rating. The rating systems are designed to reflect an assessment of the individual institution, including its size and sophistication, the nature and complexity of its business activities, and risk profile.

*Failing Institutions*

The FDIC will attempt to preserve the minority character of failing institutions during the resolution process. In the event of a potential failure of a minority depository institution, the Division of Resolutions and Receiverships will contact all minority depository institutions nationwide that qualify to bid on failing institutions. The Division of Resolutions and Receiverships will solicit qualified minority depository institutions' interest in the failing institution, discuss the bidding process, and offer to provide technical assistance regarding completion of the bid forms. In addition, the Division of Resolutions and Receiverships, with assistance from the Office of Minority and Women Inclusion, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority depository institutions and have been pre-approved by the Division of Risk Management Supervision and the chartering authority for access to the FDIC's virtual data room for online due diligence.

*Internet Site*

The FDIC will maintain a website to promote the MDI program. Among other things, the website will describe the tools and resources available under the program. The website will include the name, phone number, and email address of the national director, each regional coordinator, and additional staff. The website will also contain links to the list of minority depository institutions, pertinent trade associations, and other federal agency programs. The FDIC will also explore the feasibility and usefulness of posting other items to the page, such as statistical information and comparative data for minority depository institutions. Visitors will have the opportunity to provide feedback regarding the FDIC's program and the usefulness of the website.

## IV. Administrative Law Matters

The Paperwork Reduction Act of 1995 (PRA) [7] states that no agency may conduct or sponsor, and no respondent is required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The Statement of Policy Regarding Minority Depository Institutions does not create any new or revise any existing information collections pursuant to the PRA. Rather, any reporting, recordkeeping, or disclosure activities mentioned in the Statement of Policy Regarding Minority Depository Institutions are usual and customary and should occur in the normal course of business as defined in the PRA.[8] Consequently, no submissions will be made to the OMB for review. No comments were received regarding PRA or other burdens.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on June 15, 2021.

**James P. Sheesley,**

*Assistant Executive Secretary.*

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[7] 44 U.S.C. 3501, *et seq.*

[8] 5 CFR 1320.3(b)(2).