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FEDERAL DEPOSIT INSURANCE CORPORATION

Policy Statement Regarding Minority Depository Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final policy statement.

SUMMARY: The FDIC is adopting a final Policy Statement Regarding Minority Depository Institutions. The final Policy Statement recognizes the importance of minority depository institutions and the unique challenges they often face in serving their communities. This FDIC Policy Statement complies with the requirements of Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") by implementing an outreach program designed to preserve and encourage minority ownership of financial institutions. Based on comments received by the agency, the final Policy Statement amends the proposed definition of minority-owned institution, clarifies the types of technical assistance available from the FDIC, improves interagency coordination and enhances communications between the FDIC and minority institutions.

EFFECTIVE DATE: April 16, 2002.

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SUPPLEMENTARY INFORMATION:

I. Background

On April 3, 1990, the Board of Directors of the FDIC adopted a Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions. The original Policy Statement provided guidance to the industry regarding the agency's efforts in achieving the goals of Section 308 of FIRREA. On December 20, 2001, the FDIC Board of Directors approved a new proposed Policy Statement

Regarding Minority-Owned Depository Institutions for public comment. The revised Policy Statement attempts to provide a more structured framework that sets forth initiatives of the FDIC to promote and preserve the minority ownership of depository institutions, and to provide technical assistance, training and educational programs to minority depository institutions by working with those institutions, their trade associations and the other Federal financial regulatory agencies. The proposed Policy Statement was published on January 2, 2002, and the comment period ended on March 4, 2002.

II. Comments Received

The FDIC received eleven comment letters in response to the proposed Policy Statement that raised 23 issues. The comments came from seven insured financial institutions and four trade associations. All of the commenters expressed support for the FDIC's proposed Policy Statement; however, each of the commenters recommended specific changes to the final Policy Statement. These comments and the changes and additions made to the final Policy Statement are discussed in detail below. It should be noted that several commenters raised issues that are not related to the proposed Policy Statement (i.e., CRA credit for assistance to minority- and women-owned financial institutions). These issues are being addressed in other projects of the FDIC and the other Federal financial institution regulators. Since the issues raised by those comments relate to other initiatives, they are not specifically discussed herein.

Four commenters suggested that the FDIC develop a definition of "minority-owned institution" consistent with that used by other Federal agencies. Two commenters suggested that the FDIC change the term Black American to African American. Another commenter suggested that the definition of minority include multi-racial individuals. One commenter suggested that the definition of minority-owned include institutions owned by women. Three comments suggested that the FDIC expand the program to include legal residents of the United States as opposed to only citizens of the United States. The FDIC received a number of comments relating to whether an institution should continue to be considered minority-owned if it is merged with an institution that is publicly traded and/or widely held if the board of directors, account holders and community that it serves are predominantly minority. One commenter vehemently disagreed with expanding the definition to include publicly traded and widely held institutions under these circumstances, stating that the expanded definition would contradict the language and intent of Section 308 of FIRREA. Two commenters recommended expanding the definition of minority-owned to include any institution if a majority of its board of directors, account holders, and the community that it serves is predominantly minority. Another commenter suggested changing the requirement to allow publicly traded and widely held institutions to be considered minority-owned if any one of the three specified criteria were met. Two commenters suggested the definition of minority-owned be based on ownership or control by minority individuals. Another commenter preferred eliminating the ownership requirement entirely and basing the

definition on the customers and community served. Several commenters suggested that the FDIC be more proactive and expeditious in identifying and notifying qualified bidders in the event a minority-owned institution failed. The agency also received several comments seeking further clarification as to the level of technical assistance the FDIC would provide. One commenter suggested that the FDIC consider hosting an annual conference designed to promote and encourage the creation of new minority-owned depository institutions. One commenter suggested that the return visit after examinations to provide technical assistance be available upon request rather than routinely offered to the institutions. One commenter recommended that the FDIC's national coordinator evaluate the training needs of individual minority-owned institutions. Two commenters recommended that the FDIC form an advisory board of minority-owned institution bankers to provide additional guidance in administering the program. Two commenters suggested that the content of the FDIC's Webpage contain information determined relevant by conducting a survey of all the minority-owned depository institutions and contain information regarding the FDIC's rules and regulations. Finally, three commenters suggested that the FDIC reduce the reporting burden on

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minority institutions as a result of the program. The FDIC has responded to these comments by defining the term minority depository institution, expanding the definition for purposes of this policy statement to include those institutions where its board of directors and community that it serves are predominantly minority, and providing a better explanation of technical assistance under the FDIC's outreach program. More specific discussions of the FDIC's particular responses to the comments are found in the section-by-section analysis.

III. Final Policy Statement--Section-by-Section Analysis

Title

The FDIC is changing the title of the statement to Policy Statement Regarding Minority Depository Institutions to reflect the change in the definition of minority depository institution for purposes of this policy statement.

Definition

The FDIC made a few technical amendments to this section of the Policy Statement. We reviewed the comments relating to a change in the definition of minority for purposes of this Policy Statement. The FDIC used the definition of minority as that term is defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). While we understand and appreciate the sensitivity surrounding the suggested changes to the definition of minority, the FDIC has no authority to change the statutory language, and therefore the agency is using the exact definition provided in the law. Accordingly, the definition of minority is unchanged in the Final

Policy Statement.

Three commenters suggested that the FDIC expand its program under the Policy Statement to include legal residents of the United States. Section 308 of FIRREA does not address the citizenship issue. Permanent legal residents are legally accorded the privilege of residing permanently in the United States. The FDIC's Minority Depository Institutions Program is centered on outreach, and institutions do not receive any direct economic benefit from participation. Therefore, the Policy Statement has been changed to include ownership by minority individuals that are permanent legal residents of the United States. Several commenters discussed the suggested criteria relating to board membership, account holders and the community served being predominantly minority to determine whether mutual institutions, publicly traded and widely held institutions should be considered minority-owned institutions. Based on the comments received, the FDIC is defining the term "minority depository institution" as any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals. In addition, for purposes of this Policy Statement, the FDIC is including in the definition of minority depository institution, institutions are not minority-owned but a majority of its Board of Directors and the community that it serves are predominantly minority. The FDIC is not including for consideration a criterion that the majority of account holders of an institution be predominantly minority. The FDIC does not intend to suggest that institutions should collect information regarding the race and national origin of their account holders in order to be considered minority depository institutions.

As a result, the term minority depository institution is being used throughout the policy statement in place of the term minority-owned institution.

Identification of Minority Depository Institutions

There are no changes to this section of the Policy Statement.

Organizational Structure

A technical change to this section that eliminates the requirement for the national coordinator to consult with officials from the FDIC's Division of Compliance and Consumer Affairs merely reflects an internal change in the FDIC's organizational structure. The FDIC is further clarifying the scope of its program under the Policy Statement by changing the final Policy Statement to reflect that the agency's regional coordinators will contact minority depository institutions directly supervised by the FDIC on an annual basis.

Technical Assistance

The proposed Policy Statement clarified the meaning of technical assistance and provided examples as to the types of assistance that FDIC employees could provide to minority depository institutions. While the Policy Statement cannot address every possible action by which the FDIC could assist an institution, the final Policy Statement further

clarifies that FDIC employees can advise on risk management procedures, accounting practices, recruiting techniques, etc., but will not actually perform tasks expected of bank personnel. The final Policy Statement also emphasizes that the return visits are optional, and to be proactive, we feel the return visits should be offered rather than available upon request.

Training and Educational Programs

One of the goals specified in Section 308 of FIRREA is "promoting and encouraging creation of new minority depository institutions." Therefore, the final Policy Statement has been amended to state that the national and regional coordinators will work with trade associations and other organizations to attempt to identify 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 geared toward minority depository institutions. In response to those comments regarding the FDIC's training and educational programs, the final Policy Statement emphasizes that we will work with trade associations representing minority depository institutions and other regulatory agencies to periodically assess the need for, and provide for, training and educational opportunities. The FDIC will partner with the trade associations to offer these types of programs during their annual conferences and other regional meetings. To address the specific needs of each institution, the agency will offer to have staff members return after examinations of minority depository institutions directly supervised by the FDIC to provide technical assistance.

Failing Institutions

Several commenters suggested the FDIC be proactive and expeditious in identifying qualified interested bidders in the case of a failing minority-owned institution. The process of notifying qualified minority depository institutions is handled by the FDIC's Division of Resolutions and Receiverships ("DRR"). This Division already contacts all qualified minority-owned institutions nationwide in the case of a failing minority-owned institution. The process is handled as quickly as possible considering that the FDIC must be relatively certain that an institution will actually fail before soliciting the interest of other institutions. A technical amendment to this section is being made to ensure that the FDIC consults with all trade associations that represent minority depository institutions in maintaining a list of qualified and interested bidders.

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Reporting Requirements

No changes are being made to this section of the Final Policy Statement since the program does not impose any reporting burden on minority depository institutions participating in the program.

Internet Site

A technical change is being made to this section based on comments aimed at making the site more beneficial. The final Policy Statement is being changed to indicate that the Webpage will provide links to various FDIC resources of information available to the public such as the FDIC's Rules and Regulations. The final Policy Statement also provides a general description of the proposed Webpage and states that visitors will have the opportunity to provide feedback regarding the FDIC's program and the usefulness of the Webpage.

For the reasons set forth above, the final Policy Statement is amended to read as follows:

Federal Deposit Insurance Corporation

Policy Statement Regarding Minority Depository Institutions

Minority depository institutions often promote the economic viability of minority and under-served communities. The FDIC has long recognized the importance of minority depository institutions and has historically taken steps to preserve and encourage minority ownership of insured financial institutions.

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.

Definition

"Minority" as defined by Section 308 of FIRREA means any "Black American, Asian American, Hispanic American, or Native American." 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." Given the ambiguous nature of the phrase "socially and economically disadvantaged individuals," for the purposes of this Policy Statement, 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 Policy Statement, institutions will be considered minority depository institutions if a majority of

the Board of Directors is minority 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 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, our examiners will review the appropriateness of an institution being on the list during the examination process. In addition, case managers in our 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 regulatory agencies to ensure that institutions not directly supervised by the FDIC are accurately captured on our list. In addition, the FDIC will periodically provide the list to relevant trade associations and seek input regarding its accuracy. Inclusion in the FDIC's minority depository institution program is voluntary. Any minority depository institution not wishing to participate in this program will be removed from the official list upon request.

Organizational Structure

The FDIC has designated a national coordinator for the FDIC's minority depository institutions program in the Washington Office and a regional coordinator in each Regional Office. The national coordinator will consult with officials from the Office of Diversity and Economic Opportunity, the Legal Division, and the Division of Resolutions and Receiverships to ensure appropriate personnel are involved in program initiatives. The national coordinator will regularly contact the various minority depository institution trade associations to seek feedback on the FDIC's efforts under this program, discuss possible training initiatives, and explore options for preserving and promoting minority ownership of depository institutions. As the primary Federal regulator for State nonmember banks, the FDIC will focus its efforts on these institutions. However, the national coordinator will meet with the other Federal regulators periodically 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.

The regional coordinators are knowledgeable about minority bank issues and are available to answer questions or to direct inquiries to the appropriate office. However, each FDIC-insured institution has previously been assigned a specific case manager in their regional office who will continue to be the institution's central point of contact at the FDIC. At least annually, regional coordinators will contact each minority depository institution directly supervised by the FDIC in their respective regions to discuss the FDIC's efforts to promote and preserve minority ownership of financial institutions and to offer to have a member of regional management meet with the institution's board of directors to discuss issues of interest.

Finally, the regional coordinators will contact all new minority State nonmember banks identified through insurance applications, merger applications, or change in control notices to familiarize the institutions with the FDIC's minority depository institution program.

Technical Assistance

The FDIC can provide technical assistance to minority depository institutions in several ways on a variety of issues. An institution can contact its case manager for assistance in understanding bank regulations, FDIC policies, examination procedures, etc. Case managers can also explain the application process and the type of analysis and information required for different applications. During examinations, examiners are expected to fully explain any supervisory

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recommendations and should 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 offer to have representatives return to the institution approximately 90 to 120 days later to review areas of concern or topics of interest to the institution. The purpose of the return visits will be to assist management in understanding and implementing examination recommendations, not to identify new problems. The level of technical assistance provided should be commensurate with the issues facing the institution. As such, institutions where more examination recommendations are made would generally be offered more detailed technical assistance in implementing those recommendations.

FDIC employees can advise on risk management procedures, accounting practices, recruiting techniques, etc., but will not actually perform tasks expected of an institution's management or employees. For example, FDIC employees may explain Call Report instructions as they relate to specific accounts, but will not assist in the preparation of an institution's Call Report. As another example, FDIC employees may provide information on community reinvestment opportunities, but will not recommend a specific transaction.

Training and Educational Programs

The FDIC will work with trade associations representing minority depository institutions and other regulatory agencies to periodically assess the need for, and provide for, training opportunities and educational opportunities. We will partner with the trade associations to offer training programs during their annual conferences and other regional meetings.

The national coordinator and the regional coordinators will also work with trade associations and other organizations to attempt to identify 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 geared toward minority depository institutions.

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 upon request, 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 Diversity and Economic Opportunity, will maintain a list of minority individuals and nonbank entities that have expressed an interest in acquiring failing minority-owned institutions. Trade associations that represent minority depository institutions will also be contacted periodically to help identify possible interested parties.

Reporting

The regional coordinators will report their region's activities related to this Policy Statement to the national coordinator quarterly. The national coordinator will compile the results of the regional offices' reports and submit a quarterly summary to the Office of the Chairman. Our efforts to preserve and promote minority ownership of depository institutions will also be highlighted in the FDIC's Annual Report.

Internet Site

The FDIC will create a Webpage on its Internet site (www.fdic.gov) to promote the Minority Depository Institution Program. Among other things, the page will describe the program and include the name, phone number, and email address of the national coordinator and each regional coordinator. The page will also contain links to the list of minority depository institutions, pertinent trade associations, and other regulatory agency programs. We 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 Webpage.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of April, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

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