November 24, 2020

Robert E. Feldman
Executive Secretary
ATTN: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Statement of Policy Regarding Minority Depository Institutions, RIN 3064-ZA19

Dear Mr. Feldman:

Better Markets[1] appreciates the opportunity to comment on the proposed statement of policy captioned above ("Release" or "Proposal"), issued by the Federal Deposit Insurance Corporation ("FDIC").[2] The Proposal would revise the FDIC's policy statement on minority depository institutions ("MDIs"), which has not been revisited in almost 20 years. The stated purpose of the revisions is to update, strengthen, and clarify the FDIC's policies and procedures related to MDIs. The Proposal is in furtherance of the FDIC's statutory obligation under Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") to consult with the other prudential regulators about ways to preserve, promote, and assist MDIs which, as discussed below, are vital to the financial and economic health of the often disadvantaged communities they serve.[3]

BRIEF OVERVIEW OF PROPOSAL

The FDIC issued its first policy statement on MDIs in 1990 and revised it in 2002. The Proposal would further amend the policy statement by—

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans' jobs, savings, retirements, and more.

2 85 Fed. Reg. 60,502 (Sept. 25, 2020).

3 *See* Release at 60,402.

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- Clarifying that technical assistance is not a supervisory activity and that examination teams will not view requests for assistance negatively when evaluating institution performance;
- Adding definitions for the terms "technical assistance," "training and education," and "outreach;"
- Updating the reporting requirements of the MDI Program, including those relating to the Annual Report to Congress on the Preservation and Promotion of Minority Depository Institutions;
- Establishing new requirements to measure the effectiveness of the MDI Program, including tracking instances of assistance and soliciting feedback from MDIs to evaluate the effectiveness of the FDIC's technical assistance, training and education, and outreach efforts; and
- Adding a description of how the FDIC applies rating systems at examinations of MDIs.

COMMENTS

It is encouraging that the FDIC is reviewing its policy on MDIs, particularly in light of its 2019 report on MDIs ("2019 MDI Report") that illustrated both their importance to underserved communities and the mixed record of the FDIC and other banking agencies in promoting MDIs.[4] Furthermore, the updates in the Proposal represent enhancements to the FDIC's statement of policy on MDIs. However, regardless of the specific content of any policy statement on MDIs, these institutions and the communities they serve will continue to struggle unless the FDIC and other banking regulators take a number of important steps. They must gain a better understanding of the challenges facing minority communities, and the critical role that banking regulators can and should play in addressing racial gaps in financial and economic opportunity. And, in light of this knowledge, the banking regulators must take more affirmative steps to help close those gaps. Accordingly, below we provide general comments that should guide the FDIC as it takes a more appropriately proactive role in addressing racial inequality.

1. Americans of Color Are Still Being Left Behind by an Unequal and Unjust Financial System, With Serious Consequences.

Financial and economic inequality, driven by racial inequality, is an unfortunately persistent fact of American life. Black Americans, Hispanic Americans, and other Americans of color are more likely to have lower-income jobs,[5] more likely to be unemployed,[6] less likely to

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[4] FDIC, MINORITY DEPOSITORY INSTITUTIONS: STRUCTURE, PERFORMANCE, AND SOCIAL IMPACT (2019), https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.

[5] David Cooper, Economic Policy Institute, *Workers of Color Are Far More Likely to be Paid Poverty-level Wages Than White Workers*, WORKING ECONOMICS BLOG (June 21, 2018), https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/.

have significant savings,[7] more likely to be underbanked or unbanked overall,[8] less likely to own a home (a significant driver of the racial wealth gap),[9] and more likely to receive more expensive and predatory financial products.[10] As a result, minorities are more likely to face poverty and economic hardship,[11] and thus are more likely to suffer from the various deleterious effects that result therefrom, including poorer physical and mental health outcomes[12] and a greater likelihood of negative interactions with police and the criminal justice system.[13]

All of this has played out with depressing predictability during the current COVID19 crisis. Black Americans, Hispanic Americans, and other minorities and Americans of color are more likely to be in low-income jobs, which ends up inflicting multiple harms on minority communities. Many of these low-paying jobs are more likely to be considered "essential,"

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6 OLUGBENGA AJILORE, CENTER FOR AMERICAN PROGRESS, ON THE PERSISTENCE OF THE BLACK-WHITE UNEMPLOYMENT GAP (Feb. 24, 2020), https://www.americanprogress.org/issues/economy/reports/2020/02/24/480743/persistence-black-white-unemployment-gap/.

7 Kai Yuan Kuan, et. al, Racial Disparities in Savings Behavior for a Continuously Employed Cohort, NBER Working Paper No. 20937 (2015), https://www.nber.org/system/files/working_papers/w20937/w20937.pdf.

8 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 2 (2017), https://www.fdic.gov/householdsurvey/2017/2017report.pdf.

9 U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, HOMEOWNERSHIP GAPS AMONG LOW-INCOME AND MINORITY BORROWERS AND NEIGHBORHOOD (Mar. 2005), https://www.huduser.gov/Publications/pdf/HomeownershipGapsAmongLow-IncomeAndMinority.pdf.

10 Dwyer Gunn, *Predatory Lending is Another Form of Housing Discrimination*, PACIFIC STANDARD (June 14, 2017), https://psmag.com/economics/predatory-lending-is-americas-newest-form-of-housing-discrimination; Lori Teresa Yearwood, *Many Minorities Avoid Seeking Credit Due to Generations of Discrimination. Why That Keeps Them Back*, CNBC (Sept. 1, 2019), https://www.cnbc.com/2019/09/01/many-minorities-avoid-seeking-credit-due-to-decades-of-discrimination.html.

11 Valerie Wilson, Economic Policy Institute, *Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019*, WORKING ECONOMICS BLOG (Sept. 16, 2020), https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/.

12 Risa Lavizzo-Mourey & David Williams, Opinion, *Being Black is Bad for Your Health*, U.S. NEWS & WORLD REPORT (Apr 14, 2016), https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities.

13 *See* THE SENTENCING PROJECT, REDUCING RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS 1 (2000) ("Our gains in economic prosperity, however, are not uniformly shared across society, as whole segments of American communities have become marginalized. One fundamental aspect of this marginalization is the disparate treatment of persons of color which occurs incrementally across the entire spectrum of America's criminal justice system."), https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf.

meaning those who hold them are more likely to have to continue working even in the middle of a raging pandemic. At the same time, many of those low-income jobs are paradoxically more likely to be lost as a result of the ongoing economic crisis.[14] Because minorities are less likely to have significant savings or any other store of wealth, they are especially vulnerable to severe economic hardship when they lose their jobs and incomes.[15] Unsurprisingly, minority communities have also been hit particularly hard by the pandemic itself—Black Americans especially are more likely to be infected, more likely to face severe health outcomes from COVID, less likely to receive optimal medical care, and more likely to die or suffer long-term ill-effects from the disease.[16]

In turn, there is evidence that these dire economic and life-or-death health challenges facing minority communities have led to an apparent rise in at least some types of criminal activity.[17] Such an increase in criminal activity, particularly in urban areas, threatens a rise in negative contacts between police and members of the community.[18] This increases the odds of hostile interactions that may spark social unrest. And, indeed, the murder of George Floyd by a Minneapolis police officer in May, on top of several other prominent incidents, sparked a summer of protests, counter-protests, and recriminations that are in many respects still ongoing.

It would be tempting to portray the various interrelated crises facing minority communities—the pandemic, its economic fallout, and the resultant social unrest—as a "perfect storm." But in fact, a "perfect storm" typically describes an incident exacerbated by an unlikely

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14 ELISE GOULD & VALERIE WILSON, ECONOMIC POLICY INSTITUTE, BLACK WORKERS FACE TWO OF THE MOST LETHAL PREEXISTING CONDITIONS FOR CORONAVIRUS—RACISM AND ECONOMIC INEQUALITY (June 1, 2020) (Black Americans "have suffered record numbers of job losses over the last two months (March 2020–May 2020), along with the ensuing related economic devastation. They also are disproportionately found among the essential workers in the economy today—continuing to go to their workplaces, risking their health and that of their families because they are unable to sustain adequate social distance from their co-workers and customers."), https://www.epi.org/publication/black-workers-covid/.

15 *Id.*

16 *Id.*

17 *See* Emily Badger & Quoctrung Bui, *The Pandemic Has Hindered Many of the Best Ideas for Reducing Violence*, N.Y. Times (Oct. 6, 2020) (explaining that while many categories of crime have declined during the pandemic, there has been a "stark and puzzling" uptick in "[s]hootings and homicides"), https://www.nytimes.com/interactive/2020/10/06/upshot/crime-pandemic-cities.html.

18 *See* Daniel J. Jones, *The Potential Impacts of Pandemic Policing on Police Legitimacy: Planning Past the COVID-19 Crisis*, Policing: A Journal of Policy & Practice (June 5, 2020) ("The over-policing of marginalized neighborhoods and communities is particularly worrisome during the pandemic, when the police have to enforce new public health laws and ensure public safety while depending on the public's willingness to comply with social distancing or lockdowns in a way that they never had to before. "), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7313846/pdf/paaa026.pdf.

and difficult to foresee combination of events.[19] In fact, however, little about the current set of crises now affecting minority communities could fairly be said to be difficult to predict. That a pandemic would hit minority communities particularly hard is not surprising, as minority communities (especially Black and Hispanic communities) typically have worse health outcomes in general.[20] That a pandemic-induced economic shock would fall disproportionately on minority communities is not surprising, as those communities are already disproportionately struggling economically.[21] That minority communities struggling with the health and economic fallout of a pandemic would see an increase in social unrest, both in terms of an increase in crime rate and a backlash against police brutality, is unsurprising, as there is a well-known link between economic hardship on the one hand, and crime and other indicators of social unrest on the other hand.[22] In short, none of the current, simultaneous, and interrelated crises facing Black, Hispanic, and other minority communities is or was unpredictable. They are the result of inequalities, starting with economic inequalities, that have persisted for generations.

Put simply, the issue is not that the dynamics contributing to the crises facing minority communities are not well-understood, but that there is a lack of will to proactively solving these issues among responsible regulators. This includes the FDIC and the other banking regulators, which have a significant role to play in addressing economic and financial inequality and injustice, but which have failed to adequately do so. The FDIC must do a better job of promoting struggling MDIs, which will play a key role in helping struggling minority communities to thrive. The FDIC, along with the other federal banking regulators, must also recognize that remedying the racial inequality that is endemic in the financial system is a key aspect of their mission to promote a safe, sound, and stable financial system.[23]

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19 Allan M. Brandt, Ph.D. & Alyssa Botelho, A.B., Perspective, *Not a Perfect Storm: Covid-19 and the Importance of Language*, NEW ENGLAND JOURNAL OF MEDICINE (Apr. 16, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2005032.

20 Lucien Bruggeman & Soo Rin Kim, *Government Predicted, But Failed to Address, Racial Disparities in Global Pandemic: Ex-Officials*, ABCNews (Jul. 27, 2020) ("An ABC News investigation found that so called 'playbooks' drafted by prior administrations anticipated disparate outcomes along racial and economic lines in the event of a global pandemic. Public health experts who worked closely with Presidents George W. Bush and Barack Obama called this tragic reality 'easily foreseeable.'"), https://abcnews.go.com/Politics/government-predicted-failed-address-racial-disparities-global-pandemic/story?id=72011310.

21 *Id.*

22 John N. Mitchell, *Breaking Poverty: Crime, Poverty Often Linked*, THE PHILADELPHIA TRIBUNE (Sept. 16, 2018), https://www.phillytrib.com/metros/breaking-poverty-crime-poverty-often-linked/article_258b0eac-33f6-570e-89bf-b2d83635a13b.html#:~:text=%E2%80%9CPoverty%20causes%20crime%20and%20crime,turn%20them%20into%20criminal%20convictions.%E2%80%9D&text=The%20system%2C%20Krasner%20said%2C%20ensures,is%20going%20to%20cause%20poverty.%E2%80%9D.

23 *See* United Nations, *Inequality and Financial Instability: Structural Limits to Inclusive Growth* in Trade and Development Report 2017 (explaining how income inequality contributes to financial instability), https://unctad.org/system/files/official-document/tdr2017ch5_en.pdf.

2. <u>The FDIC Must Do More to Protect and Promote Struggling MDIs.</u>

Section 308 of FIRREA lays out the goals the banking agencies, including the FDIC, must strive for in regards to MDIs, including:

(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 the creation of new MDIs; and
(5) providing for training, technical assistance, and education programs.[24]

These statutory commands make good sense because, as the FDIC's 2019 MDI Report illustrates, MDIs play a critical role in supporting and improving the communities they serve, communities that are often underserved by other depository institutions. Among other things, the 2019 MDI Report found that MDIs:

- tend to serve areas in which a higher proportion of residents have low- and moderate-income;
- tend to serve areas in which a higher proportion of residents are minorities;
- provide a higher proportion of mortgages to minorities, and in areas with more low- and moderate-income residents;
- provide a higher proportion of small business lending in areas with more low- and moderate-income residents.[25]

In other words, MDIs directly contribute to the economic health of the communities they serve, communities which include a disproportionate number of minorities as well as a disproportionate number of low- and moderate-income residents who are more likely to be left behind by the economic system. MDIs help create the conditions that can allow struggling communities to thrive, including by helping more customers buy homes, a critical component in building household wealth and attendant stability, and by helping small businesses get off the ground, which not only helps those small business owners, but also provides employment and other opportunities.

Put simply, promoting and protecting MDIs is synonymous with promoting and protecting the disproportionately disadvantaged communities they serve. In light of this, the FDIC's role as the primary regulator for most of the country's MDIs is critical.[26] Over the decades, however, the FDIC and other banking regulators have a decidedly mixed record in

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[24] Release at 60,402.
[25] 2019 MDI Report at 55-69.
[26] *See* FDIC, PRESERVATION AND PROMOTION OF MINORITY DEPOSITORY INSTITUTIONS: REPORT TO CONGRESS FOR 2019 at 1, https://www.fdic.gov/regulations/resources/minority/congress/report-2019/complete-report.pdf.

fulfilling their statutory duty to protect and promote MDIs. In the first decade of the 2000s, prior to the financial crisis, there was significant growth in the number of MDIs. However, that trend sharply reversed as a result of the crisis: MDI charters fell by 31 percent after the crisis, and MDIs were two-and-a-half times more likely to fail than all other banks.[27] MDIs also face significant challenges as a direct result of the COVID-19 pandemic. The assets of MDIs are increasingly concentrated in commercial real estate lending,[28] an area that has been particularly hard hit as a result of the pandemic.[29]

Given all of this, it is critical that promoting and protecting MDIs be a primary focus of the FDIC and other banking regulators, going forward as the COVID-19 crisis continues to unfold. To that end, the particulars of a necessarily vague and general policy statement are less important than the actual actions that the FDIC takes to prioritize, protect, and promote MDIs, in accordance with its statutory duty. Thanks in large measure to the reforms of the Dodd-Frank Act), the pandemic may not result in a broad-scale banking crisis, but it appears equally clear that it will result in a narrower crisis for MDIs and, by extension, the communities they serve. If this does happen, the FDIC's response to the pandemic will rightly be considered a failure, even in the absence of a broader collapse of the banking system, because the FDIC will have facilitated an exacerbation of racially-fueled economic inequality. In order to avoid such a failure, the FDIC must prioritize its efforts to promote MDIs, and must proactively engage with all relevant stakeholders, including owners of MDIs and the communities they serve, to ensure that its approach is effective and takes into account the needs of MDIs and their communities.

3. **Promoting MDIs Is Only Part of the Solution; The FDIC Must Proactively Work to Create a Financial System that Is Just and that Promote Economic Prosperity for All.**

While promoting MDIs is a critical, and necessary, component of building a financial system that works for all Americans, it is not sufficient. What the banking agencies, including the FDIC, must ultimately recognize is that **you cannot have a financial system that is safe, sound, and stable, on the one hand yet marked by unfairness and racial inequality on the other hand**. Put differently, racial inequalities in the financial system are not just moral issues to be resolved, or not, as resources permit. Race-driven economic inequality is inextricably tied up in the FDIC's mission to ensure a safe, sound and stable financial system. As long as there is a banking system where race is a significant driver of unequal financial and economic outcomes, then the banking system will undermine broad-based economic growth, financial stability, and, in turn, broader systemic stability, financial and otherwise. A financial system that fuels, rather than mitigates, racial inequality will always be one that leaves too many in danger of falling into

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[27] 2019 MDI Report at 4.

[28] 2019 MDI Report at 11.

[29] Weizhen Tan, *Banks May Have to Brace for Heavy Losses as Commercial Property Prices Plunge*, CNBC (Oct. 25, 2020), https://www.cnbc.com/2020/10/26/commercial-property-prices-are-a-risk-for-banks-and-bond-investors.html.

the economic abyss, resulting in the sorts of dire yet predictable outcomes described above that threaten the health of the financial system and society as a whole.

Thus, in addition to its efforts related to MDIs, the FDIC and the other banking regulators must take steps to ensure that the financial and banking system contributes to racial equality. This includes, among other things, modernizing the rules implementing the Community Reinvestment Act to ensure they actually encourage investment in underserved communities; relentlessly enforcing the law against financial predators (who tend to target more vulnerable communities); and ensuring that the composition of bank management (whether at MDIs or otherwise) reflects the diversity of America.

CONCLUSION

We hope you find these comments helpful.

Sincerely,

[redacted]

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