September 30, 2013

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: RIN 3133-AE16; Comments on Proposed IRPS 13-1, Minority Depository Institution Preservation Program

Dear Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), the largest state trade association for credit unions in the United States, representing the interests of more than 400 credit unions and their 10 million member-consumers.

As mandated by the Dodd-Frank Act, NCUA is proposing to establish a Minority Depository Institution Preservation Program to encourage the preservation of Minority Depository Institutions (MDIs). The MDI Program (Program) will be administered by the Office of Minority and Women Inclusion (OMWI). The Program would consist of outreach efforts, various forms of technical assistance, and educational opportunities to benefit eligible credit unions.

The Leagues firmly support the efforts of all credit unions to serve their fields of membership and communities. As such, the Leagues generally support this proposed IRPS aimed at preserving minority credit unions, and we respectfully submit the following comments and suggestions regarding the structure of the Program.

Goals and Objectives of the MDI Program

The Leagues agree with and support the objectives of the NCUA's proposed Program. These objectives are consistent with the preservation goals and objectives of FIRREA §308 for MDIs, namely:

- To preserve the present number of MDIs;
- To preserve the minority character of MDIs in cases involving (involuntary) mergers or acquisitions of an MDI by following the priority of the prescribed ''general preference guidelines'' in identifying a merger or acquisition partner;
- To provide technical assistance to prevent insolvency of MDIs not now insolvent;
- To promote and encourage the creation of new MDIs; and
- To provide for training, technical assistance, and educational programs.

Benefits of Participating in the MDI Program

The Leagues support NCUA's efforts to provide MDI participants with a variety of benefits, including facilitating technical assistance and educational opportunities to MDIs in coordination with NCUA's Office of Small Credit Union Initiatives (OSCUI) and aiding in the development of collaborative partnerships.

Mergers or Acquisitions

The primary objective of the proposed Program is to preserve the existence of MDIs. As such, NCUA will attempt to preserve the minority character of failing MDIs that go through an involuntary merger or acquisition process by using the General Preference Guidelines outlined in §308 of FIRREA.

That is, preference will be given to qualifying MDIs as acquirers in order to support the preservation of MDIs. The Leagues support this objective as long as all other factors are also given appropriate weight and consideration, such as the acquiring MDI has the capacity to offer the same or improved financial services and access to the credit union members.

Eligibility

NCUA is proposing to define a MDI as follows:

> (a) A federally insured credit union with more than 50 percent of its current or eligible potential members falling within any of the eligible minority groups; and
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> (b) A federally insured credit union with more than 50 percent of the current management officials falling within any of the eligible minority groups.

NCUA is proposing to define a credit union management official as a member of the board of directors, supervisory committee or credit committee, and senior executive staff. Senior executive staff includes the credit union's chief executive officer (typically titled as President or Manager), Assistant Chief Executive Officers (e.g., Vice-President or Assistant Manager), Chief Financial Officer, and branch managers.

The Leagues oppose the requirement that more than 50 percent of the current management officials be minority individuals. Approximately 1,000 credit unions operate with one or fewer full-time equivalent employees, and nearly one-half of the nation's 6,819 credit unions operate with five or fewer full-time equivalent employees. To place a minority requirement on staffing will burdensome. Further, a minority requirement should not be imposed for board, supervisory committee, and credit committee members. Credit union volunteers are elected from and by the membership. These individuals are involved in their communities and are committed to ensuring their communities and the people have the financial products, services, and access they need to thrive. It is important that individuals serving on boards, supervisory committees, and credit committees have the education, experience, and knowledge to manage the credit union. In addition, these individuals often have the resources and community influence to effectuate change within the community and help ensure its population is aware of the credit union benefits. To require a minimum of these individuals be minorities is short-sighted and does not take into account that others in the community also have a vested interest in the community where they live, work, worship, shop, or own a business.

The Leagues recommend that the eligibility for a MDI be based solely on the percent of its current or eligible potential members.

Self-Certification

Under the proposal, credit unions may self-certify that they qualify as an MDI. Credit unions with $50 million or less in assets may self-certify based solely on knowledge of their membership. Credit unions with assets over $50 million may rely on one of four proposed methods to determine the minority composition of its current membership or its potential field of membership (FOM).

The Leagues agree with the proposed methods that utilize U.S. Census data or HMDA data. The Leagues recommend the rule clarify U.S. Census data means population and housing data.

The Leagues strongly oppose the proposed method that would collect data from members who choose to self-identify themselves as minority, or with any method that collects ethnicity data from members. Such a practice would be at odds with anti-discrimination laws. The Equal Credit Opportunity Act prohibits discrimination based on race, color, and national origin, among other things. To have ethnicity information in the credit union records exposes the credit union to criticism and possible law suits.

The Leagues support the requirement to document the method used by a credit union to determine its MDI eligibility. However, we do not agree with an annual review and update by the credit union. Instead, we recommend that the review and update be consistent with the method used. For example, if basing MDI eligibility on U.S. Population and Housing Census data, the review and update would need to occur every 10 years.

Conclusion

The Leagues generally support the proposed IRPS and any efforts by the NCUA to ensure credit union access to all. We support the FIRREA General Preference Guidelines for use in involuntary mergers as long as all other factors are also given appropriate weight and consideration when evaluating merger partners. We do not agree with the MDI eligibility requirement that more than 50 percent of current management officials be minority individuals. Instead, the Leagues recommend that MDI eligibility be based solely on the percent of its current or eligible potential members. In that respect, the Leagues strongly oppose any method that would collect data from members regarding ethnicity, and we recommend instead the use of U.S. Population and Housing Census data or a credit union's HMDA data.

The Leagues thank you for the opportunity to comment on the proposed IRPS and for considering our views on the issues.

Sincerely,

Diana R. Dykstra
CEO/President
California and Nevada Credit Union Leagues

cc: CCUL