

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**RIN: 3133-AE16**

**Minority Depository Institution Preservation Program**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final Interpretive Ruling and Policy Statement 13-1.

**SUMMARY:** The NCUA Board is issuing a final Interpretive Ruling and Policy Statement to establish a Minority Depository Institution Preservation Program for federally insured credit unions.

**DATES:** This final Interpretive Ruling and Policy Statement is effective [Insert date 30 days from date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Wendy A. Angus, Acting Director, Office of Minority and Women Inclusion, at (703) 518-1650; or Cynthia Vaughn, Diversity Outreach Program Analyst, Office of Minority and Women Inclusion, at (703) 518-1650.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)<sup>1</sup> in response to the failure of the Federal Savings and Loan Insurance Corporation (FSLIC), which insured the deposits of insolvent savings & loan institutions. Section 308 of FIRREA established goals for preserving and promoting minority depository institutions.<sup>2</sup> When enacted, FIRREA §308 applied only to the Office of Thrift Supervision (OTS) and Federal Deposit Insurance Corporation (FDIC), successor to FSLIC.<sup>3</sup> Those agencies developed various initiatives, such as training, technical assistance and educational programs, aimed at preserving federally insured banks and savings institutions that meet FIRREA's definition of a minority depository institution (MDI).<sup>4</sup>

In 2010, Congress enacted the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act).<sup>5</sup> Section 367(4)(A) of the Dodd Frank Act amended FIRREA §308 to require the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Fed) to take steps to preserve existing MDIs and encourage the establishment of new ones.<sup>6</sup> In addition, Dodd Frank Act §367(4)(B) requires these agencies, along with FDIC, to each submit an annual report to Congress describing actions it has taken to carry out FIRREA §308.<sup>7</sup>

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<sup>1</sup> Pub. L. 101-73, 103 Stat. 183 (Aug. 9, 1989).

<sup>2</sup> *Id.* Title III, §308, 103 Stat. 353 note re "Preserving Minority Ownership of Minority Financial Institutions," 12 U.S.C. 1463 note.

<sup>3</sup> *Id.* §1463 note (a). OCC and the Fed also initiated MDI programs to comply with the spirit of FIRREA §308, even though neither was originally required to do so. OTS became part of OCC on July 21, 2011. OCC now administers the OTS MDI Program.

<sup>4</sup> 12 U.S.C. 1463 note (b).

<sup>5</sup> Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010); 12 U.S.C. 5301 *et seq.*

<sup>6</sup> 12 U.S.C. 1463 note (a).

<sup>7</sup> *Id.* §1463 note (c).

In 2013, the NCUA Board proposed an Interpretive Ruling and Policy Statement 13-1 (proposed IRPS) to establish a Minority Depository Institution Preservation Program (Program) to encourage the preservation of MDIs.<sup>8</sup> As proposed, the MDI program would be administered by NCUA’s Office of Minority and Women Inclusion (OMWI) and would consist of outreach efforts, various forms of technical assistance and educational opportunities to benefit eligible credit unions.

NCUA received a total of nine comments on the proposed IRPS—eight from credit union trade associations and one from a community advocacy group. Seven commenters expressly supported the proposal; none opposed it.

## **II. Summary of Comments on Proposed IRPS**

### **1. “Minority Depository Institution” Definition**

Three commenters recommended defining MDIs by minority representation solely among current or potential members, without considering minority representation among credit union management officials. Two commenters believe extending the definition beyond minority representation among the membership would exceed the statutory mandate, and questioned whether including management officials within the scope of minority representation is necessary or would undermine the Program’s goals. Another commenter opposed extending the minority representation requirement to management officials, contending that, if it were to encompass credit union staff, it would be burdensome for nearly one-half of the nation’s federally insured

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<sup>8</sup> 78 FR 46374 (July 31, 2013)

credit unions that operate with five or fewer employees. This commenter also opposed requiring minority representation among members of the board of directors, supervisory and credit committee members because they are volunteers elected from and by the membership, and who should have the education, experience, and knowledge to manage a credit union regardless of minority status.

In contrast, a commenter applauded NCUA for measuring minority representation among these officials to ensure that credit union leadership reflects the diversity of the communities and members an MDI serves. In addition, the same commenter wanted to limit the MDI definition to current members only, contending that having potential members who reside in an area having a mostly minority population is no assurance that an MDI would actually serve and invest in consumers of color within that community. Finally, the commenter suggested that minority representation should also encompass persons that identify as multi-racial/multi-ethnic, estimated at 9 million Americans by the U.S. Census Bureau.

In the final Interpretive Ruling and Policy Statement 13-1 (final IRPS), the NCUA Board retains the proposed MDI definition with three significant modifications to ensure complete conformity with the statutory MDI definition of a mutual institution. Under that definition, a credit union qualifies as an MDI when “the majority of the Board of Directors, account holders, and the community which it services is predominantly minority.”<sup>9</sup> (Hereinafter, when minority representation is required to be “predominant” or to consist of a “majority,” *i.e.*, greater than 50 percent in either case, it will be referred to as “>50%”).

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<sup>9</sup> 12 U.S.C. 1463 note (b)(1)(C).

First, the proposed MDI definition combined both current and “eligible potential” credit union members to assess minority representation among a credit union’s “account holders.”

Recognizing that a potential member does not hold a credit union account nor enjoy the rights and benefits of membership, the final IRPS limits to *current* members the assessment of >50% minority representation among credit union “account holders.”

Second, as several commenters contended, the proposed MDI definition assessed minority representation not only among a credit union’s board of directors (BOD) as required, but more generally among its “current management officials,” consisting of members of the supervisory and credit committees and of the senior executive staff.<sup>10</sup> Despite the NCUA Board’s wish to emphasize the importance of minority representation within the leadership ranks of MDIs, the final IRPS limits to the BOD exclusively the assessment of >50% minority representation, consistent with the letter of the applicable statutory definition.

Third, the final IRPS clarifies that the MDI criterion requiring the community of a would-be MDI to be “predominantly minority” is not an alternative criterion for credit unions unable to meet the MDI criteria requiring >50% minority representation within its membership and on its BOD; it is an additional MDI criterion in and of itself.<sup>11</sup> To assess whether the community of a would-be MDI is “predominantly minority,” the final IRPS designates a credit union’s

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<sup>10</sup> *E.g.*, Chief executive officer, assistant chief executive officer, chief financial officer and branch managers. 78 FR 46374, 46375 (July 31, 2013)

<sup>11</sup> 12 U.S.C. 1463 note (b)(1)(C). In contrast to NCUA, the fact that FDIC oversees publicly-owned, privately-owned and mutual institutions may account for its policy permitting an institution that is unable to meet the 51 percent minority ownership criterion to instead rely on two of the mutual MDI >50% criteria, yielding a hybrid definition: “In addition to the institutions that meet the [51 percent] ownership test, for purposes of this Policy Statement, institutions will be considered [MDIs] if a majority of the [BOD] is minority *and* the community that the institution serves is predominantly minority.” 67 FR 18 618, 18620 (April 16, 2002). *See also* 67 FR 77, 79 (January 2, 2002).

community according to its charter. To make this assessment, the final IRPS also permits credit unions to rely on the same methods and supporting data the proposed IRPS prescribed for use by credit unions to self-certify as an MDI (*e.g.*, U.S. Census and Home Mortgage Disclosure Act data).<sup>12</sup>

In addition to the above modifications, the MDI definition in the final IRPS counts a person of multiple ethnicities who falls into at least one of the four minority categories designated by law,<sup>13</sup> (or is multi-racial as defined in Table 1) as a single minority individual for purposes of minority representation.

## **2. *Documentation to Support MDI Designation***

In order to receive the MDI designation, one commenter advocated requiring the majority of a credit union's members' deposits and/or loan products to be held by racial minorities. While striving to maximize flexibility and the options to determine and support an MDI designation, the NCUA Board is concerned that it would be too burdensome and restrictive to identify the race and/or ethnicity of all members with deposits and/or loan products. The final IRPS therefore does not adopt this suggestion as an MDI criterion.

One commenter recommended that NCUA clarify which U.S. Census demographic data to rely upon to measure minority representation among members for purposes of MDI determination.

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<sup>12</sup> 78 FR at 46376 and n. 14. In many cases the methods and data that establish >50% minority representation among a credit union's membership also will establish >50% minority representation within the community it services. The Board acknowledges this redundancy as necessary to conform this third criterion to the letter of the statutory MDI definition.

<sup>13</sup> 12 U.S.C. 1463 note (b)(2).

The final IRPS clarifies that U.S. Census data includes the American Fact Finder's most recent census population data (*e.g.*, 2010) for a particular geographic area, such as within members' zip codes or census tracts; and that minority composition<sup>14</sup> by census tracts, according to U.S. Census population data, can be found on the U.S. Census Bureau and the Federal Financial Institutions Examination Council (FFIEC) websites.

One commenter suggested providing a portal on NCUA's website for credit unions to access the sources of data relevant to self-certifying as an MDI, such as links to U.S. Census and Home Mortgage Disclosure Act (HMDA) data. NCUA currently provides links to access U.S. Census and FFIEC data on OMWI's webpage. To identify the ethnicity of its mortgage applicants, a credit union may rely on the home mortgage data it submits to comply with HMDA.

One commenter opposed the notion of collecting data by any method that relies on members voluntarily identifying themselves as a minority, for two reasons. First, the practice may conflict with anti-discrimination laws; and second, maintaining the collected ethnicity data may expose credit unions to criticism that the practice is intrusive, and to the risk of legal action. The final IRPS permits collection of volunteered ethnicity data as an option, but not a requirement, for credit unions to determine and to support self-certification of MDI eligibility. Organizations that already collect volunteered ethnicity data from customers and members must take care to maintain the confidentiality of the collected data. Credit unions that elect this option to support self-certification should maintain the collected data separately from members' personal account files, and without personal identifiers (*e.g.*, name, account or social security number, etc.).

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<sup>14</sup> The minority composition represents the percentage of minorities divided by the entire referred population (*e.g.*, total membership or within a geographic area such as a census tract or a Metropolitan Statistical Area).

One commenter disagreed with the proposed requirement to annually review and update credit unions' MDI status, suggesting that NCUA require credit unions to follow a data review schedule that is consistent with the data each credit union relied upon to document its MDI certification. For example, when MDI eligibility is based on U.S. Census population data, the review and update would occur every 10 years. Due to frequent changes in a credit union's field of membership, and the composition of its board of directors due to annual elections, the final IRPS retains an annual schedule for the review and update of MDI self-certifications.

### **3. *MDI Program Costs, Resources & Funding***

Three commenters asked NCUA to perform a cost/benefit analysis of the new Program, detailing the new resources or processes that will be essential to realize NCUA's commitment to preserve MDIs, and how the Program will be funded. Another commenter sought further explanation of Program mechanics, funding details, the number of staff dedicated to Program implementation, the geographic distribution of Program beneficiaries, and the frequency of OMWI staff interaction with participating MDIs.

The NCUA Board anticipates no additional costs or new resources attributable to the Program, due to reliance on existing agency programs and resources offered through NCUA's Office of Small Credit Union Initiatives (OSCUI), regional offices, and Office of Consumer Protection (OCP), thus avoiding overlaps with existing supervision, chartering, training, technical assistance, and educational programs. About 92 percent of MDIs already are eligible for OSCUI services that assist and educate credit unions designated either as low-income or as small. Examiners provide additional guidance to MDIs in between examinations to assist them in

resolving substantial examination or viability concerns. OCP provides guidance to assist and educate MDIs and interested minority groups in chartering and in field of membership expansions. One OMWI staff member is responsible for managing the Program. OMWI's initial interaction and communications with MDIs will include OMWI's participation at events attended by MDIs, and OMWI's assistance provided upon request from MDIs.

#### **4. MDI Program Benefits**

One commenter favored an expansion of financial support to enable the Program to provide direct financial support to MDIs. Financial support to eligible MDIs will be offered through the existing grant and loan programs funded by NCUA's Community Development Revolving Loan Fund (CDRLF).

Two commenters encouraged NCUA to provide technical assistance to MDIs to avoid insolvency. One suggested two ways to strengthen the net worth of MDIs in response to unusual losses related to economic conditions outside the credit union's control: (1) develop criteria and goals for access to assistance under section 208 of the Federal Credit Union Act (§208 assistance);<sup>15</sup> and (2) make CDRLF funding a source of secondary capital for low-income designated credit unions, especially MDIs.

The NCUA Board emphasizes that the agency's role in preserving MDIs and providing technical support not only is to help MDIs survive, but to help them thrive as ongoing concerns. Section 208 assistance is available to all credit unions under at least one of three conditions: (1) to assist in the voluntary liquidation of a solvent credit union; (2) to avert the liquidation of a credit union

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<sup>15</sup> 12 U.S.C. 1788(a). *See also* 12 U.S.C. 1790d(o)(2)(B).

that NCUA determines is in danger of insolvency; or (3) when NCUA determines it is needed to reduce the risk, or avert the threat, of a loss to the National Credit Union Share Insurance Fund.<sup>16</sup>

NCUA typically provides §208 assistance to facilitate a sound merger or consolidation of an insured credit union in order to avert the liquidation of a credit union. Other than to avert the liquidation of a credit union that NCUA determines on a case-by-case basis is in danger of insolvency, regardless whether it is an MDI, §208 assistance is not used solely to improve a credit union's capital position. The NCUA Board reserves the use of §208 assistance for credit unions under the above three conditions. However, the agency plans to enhance its guidance to examiners to sensitize them about the availability of §208 assistance for MDIs, as well as about the "General Preference Guidelines" for mergers, addressed below. In contrast, the purpose of CDRLF grants and loans is to support enhanced service to underserved communities, including those served by MDIs. Unlike §208 assistance, CDRLF grants and loans generally are not provided solely for the purpose of improving capital to avoid insolvency.

One commenter suggested making technical assistance and educational programs available on a variety of topics critical to preserving MDIs, including aid in achieving satisfactory levels of operations and regulatory performance. OSCUI currently provides technical guidance and educational programs to assist MDIs, as well as small credit unions, in achieving these objectives regardless of low-income designation and asset size. These programs include NCUA-sponsored videos, webinars, consulting services, newsletters, and other publications, including a [Credit Union Leadership Resource Manual](#).

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<sup>16</sup> 12 U.S.C. 1788(a)(1)-(2).

One commenter advocated adopting a plan that combines targeted resources with supervisory authority in an effort to resolve material safety and soundness concerns among troubled MDIs. NCUA has no plans to make MDI preservation a part of the examination and/or supervision processes, although examiners are encouraged to provide additional guidance to MDIs in resolving material safety and soundness concerns whenever feasible. Also, OSCUI will continue to provide MDIs with technical assistance and educational and consulting services to assist them in resolving these concerns, thus improving their viability. OMWI will aid MDIs by facilitating and monitoring the assistance they receive, will report to Congress annually on these efforts to preserve MDIs and to create new MDIs, and will reevaluate and enhance the Program as it matures.

#### **5. *MDI Program Partnerships***

Two commenters suggested collaborating with interested stakeholders (e.g., trade associations) to increase the likelihood of preserving MDIs, as well as to participate with NCUA's OMWI as a resource partner. One of the two commenters advocated expanding the Program's outreach to include a webinar on the application process for would-be MDIs, workshop sessions at trade conferences, and a comprehensive marketing program to increase awareness. NCUA's Office of Consumer Protection (OCP) recently published the [Federal Credit Union Charter Application Guide](#), which provides detailed step-by-step instructions for chartering a new federal credit union. Additionally, NCUA is building relationships and plans to collaborate with credit union trade associations, credit unions, and other organizations to provide mentoring and educational opportunities for MDIs, including workshops and webinars. Interested organizations and credit unions should contact OMWI and suggest ideas for possible partnerships.

One commenter encouraged NCUA's OMWI to collaborate with the original FIRREA-designated agencies, and the two agencies that joined them, to implement their ideas and suggestions. To develop and enhance NCUA's Program, OMWI continues to consult with its counterparts at the FDIC, the OCC and the Fed, to review their MDI programs, and to attend their interagency MDI and Community Development Financial Institution Banks' Conferences. NCUA will continue to work with its counterparts, whenever feasible, to obtain additional ideas to enhance its Program.

#### **6. *General Preference Guidelines for MDI Mergers***

One commenter supported the FIRREA-prescribed "General Preference Guidelines" for mergers (Guidelines),<sup>17</sup> which give MDIs preference as a merger partner, provided that other relevant factors are given appropriate weight and consideration (*e.g.*, the acquiring MDI's capacity to offer the same and/or improved financial services and access to the acquired members).

To implement the Program, another commenter encouraged NCUA to work closely with state regulators to apply the Guidelines seamlessly and fairly when comparing potential MDI versus non-MDI merger partners for a troubled state-chartered credit union; to make the Program respond expeditiously and effectively to a troubled institution; and to ensure that supervisory oversight remains the focus of the Program—all without delaying the resolution of a troubled institution through merger or acquisition.

Under the final IRPS, NCUA regional offices will continue to process the mergers of troubled MDIs, working closely with state regulators to apply the Guidelines, and to ensure that the

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<sup>17</sup> 12 U.S.C. 1463 note (a)(2).

Guidelines do not conflict with safety and soundness considerations. In processing MDI mergers and purchase-and-assumption transactions, the need to respond expeditiously and effectively to troubled MDIs will continue to be the primary focus of NCUA's supervisory oversight. The Guidelines provide interested MDIs an opportunity to participate in the merger bidding process for an insolvent or troubled MDI, enabling the minority character of the MDI to be preserved.

#### **7. *Attention to Troubled MDIs***

One commenter recommended establishing a clear supervisory framework and strategy to establish a sufficient period of time to permit a more aggressive workout strategy for troubled MDIs. The commenter contended that such a framework and strategy would be an important preservation step between the identification of a troubled credit union and its dissolution. The commenter suggested addressing steps that may be taken through NCUA's supervisory examinations and oversight; and recommending an aggressive strategy for intervention using supervisory authorities combined with its targeted workout teams and resources.

In addition, this commenter advocated adopting a system of triage for prioritizing attention to MDIs, based on financial health, to best support those that are financially sound in building and expanding their work, while intervening sooner with those on a less secure footing in order to preserve service to their communities. Furthermore, this commenter advocated adopting a plan to provide resources and support to struggling MDIs identified as in danger of failing either through agency enforcement action or an inability to address issues identified in a Document of Resolution (DOR) and/or Letter of Understanding and Agreement (LUA). The period between a DOR and an LUA may present a critical moment where additional help and support can be sought. This commenter suggested steps NCUA could implement to work an MDI out of

distress or troubled status. The commenter suggested using NCUA's Vendor Registration process to identify an appropriate resource team to participate in workout situations and to put additional resources and technical assistance at its disposal in working to resolve sound operations in a troubled MDI. The commenter envisioned the resource team effecting a significant turnaround in 6-12 months with the intention of preserving and building the institution. If the situation is not viable, the commenter suggested the resource team would be able to assist in identifying appropriate merger partners interested in serving the minority community.

NCUA cannot adopt the commenter's suggestions regarding attention to troubled MDIs because they would involve internal agency processes beyond the scope of this final IRPS. The final IRPS is a policy statement that generally prescribes actions to preserve MDIs, such as technical assistance, training, and educational opportunities to strengthen management and/or operations, as well as to assist in resolving examination and compliance concerns. The Program will not interfere with supervisory enforcement actions duly undertaken by the other offices within the agency.

Also, due to confidentiality, NCUA cannot disclose information about troubled MDIs to resource teams involving third parties (*e.g.*, trade associations or vendors). Credit union examination results constitute confidential information; public disclosure is prohibited by law. NCUA regulations specifically prohibit the release of such information by officers, employees or agents of NCUA or any federally insured credit union.<sup>18</sup> Such disclosure risks harming the financial stability of credit unions or interfering in the relationship between NCUA and credit unions.

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<sup>18</sup> 12 C.F.R. 792.11(a)(8),

The final IRPS addresses the posting of a list of MDIs on the agency's website ([www.ncua.gov](http://www.ncua.gov)) and the use of a Vendor Registration Form to provide an opportunity for qualified minorities or minority-owned firms to apply for the position of interim manager of an MDI placed in conservatorship. Other uses of the form may be considered. With the posting of an MDI list on the agency website, interested parties (*e.g.*, trade associations or vendors) may monitor the financial trends of all MDIs to identify troubled MDIs and offer a program to restore them to financial soundness.

#### **8. Commenters' Other Suggestions**

Rather than holding to a static number of MDIs to measure preservation, one commenter advocated chartering new MDIs in communities that would benefit from MDI service. NCUA's goals are to implement efforts not only to preserve existing MDIs, but to encourage the chartering of new MDIs, as FIRREA §308(a) (1)-(5) prescribes.<sup>19</sup> NCUA's OCP and OSCUI will continue to work with groups seeking to charter new MDIs and with MDIs seeking a common bond conversion or a charter expansion, and they will assist them in the application process.

One commenter advocated publicizing information to credit unions, leagues and state agencies about NCUA's efforts to preserve MDIs and about the Program's benefits. Information pertaining to MDI preservation efforts is provided in NCUA's annual reports to Congress.<sup>20</sup> NCUA's MDI Reports to Congress for 2013 and 2014 are available on OMWI's webpage.<sup>21</sup>

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<sup>19</sup> 12 U.S.C. 1463 note (a)(1)-(5).

<sup>20</sup> *Id.* §1463 note (c).

<sup>21</sup> Available at: <http://www.ncua.gov/Legal/RptsPlans/Pages/OMWI.aspx>

Another commenter suggested limiting the regulatory burden on credit unions as a step in support of the survival of MDIs. The NCUA Board agrees with this recommendation, and is aggressively working toward this goal. In January 2013, the NCUA Board reviewed the threshold it uses to identify which credit unions qualify as small entities and thus receive special consideration regarding regulatory burden and alternatives under the Regulatory Flexibility Act (“RFA”).<sup>22</sup> Based on industry percentages carried forward from the last update in 2003, and corresponding risks to the Share Insurance Fund, the NCUA Board determined that credit unions with less than \$50 million in assets, up from the prior \$10 million threshold, were small and non-complex for purposes of the RFA.<sup>23</sup> These credit unions receive exemptions from certain NCUA rules, and heightened consideration of regulatory burden. Approximately 82 percent of the 655 self-identified MDIs under the proposed definition had assets of less than \$50 million as of March 31, 2015. In February of 2015, the NCUA Board proposed increasing the asset threshold to define small credit unions under the RFA to \$100 million.<sup>24</sup> The proposed rule is intended to provide regulatory relief for a greater percentage of credit unions (including MDIs) in future rulemakings. Approximately 89 percent of the 655 self-identified MDIs under the proposed definition had assets of less than \$100 million as of March 31, 2015.

One commenter proposed that NCUA establish an advisory committee to assist in developing, designing, and testing strategies and approaches on how to best preserve MDIs. Rather than rely on a permanent advisory committee, NCUA may consider informal focus groups comprised of MDIs of all asset sizes and levels of complexity to accomplish the suggested goals.

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<sup>22</sup> 5 U.S.C. 601.

<sup>23</sup> 78 FR 4032 (January 18, 2013).

<sup>24</sup> 80 FR 11954 (March 15, 2015).

Revised as explained above, the final IRPS follows.

### **III. Final Interpretive Ruling and Policy Statement 13-1 (final IRPS)**

#### **1. Why is the NCUA Board issuing this final IRPS?**

The NCUA Board is issuing this final IRPS to establish a Minority Depository Institution Preservation Program (Program) to achieve the goals of preserving and encouraging Minority Depository Institutions (MDIs), as section 308 of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA §308) directs.<sup>25</sup> Recognizing the important role of MDIs in minority communities, the NCUA Board envisions a program of proactive steps and outreach efforts to promote and preserve minority ownership in the credit union system. To achieve these goals, the final IRPS prescribes the Program eligibility criteria and Program elements.

#### **2. What are the goals and objectives of the MDI Program?**

The Program embraces goals and objectives that relate to NCUA's mission and goal to ensure a safe, sound, and sustainable credit union system as envisioned in NCUA's current strategic plan.

The Program also reflects the preservation goals of FIRREA §308,<sup>26</sup> namely:

- To preserve the present number of MDIs;

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<sup>25</sup> Pub. L. 101-73, 103 Stat. 183 (Aug. 9, 1989).

<sup>26</sup> 12 U.S.C. 1463 note (a) & (c).

- To preserve the minority character of MDIs that are involuntary merged, or are acquired, by following the prescribed “general preference guidelines” to identify a merger or acquisition partner;<sup>27</sup>
- To provide technical assistance to prevent insolvency of MDIs that are not now insolvent;
- To promote and encourage the creation of new MDIs; and
- To provide for training, technical assistance, and educational programs.

### 3. Who is eligible to participate in the MDI Program?

A credit union that meets the definition of an MDI is eligible to participate in the Program. The Program adopts the MDI definition set forth in FIRREA §308 that applies to a mutual institution.<sup>28</sup> Accordingly, this final IRPS defines an MDI as a federally insured credit union in which a majority of its current members, a majority of its board of directors (BOD), and a majority of the community it services, as designated in its charter, falls within any of the eligible minority groups described below. (Hereinafter, when minority representation is required to be “predominant” or to consist of a “majority,” *i.e.*, greater than 50 percent in either case, it will be referred to as “>50%”.)

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<sup>27</sup> In priority, the General Preference Guidelines for identifying an involuntary merger/acquisition partner are: (a) Same type of MDI in the same city; (b) Same type of MDI in the same state; (c) Same type of MDI nationwide; (d) Any type of MDI in the same city; (e) Any type of MDI in the same state; (f) Any type of MDI nationwide; and (g) Any other bidders (for merger/acquisition partners). 12 U.S.C. 1463 note (a)(2). Rules concerning field of membership, least cost to NCUSIF, and safety and soundness still apply to all mergers. Regional office staff will continue to process mergers and work with management and state regulators. OMWI will monitor MDI mergers and report about them to Congress annually.

<sup>28</sup> 12 U.S.C. 1463 note (b)(1)(C).

NCUA relies on FIRREA §308’s “minority” definition to identify an eligible minority exclusively as any Black American, Asian American, Hispanic American, or Native American.<sup>29</sup>

Also, for the purpose of minority representation under the MDI definition, anyone of multiple ethnicities who falls into more than one of the minority categories depicted below is a single minority individual.

Minority Category	Equal Employment Opportunity Commission (EEOC)
<b>Black American</b>	<u>Black or African American</u> (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.
<b>Native American</b>	<u>American Indian or Alaska Native</u> (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
<b>Hispanic American</b>	<u>Hispanic or Latino</u> - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
<b>Asian American</b>	<u>Asian</u> (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; or <u>Native Hawaiian or Other Pacific Islander</u> (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
<b>Multi-Racial American</b>	<u>Two or More Races</u> <sup>30</sup> (Not Hispanic or Latino) – A person who identifies with more than one of the above races.

**Table 1: Minority Category Definitions**

#### 4. How will the MDI Program function?

NCUA’s Office of Minority and Women Inclusion (OMWI) administers the Program. A federally insured credit union can self-certify as an MDI by affirmatively answering the following questions within NCUA’s Credit Union Online Profile (CU Online System), accessible from the NCUA website,<sup>31</sup> or when submitting a Call Report: (1) Are more than 50 percent of your credit union’s current and eligible potential members Black American, Native American, Hispanic American or Asian American?;<sup>32</sup> and (2) Is more than 50 percent of your credit

<sup>29</sup> *Id.* §1463 note (b)(2). Compare 12 U.S.C. 5452(g)(3) incorporating 12 U.S.C. 1811 note(c)(3).

<sup>30</sup> U.S. Equal Employment Opportunity Commission’s EEO-1 Report-Race/Ethnicity Categories.

<sup>31</sup> [www.ncua.gov](http://www.ncua.gov)

<sup>32</sup> The community serviced by a multiple common bond credit union consists of both its current members and the eligible non-members within the select groups designated by its charter. For example, the current members and eligible non-members may all reside in one city, county, or MSA. The community serviced by a community credit

union's current board of directors Black American, Native American, Hispanic American or Asian American?

If both questions are answered "yes", the credit union may self-certify via NCUA's Credit Union Online Profile system that it meets the >50% minority criteria, as the case may be. A credit union defined as a small entity under the Regulatory Flexibility Act (RFA) may self-certify >50% representation among its current members, and within the community it services (current and potential members combined), based solely on knowledge of those members. A credit union not defined as a small entity under the RFA may rely on one of the following methods, as applicable, to determine the minority composition of its current membership exclusively, and of the community it services, consisting of the combined current and potential membership:

(A) Ascertain the minority representation using demographic data from the U.S. Census Bureau (using the U.S. Census Bureau or FFIEC website) based on the area(s) where the combined current and potential membership resides, such as a township, borough, city, county, or Metropolitan Statistical Area (MSA). If the U.S. Census data (*e.g.*, census tracts, zip codes, townships, boroughs, cities, counties, etc.) shows that the area's population is comprised mostly of eligible minorities, the credit union may assume that its current membership and the community it services both have the same minority composition as the U.S. Census data indicates.

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union consists of both its current members and the eligible non-members who reside within the well-defined local community designated by its charter.

(B) Use Home Mortgage Disclosure Act (HMDA) data to calculate the reported number of minority mortgage applicants divided by the total number of mortgage applicants within the credit union's membership. HMDA data can be obtained from the FFIEC website. If the share of minority representation among applicants is >50%, the minority membership and the predominantly community criteria may be met. If a credit union grants a majority of its mortgage loans to minorities, it is most likely the majority of the community the credit union services (its current and potential members) will consist of minorities.

(C) Elect to collect data from members who voluntarily choose to self-identify as an eligible minority and use the data to determine minority representation among the credit union's membership. The credit union may wish to consider using an unbiased third party to conduct such a collection process. For example, data can be collected through a survey of members assessing the services they desire, or by mailed electoral ballots for official positions. Once collected, it is essential to maintain the confidentiality of the data; it should not be retained in the members' file or with any personal identifiers (*e.g.*, name, account or social security numbers, etc.) If a majority of its current members are minorities, it is most likely the majority of the community the credit union services (its current and potential members) will consist of minorities.

(D) Use any other reasonable form of data, such as membership address list analyses, or an employer's demographic analysis of employees.

A credit union defined as a small entity under the RFA that self-identifies as an MDI should maintain some form of the documentation that it relied upon to determine that, as explained above, it meets the minimum minority representation among its membership. This

documentation may consist of demographic data obtained from the U.S. Census Bureau,<sup>33</sup> from a credit union's HMDA report, or from any other reasonable source and form of data (e.g., member survey, sponsor's employee demographic or members' zip code analysis).

Regardless of asset size and the method a credit union uses to self-certify as an MDI, the validity of the self-certification (and the supporting data) is subject to verification by NCUA based on minority representation where the credit union's members reside.

If NCUA questions a credit union's certification or the data supporting it (e.g., members' addresses) is found to be at odds with a credit union's self-certification of >50% minority representation among either its current membership, the community it services (consisting of current and potential members) or its board of directors, NCUA's OWMI will:

- (1) Notify the credit union in writing about its reasons for invalidating the certification.
- (2) Provide the credit union an opportunity to submit documentation and/or a rationale to support its MDI self-identification within 60 days of receiving OWMI's notification.
- (3) Review the documentation and/or rationale the credit union submits and inform the credit union whether, as a result, it meets the >50% minority criterion.
- (4) Deny the MDI designation if the credit union either provides no documentation and/or rationale, or provides documentation and/or rationale that, in NCUA's discretion, is insufficient to support a certification based upon >50% minority representation under all criteria.

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<sup>33</sup> [www.census.gov](http://www.census.gov) or [www.FFIEC.gov](http://www.FFIEC.gov)

NCUA will periodically review and determine whether an MDI continues to meet the MDI definition. A credit union may no longer meet the MDI definition as a result of FOM expansions (*e.g.*, mergers, purchase and assumptions, new groups added to the FOM, or charter conversions) and changes resulting from board of directors elections. NCUA, at its discretion, may continue to treat a credit union as an MDI under this final IRPS in the event its board of directors no longer meets the minority criteria, provided there is >50% minority representation among both the credit union's current members and the community it serves.

Once it qualifies as an MDI, a credit union should annually assess whether it continues to meet the MDI definition (*e.g.*, December 31<sup>st</sup> Call Report cycle), and update its status on NCUA's Credit Union Online Profile system as necessary.

Participation in the MDI Program is voluntary. An MDI may discontinue its participation at any time by updating its status on NCUA's Credit Union Online system. In that event, the credit union would no longer be eligible to participate in any MDI Program initiatives (*e.g.*, MDI merger/acquisition preference consideration or MDI partnerships).

## **5. What are the elements of the MDI Program?**

NCUA seeks to provide MDI Program participants a variety of initiatives to assist in preserving the economic viability of their institutions. The initiatives include technical assistance and

educational opportunities for MDIs through NCUA's Office of Small Credit Union Initiatives (OSCUI).<sup>34</sup> This technical assistance may include participation in:

- (1) OSCUI's Consulting Program;
- (2) NCUA-sponsored training, webinars, etc.; and
- (3) Grant or loan programs of NCUA's Community Development Revolving Loan Fund (CDRLF).

The technical assistance may also include examiner guidance in resolving examination concerns; in locating new sponsors, mentors, or merger partners; in expanding the field of membership; and in setting up new programs and services. Additionally, the NCUA Board will consider providing Section 208 assistance to avert the liquidation of a credit union that it determines on a case-by-case basis is in danger of insolvency, regardless whether the credit union is an MDI.<sup>35</sup>

NCUA may aid in coordinating partnerships between MDIs and other organizations (*e.g.*, other MDIs, and/or trade associations) as a means of providing technical or operational assistance to MDIs. This assistance may include training for officials and staff, expertise in technical areas (*e.g.*, marketing, FOM expansion guidance, bidding on merger proposals), equipment, and assistance for specific projects or to achieve specific goals.

NCUA will publish a list of federally insured MDIs on its website ([www.ncua.gov](http://www.ncua.gov)) to enable organizations (*e.g.*, banks, other MDIs, trade associations or other third parties) to identify MDIs

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<sup>34</sup> OSCUI's services are generally offered to credit unions that have less than \$50 million in assets or are low-income designated. By statute, grants and loans from the CDRLF are available only to low-income designated credit unions. The webinars and training programs are open to all credit unions. The MDI Program expands consulting services to all MDIs.

<sup>35</sup> 12 U.S.C. 1788(a)(1)-(2).

that would benefit from partnering, mentoring, additional resources, and/or business relationships. Banks can obtain Community Reinvestment Act (CRA) credit for investing in MDIs. For example, if a bank were to have an unused building, the bank could lease that space to an MDI at no charge or at a low cost, and receive a corresponding CRA credit.

NCUA will monitor MDIs and will report to Congress annually on the number and overall financial condition of MDIs, along with actions taken by the agency to preserve and strengthen them and to encourage the chartering of new ones.

NCUA will use FIRREA's prescribed General Preference Guidelines (see §II.6. above) to attempt to preserve the minority character of failing MDIs that are involuntarily merged or acquired. In the event of an involuntary merger/acquisition of a troubled MDI,<sup>36</sup> NCUA will invite bids from MDIs that are qualified to partner with a failing MDI, along with non-MDI credit unions. OMWI also will assist in locating an MDI partner for MDIs wishing to voluntarily merge their operations. To be considered as an acquirer, an MDI is strongly encouraged to document its desire to acquire another MDI by registering itself on NCUA's Merger Registry via the CU Online System.

Additionally, any organization or person seeking to be a candidate for managing the conservatorship of an MDI should complete an NCUA Vendor Registration Form (NCUA

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<sup>36</sup> A merger is involuntary whenever the credit union is insolvent. 12 U.S.C. §1787(a) (1). A credit union is insolvent when the total amount of the credit union's shares exceeds the present cash value of its assets after providing for liabilities unless: (i) It is determined by the NCUA Board that the facts that caused the deficient share-asset ratio no longer exist; and (ii) The likelihood of further depreciation of the share asset ratio is not probable; and (iii) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable; and (iv) The probability of a further potential loss to the insurance fund is negligible. 12 C.F.R. 700.2(e)(1)

1772)<sup>37</sup> and OSCUI's Credit Union Service Provider (CUSP) Database Registration Form.<sup>38</sup>

OMWI can provide NCUA regional offices with a list of diverse candidates who have requested consideration for the position of interim Chief Executive Officer/Manager of a conserved MDI, upon request.

Finally, the Office of Consumer Protection and OSCUI will be available to provide assistance, and guidance in the application process, to groups that may be interested in chartering a new MDI, and to MDIs wishing to apply to change their charter or field of membership. For detailed step-by-step instructions on chartering a federal credit union, please refer to the *Federal Credit Union Charter Application Guide*.<sup>39</sup>

#### **IV. Regulatory Procedures**

##### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact the IRPS may have on a substantial number of small entities. The final IRPS permits a credit union defined as small under the RFA to self-certify that it meets the MDI definition based solely on its knowledge of its current membership and the community it services (*e.g.*, potential membership identified in its charter), without any supporting documentation. The Program will have a significantly beneficial economic impact on small entities because it offers eligible credit unions, including small entities, various forms of technical assistance and educational opportunities at no cost. NCUA therefore certifies that the

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<sup>37</sup> The Vendor Registration Form can be accessed, completed and submitted on NCUA's website via the following link: <http://www.ncua.gov/about/Documents/Procurement/VendorRegistration.pdf>.

<sup>38</sup> The CUSP Registration Form and Instructions can be accessed on NCUA's website at: <http://www.ncua.gov/Resources/OSCUI/Pages/CUSP.aspx>

<sup>39</sup> [www.FCU-Charter-Application-Guide](http://www.FCU-Charter-Application-Guide)

final IRPS will not have a significant adverse economic impact on a substantial number of small credit unions. Accordingly, no regulatory flexibility analysis is required.

### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, each referred to as an information collection. The 2013 proposed IRPS identified a new information collection consisting of the procedure for a credit union to document its self-certification of eligibility to participate in the Program.<sup>40</sup>

The proposed IRPS invited interested persons to submit comments on the prescribed information collection requirement to the Office of Management and Budget (OMB), with a copy to NCUA, at the address provided in the preamble to the proposed IRPS. NCUA received the following comments on the information collection requirement prescribed in the proposed IRPS, encouraging the agency to:

- remove the minority representation requirement among management officials in the MDI definition;
- restrict the collection of data by any method that allows members to voluntarily identify themselves as a minority;
- require the majority of a credit union's members' deposits and/or loan products to be held by racial minorities;

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<sup>40</sup> 78 FR 46374 (July 31, 2013)

- conform the annual review and update of the minority self-certification to the updating frequency of the data supporting a self-certification (*e.g.*, every ten years if using U.S. Census data); and
- provide a portal on NCUA's website for credit unions to access the sources of data relevant to self-certifying as an MDI, such as links to U.S. Census and HDMA data.

Section II of this final IRPS addresses these comments. In response, NCUA has narrowed the scope of the minority representation requirement among a credit union's management to its board of directors, thus reducing the paperwork burden of assessing minority representation among senior management officials. Also, NCUA has displayed on the agency's website links to sources of data for self-certifying as an MDI; thus reducing the burden on potential MDIs to locate the websites for assessing source information to document their self-certification. NCUA will apply to OMB for approval of the final IRPS.

#### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles. This final IRPS will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that this final IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

The Board’s goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether this final IRPS is understandable and minimally intrusive if implemented as proposed.

By the National Credit Union Administration Board on \_\_\_\_\_, 2015.

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Gerard S. Poliquin  
Secretary of the Board