

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

RIN: 3133-AE16

Minority Depository Institution Preservation Program

AGENCY: National Credit Union Administration.

ACTION: Proposed Interpretive Ruling and Policy Statement 13-1, with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) recognizes the importance of minority credit unions and the unique challenges they often face in serving their communities. NCUA is establishing a Minority Depository Institution Preservation Program to encourage the preservation of Minority Depository Institutions. The program, to be administered by NCUA's Office of Minority and Women Inclusion, would consist of outreach efforts, various forms of technical assistance, and educational opportunities to benefit eligible credit unions.

DATES: Comments must be received on or before [Insert date 60 days from date of publication in the **FEDERAL REGISTER**].

ADDRESSES: You may submit comments by any of the following methods (**Please send comments by one method only**):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site: <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name]—Comments on Proposed IRPS 13-1, Minority Depository Institution Preservation Program” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

PUBLIC INSPECTION: You can view all public comments on NCUA’s website at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an e-mail to OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Tawana James, Director, Office of Minority and Women Inclusion, at (703) 518-1651; or Cynthia Vaughn, Diversity Outreach Program Analyst, Office of Minority and Women Inclusion, at (703) 518-1653.

SUPPLEMENTARY INFORMATION:

I. Background

In 1989, Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)¹ in response to the failure of the Federal Savings and Loan Insurance Corporation (FSLIC). FSLIC insured the deposits of insolvent savings & loan institutions. Section 308 of FIRREA established goals for preserving and promoting minority depository institutions². When established, Section 308 applied only to the Federal Deposit Insurance Corporation (FDIC) and Office of Thrift Supervision (OTS).³ The FDIC and OTS 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).⁴

¹ Pub. L. 101-73, 103 Stat. 183

² 12 U.S.C. 1463 note (a)

³ The Office of the Comptroller of the Currency (OCC) and Board of Governors of the Federal Reserve System (FRB) also initiated MDI programs to comply with the spirit of FIRREA §308, even though they were not originally required to do so. The OTS became part of the OCC on July 21, 2011. OCC now administers the OTS MDI Program.

⁴ 12 U.S.C. 1463 note (b)

In 2010, Congress enacted the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank)⁵. Section 367(4)(A) of Dodd Frank amended FIRREA §308 to require NCUA, OCC, and FRB to comply with its goals to preserve and encourage MDIs.⁶ In addition, Dodd Frank §367(4)(B) requires these agencies, along with FDIC, to each submit an annual report to Congress describing actions taken to carry out FIRREA §308.⁷

II. Interpretive Ruling and Policy Statement (IRPS) 13-1

1. Why is the NCUA Board proposing this IRPS?

The NCUA Board is proposing this IRPS as the basis for establishing a Minority Depository Institution Preservation Program (MDI Program) designed to achieve the goals of preserving and encouraging Minority Depository Institutions (MDIs) as FIRREA §308 directs. 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 industry. To this end, the IRPS prescribes an MDI Program featuring the eligibility criteria, initiatives and benefits.

⁵ Pub. L. 111-203, 124 Stat. 1376; 12 U.S.C. 5301 *et seq.*

⁶ 124 Stat. 1556.

⁷ 124 Stat. 1556.

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

The MDI Program embraces goals and objectives related to credit union viability and access. Specifically, the program is consistent with NCUA's mission and the following two goals identified in NCUA's current strategic plan:

- To ensure a safe, sound, and healthy credit union system; and
- To promote access to credit unions for all eligible persons.

The program also follows the preservation goals and objectives of FIRREA §308 for MDIs⁸ 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;⁹
- 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.

3. Who would be eligible to participate in the MDI Program?

⁸ Dodd Frank §367(4)(A) expanded the application of FIRREA §308 to NCUA.

⁹ 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 FOM, least cost to NCUSIF, and safety and soundness still apply to all mergers.

A credit union meeting the definition of an MDI is eligible to participate in the MDI Preservation Program. In defining an MDI, NCUA proposes to adapt criteria consistent with FIRREA §308’s criteria for a minority depository institution.¹⁰ Accordingly, NCUA is proposing to define a Minority Depository Institution 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**
- (b) A federally insured credit union with more than 50 percent of the current management officials falling within any of the eligible minority groups.

For a federally insured credit union to meet this MDI definition, the percentage of both (a) minority members and (b) minority management officials must exceed 50 percent.

To identify an eligible minority group, NCUA will rely on FIRREA §308’s definition of a minority as any “Black American, Asian American, Hispanic American, or Native American.”¹¹ The following chart from the Equal Employment Opportunity Commission shows a detailed description of the minority groups falling within these four categories:

Dodd Frank Act	Equal Employment Opportunity Commission (EEOC)
Black American	Black or African American (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.
Native American	American Indian or Alaska Native (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.
Hispanic American	Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.
Asian American	Asian (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,

¹⁰ 12 U.S.C. 1463 note (b)(1). *Compare* 12 U.S.C. 5452(g)(3).

¹¹ 12 U.S.C. 1463 note (b)(2).

Thailand, and Vietnam; or,
Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

NCUA defines 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.

To ensure the MDI has minority representation at the senior management level, NCUA is including management officials as part of the definition to meet the spirit of the FIRREA and Dodd Frank Act.

4. How will the MDI Program Function?

NCUA's Office of Minority and Women Inclusion (OMWI) will administer the MDI Program. A federally insured credit union can self-certify that it qualifies as an MDI by affirmatively answering one of following two questions¹² on NCUA's Credit Union Online System (CU Online System) accessible from our website (www.ncua.gov) or the CU Profile when submitting a Call Report:

¹² NCUA is changing the questions to inquire about the minority representation among members and management officials separately. NCUA is currently pursuing OMB approval for this change in conjunction with other changes to the call report.

(a) Does your credit union have more than 50 percent of its current members **and** current management officials who are Black American, Native American, Hispanic American, or Asian American?

(b) Does your credit union have more than 50 percent of its eligible potential members¹³ **and** current management officials who are Black American, Native American, Hispanic American, or Asian American?

The credit union must certify that the eligibility criteria for members and management officials have been met. Credit unions with \$50 million or less in assets may self-certify based solely on knowledge of their membership. However, the management officials must also meet the 50 percent MDI criterion. Credit unions with assets over \$50 million may rely on one of the following methods to determine the minority composition of its current membership or its potential field of membership (FOM):

(A) Ascertain the minority membership composition using demographics data from the U.S. Census by either:

- (1) The area(s) where the current or potential membership resides; or
- (2) The area(s) consisting of the credit union's service area(s)¹⁴ as prescribed in the FOM designated by the credit union's charter.

¹³ Potential members correspond with the same definition used for FOM expansions, which include the community population for community chartered credit unions; total employees for occupational groups(s); and total members for associational groups. There are no adjustments for family members.

If the U.S. Census data (e.g., census tracts, zip codes, townships, boroughs, cities, counties, etc.) shows the area's population is comprised mostly of eligible minorities, the credit union may assume its membership or service area(s) have that minority composition.

(B) Use Home Mortgage Disclosure Act (HMDA) to calculate the reported number of minority mortgage applicants divided by the total number of mortgage applicants within the credit union's membership. If the share of minority applicants meets or exceeds the 50 percent threshold, the membership component may be met.

(C) Elect to voluntarily collect data from members who choose to self-identify themselves as minority and use the data to determine the credit union's share of minority representation. The credit union may wish to consider using an unbiased party to administer the collection process. For example, data can be collected through a member survey assessing future services desired or during the mail election ballots.

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

¹⁴ A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with the geographic area primarily served by the service facility. For a community credit union, this is the geographic community it serves as identified in the charter and FOM. For multiple common bond credit unions, it can be the areas where the select groups, in the charter and FOM, are located.

A credit union with assets greater than \$50 million that self-identifies as an MDI should maintain some form of documentation demonstrating how it determined the minority eligibility criteria of (a) membership and (b) management officials were met.¹⁵ Such documentation may consist of demographic data analysis obtained from the U.S. Census Bureau (www.census.gov), HDMA, or any other reasonable form of data (e.g., sponsor employee demographic or members' zip code analysis).

When a credit union self-identifies as an MDI regardless of asset size, OMWI may assess the legitimacy of the certification (or the underlying data). If there is doubt that the credit union meets both minority criteria based on (a) membership and (b) management officials, the NCUA's OWMI will:

- 1) Notify the credit union in writing about its findings.
- 2) Provide the credit union an opportunity to submit documentation and/or rationale to support its MDI self-identification within 60 days of receiving OMWI's notification.
- 3) Review the credit union's information and inform the credit union on whether it meets the minority criteria based on the information submitted within 60 days of OMWI's receipt.
- 4) Deny the MDI designation if the credit union provides either no information or, in NCUA's discretion, insufficient information or rationale to support the certification on both minority criteria (a) membership and (b) management officials.

¹⁵ See sections 3(a) and 3(b) *supra*.

A federally insured credit union may appeal the agency's denial of an MDI designation to the NCUA Board within 60 days of the date of OMWI's notice of denial.¹⁶

NCUA plans to develop and use a tool to determine the minority composition of a credit union's membership using their members' zip code data obtained from an AIRES download (similar to the current low-income designation tool). NCUA will periodically review and determine whether an MDI continues to meet the MDI definition. Changes in the MDI definition can occur from FOM expansions (e.g., mergers, purchase and assumptions, new groups added to the FOM, or charter conversions) as well as changes in the management officials (e.g., elections, new hires, separations, etc.).

An MDI should assess whether it continues to meet the MDI definition at least once a year (e.g., December 31st call report cycle), and update its status on NCUA's Credit Union Online system or Credit Union Profile of the Call Report system, if 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. Upon such action, the credit union would not be eligible to participate in any MDI Program initiatives (e.g., MDI merger/acquisition preference consideration, MDI partnerships, etc.).

¹⁶ Such an appeal must be filed with NCUA's OMWI Director and accompanied by documentation that demonstrates the federally insured credit union meets the MCU eligibility requirements. On appeal, the NCUA Board will determine whether the OMWI Director correctly applied the minority eligibility criteria.

5. What are the benefits of participating in the MDI Program?

NCUA seeks to provide MDI Program participants with a variety of benefits to assist in preserving the economic viability of their institutions. These benefits include facilitating technical assistance and educational opportunities to MDIs in coordination with NCUA's Office of Small Credit Union Initiatives (OSCUI). Such technical assistance may include participating in the agency's Small Credit Union Program,¹⁷ including:

- (1) participation in Small Credit Union Consulting Program;
- (2) Economic Development Specialist assistance in addressing examination concerns or topics of interest;
- (3) participation in an NCUA sponsored workshop; or
- (4) assistance in obtaining a grant or a loan through NCUA's Community Development Revolving Loan Fund (CDRLF).

OMWI may aid in collaborating partnerships between MDIs and other organizations (e.g., MDIs, OSCUI, and other sources) as a means of providing technical and/or operational assistance to MDIs. The technical and/or operational assistance may include training for officials and staff, expertise in technical areas (e.g., marketing, bidding on merger proposals, etc.), equipment and financial assistance for specific projects/goals, etc. Additionally, OMWI may assist in locating a CU mentor or merger partner for an MDI.

¹⁷ The Small Credit Union Program's initiatives are generally offered to credit unions that have less than \$50 million in assets or are low-income designated. Grants and loans from the CDRLF are only available to low-income designated credit unions. The workshops are open to all credit unions.

NCUA will publish a list of federally insured MDIs on its website to enable organizations (e.g., banks, MDIs, third parties) to identify MDIs with which to partner, mentor, provide resources, and/or establish business relationships. For example, banks can obtain Community Reinvestment Act (CRA) credit for investing in MDIs. If a bank has an unused building, the bank could lease the space to an MDI for free or at low cost, and receive a corresponding CRA credit.

NCUA will monitor the financial condition of MDIs, and will provide an annual report to Congress on the overall financial condition of MDIs. Through this process, the agency will also identify MDIs that might benefit from the MDI Program's support and technical assistance, such as mentoring, partnerships, workshops, roundtables, associations with other credit unions, and support through programs such as NCUA's Small Credit Union Program or the U.S. Treasury's Community Development Financial Institutions Fund.

NCUA will attempt to preserve the minority character of failing MDIs that go through the involuntary merger or acquisition process by using the General Preference Guidelines outlined in Section 308 to the FIRREA. In the event of the merger of a troubled MDI, NCUA will invite MDIs that qualify to bid on failing MDIs, along with non-MDI credit unions. Such actions would only occur on involuntary mergers/acquisitions. However, OMWI will offer assistance in locating an MDI partner for those MDIs wishing to voluntarily merge their operations into another MDI. To be considered an acquirer, an MDI must document its desire to acquire an MDI by registering itself on NCUA's Merger Registry via the CU Online System.

Additionally, if any organization wishes to be considered as a candidate for managing a conservatorship of an MDI, it should document its interest by completing an NCUA Vendor Registration Form (NCUA 1772). The vendor registration form can be accessed, completed and submitted on NCUA's website under Procurement/Contracting Opportunities. The form can also be accessed via the following link: <http://www.ncua.gov/about/Documents/Procurement/VendorRegistration.pdf>. OMWI will provide a list of diverse candidates to the regions for consideration as the interim Chief Executive Officer/Manager of the MDI.

Finally, NCUA will provide assistance to groups that may be interested in chartering a new MDI. Staff will be available to discuss the application process with such groups.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a proposed IRPS may have on a substantial number of small entities (currently defined by NCUA as credit unions with under \$50 million in assets). In this case, credit unions under \$50 million in assets can self-certify their credit unions as meeting the MDI definition based solely on their knowledge of their current or potential membership without any supporting documentation.

Also, the economic impact of the MDI Program on small entities would be significantly beneficial in that the MDI Program offers various forms of technical assistance and educational opportunities to eligible credit unions, including those that qualify as small entities, at no cost. NCUA therefore certifies that the proposed IRPS will not have a significant adverse economic impact on a substantial number of credit unions under \$50 million in assets. 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, both referred to as information collections. NCUA has determined that the procedure for credit unions to self-identify as meeting the definition of an MDI creates a new information collection requirement. As required, NCUA has applied to the Office of Management and Budget (OMB) for approval of the information collection procedure described below.

To participate in the MDI program, a credit union must answer two questions based on the minority composition of its (1) current or potential membership and (2) current management officials. The credit union must ascertain whether the minority ratio of the credit union members exceeds 50 percent and the ratio of current management officials exceeds 50 percent. The credit union may use (a) U.S. Census data (*e.g.*, census tracts, zip codes, townships, boroughs, cities, counties, etc.) indicating that either the area where the credit union's potential membership resides, or which is its service area, is comprised

mostly of eligible minorities; (b) Home Mortgage Disclosure Act (HMDA) data indicating that the ratio of minority mortgage applicants exceeds 50 percent of total mortgage applicants [within the credit union membership]; (c) voluntary collection of race, ethnicity, origin data from membership; or (d) any other reasonable form of data that support the minority composition of the membership. The credit union may answer the questions regarding minority membership and management composition on NCUA's Credit Union Online System or in its Call Report.¹⁸ If the credit union answers "yes" to both questions, it will qualify as an MDI and be eligible to participate in the MDI program.

NCUA estimates that, with reasonable access to the internet, it typically would take credit union staff approximately 45 minutes to (1) locate, download and review the U.S. Census or HMDA data needed; (2) assess the minority composition of its membership; and (3) assess the minority composition of its management officials to support the credit union's answers to the two MDI self-identification questions. Certain credit unions must retain the supporting documentation in its files for verification of its MDI eligibility.

NCUA has determined that 802 credit unions would qualify as MDIs based on their answers to the two questions as of June 17, 2013. Of the 802 credit unions, 671 credit unions have assets of \$50 million or less. NCUA proposes to allow these 671 credit unions to self-identify as an MDI based solely on the knowledge of their membership.

¹⁸ In 2011, NCUA published a PRA notice to insert the MCU self-identification questions into the Call Report. 76 FR 54498 (Sept. 1, 2011); 76 FR 62456 (Oct. 7, 2011).

As a result, the aggregate information collection burden for the remaining **131 credit unions** to self-identify as an MDI is **98.25 hours** (45 minutes x 131 MDIs ÷ 60 minutes). Also, we estimate that approximately five percent of the 671 credit unions whose self-certification is based on knowledge of membership may be subject to question. Thus, the aggregate information collection burden for those **40 credit unions** (671 x .05) is **30 hours** (45 minutes x 40 MDIs ÷ 60 minutes). **Total hours estimated are 128.25 hours annually.**

Organizations and individuals wishing to submit comments on this information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Attn: Shagufta Ahmed, Room 10226, New Executive Office Building, Washington, DC 20503, with a copy to the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. The PRA requires OMB to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the Federal Register.

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

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 IRPS would 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 proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this 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 IRPS is understandable and minimally intrusive if implemented as proposed.

By the National Credit Union Administration Board on _____, 2013.

Mary Rupp
Secretary of the Board