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NATIONAL CREDIT UNION ADMINISTRATION

[NCUA-2023-XXXX]

Minority Depository Institution Preservation Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed interpretive ruling and policy statement.

SUMMARY: The NCUA Board is issuing proposed revisions to Interpretive Ruling and Policy Statement 13-1, regarding the Minority Depository Institution Preservation Program for credit unions.

DATES: Comments must be received on or before [Insert date 60 days after 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: https://www.regulations.gov/. Follow the instructions for submitting comments for Docket Number NCUA-2023-XXXX.

- NCUA website: Rulemakings and Proposals for Comment | NCUA. Follow the instructions for submitting comments.
- USPS/Hand Delivery/Courier: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

PUBLIC INSPECTION: You may view all public comments on the Federal eRulemaking Portal at https://www.regulations.gov, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. If you are unable to access public comments on the Internet, you may contact the NCUA for alternative access by calling (703) 518-6540 or e-mailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Supervisory Program Manager Kristi Kubista-Hovis or Program Manager Pamela Williams, Office of Credit Union Resources and Expansion, 703-518-6610 or CUREMDI@ncua.gov.

I. Background

Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in response to the savings and loan industry crisis.[1] FIRREA included provisions designed to encourage federal financial regulators to preserve and promote minority depository

[1] Pub. L. 101–73, 103 Stat. 183 (1989).

institutions.[2] Specifically, FIRREA section 308 required the Secretary of the Treasury to consult with the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) on best methods to achieve the following goals:

- Preserving the number of minority depository institutions;
- Preserving the minority character of a minority depository institution involved in a merger or acquisition;
- Providing technical assistance to prevent the insolvency of minority depository institutions;
- Encouraging the formation of new minority depository institutions; and
- Providing training, technical assistance, and educational programs to minority depository institutions.[3]

Those agencies developed various initiatives aimed at preserving federally insured banks and savings institutions that meet FIRREA's definition of a minority depository institution (MDI).[4]

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[5] Section 367(4)(A) of the Dodd-Frank Act expanded FIRREA section 308 to require the Secretary of the Treasury to consult with the National Credit Union Administration

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[2] *Id.* Title III, sec. 308, 103 Stat. 353, *codified at* 12 U.S.C. 1463 note, "Preserving Minority Ownership of Minority Financial Institutions."
[3] *Id*. sec. (a). The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System also initiated minority depository institution programs to comply with the spirit of FIRREA sec. 308, even though neither was originally required to do so. OTS became part of the Office of the Comptroller of the Currency on July 21, 2011.
[4] *Id*. sec. (b).
[5] Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010); 12 U.S.C. 5301 *et seq*.

(NCUA) and the Board of Governors of the Federal Reserve System (Fed), in addition to the FDIC and the Office of the Comptroller of the Currency (OCC) on methods for best achieving the FIRREA goals.[6] Section 367(4)(B) of the Dodd-Frank Act also amended FIRREA section 308 to require each agency to submit an annual report to Congress describing actions it has taken to preserve and encourage MDIs.[7]

In 2013, the NCUA Board proposed Interpretive Ruling and Policy Statement (IRPS) 13-1 to establish a Minority Depository Institution Preservation Program (MDI Program) to encourage the preservation of MDIs and the establishment of new ones.[8] In 2015, the NCUA Board approved final IRPS 13-1, establishing the NCUA's MDI Program.[9]

The NCUA Board subsequently restructured the agency in 2018. Among other changes, the restructuring created the Office of Credit Union Resources and Expansion (CURE). CURE assumed administration of the NCUA's MDI Program from the agency's Office of Minority and Women Inclusion.

II. Summary of Proposed Changes to IRPS 13-1 and Request for Comments

The NCUA is proposing to amend IRPS 13-1 to reflect changes to the agency's structure and current administration of the MDI Program by CURE and improve the MDI Program, including: recognizing the transfer of the MDI program administration to CURE, incorporating recent program initiatives, simplifying "community it services, as designated in its charter" to refer to an MDI's field of membership, referencing guidance the NCUA provides examination staff who

[6] 12 U.S.C. 1463 note sec. (a).
[7] *Id.* sec. (c).
[8] 78 FR 46374 (July 31, 2013).
[9] 80 FR 36356 (June 24, 2015).

continue to play a significant role in supporting and guiding MDIs under their supervision, explaining how the NCUA will review an MDI's designation status during routine evaluations, and adding new subsections on engagement, technical assistance, MDI examinations, Community Development Revolving Loan Fund grants and loans, training and education, and MDI preservation.

The Board invites comments on all aspects of the proposed amendments to the IRPS. Additionally, the agency welcomes comments on any other aspects of the IRPS and what additional information the agency could provide to help MDIs and how best to deliver the information.

Authority: 12 U.S.C. 1463 note; Sec. 308, Pub. L. 101–73, 103 Stat. 353; as amended by Sec. 367(4), Pub. L. 111–203, 124 Stat. 1556.

III. Interpretive Ruling and Policy Statement 13-1, Minority Depository Institution Preservation Program, as Amended

The text of IRPS 13-1, with proposed amendments, follows:

a. Goals and Objectives of the MDI Preservation Program

Minority Depository Institutions (MDIs) play an important and unique role in promoting the economic viability of minority and underserved communities. The NCUA employs proactive steps and outreach efforts to preserve MDIs and foster their success. The NCUA's MDI Preservation Program (MDI Program) is designed to comply with section 308 of FIRREA, which requires the NCUA to report on the actions it has taken in furtherance of the following goals:[10]

[10] Pub. L. 101–73, title III, sec. 308, 103 Stat. 353 (1989), as amended by Pub L. 111–203, title III, sec. 367(4), 124 Stat. 1556 (2010), *codified at* 12 U.S.C. 1463 note.

- Preserve the present number of MDIs;
- Preserve the minority character of MDIs involved in mergers and acquisitions;
- Provide technical assistance to prevent insolvency of MDIs that are not now insolvent;
- Promote and encourage the creation of new MDIs; and
- Provide training, technical assistance, and educational programs for MDIs.

b. Description of the MDI Program

The NCUA's MDI Program consists of proactive steps and outreach efforts to promote and preserve MDIs in the credit union system. The NCUA's Office of Credit Union Resources and Expansion (CURE) administers the agency's MDI Program and will meet periodically with state regulators, other federal regulators, and other stakeholders to discuss outreach efforts, share ideas, and identify areas to work together to assist MDIs.

The NCUA offers MDI-designated credit unions a variety of initiatives to assist in preserving the economic viability of their institutions. The initiatives include technical assistance, educational opportunities, and funding. Examples of such initiatives include the following:

- Consulting and support program;
- Training; and
- Grants and loans through the NCUA's Community Development Revolving Loan Fund (CDRLF), subject to eligibility.[11]

[11] Prior to 2023, under the annual appropriations statutes, grants and loans from the CDRLF were historically only available to low-income designated credit unions, some of which are also MDIs. However, not all MDIs have a low-income designation.

Examples of broad-based and individualized technical assistance include the following:

- Providing guidance in resolving examination concerns;
- Helping MDIs locate new sponsors, mentors, or merger partners;
- Assisting with field of membership expansions;
- Supporting management in setting up new programs and services;
- Attempting to preserve the minority character of failing institutions during the resolution process; and
- Aiding groups that are interested in chartering a new MDI.

Engagement with MDIs

The NCUA's MDI Program will provide continual engagement with MDIs through interaction with headquarters and field staff. This interaction includes sharing information and expertise on supervisory topics, using various venues to engage in an open dialogue between NCUA, MDIs, and related organizations, seeking feedback on the NCUA's efforts under the MDI program, and providing a variety of training opportunities hosted or sponsored by the NCUA. The NCUA's outreach also includes seeking out, working with, and supporting groups interested in applying for a new federal or state charter with an MDI designation, and aiding existing credit unions interested in receiving the MDI designation.

Technical Assistance

The NCUA will provide technical assistance to an MDI designated credit union upon request. The agency contacts each MDI at least annually to ask if it would like to receive technical assistance. Also, an MDI can contact its assigned field office, supervisory examiner, or district examiner to request technical assistance.

Technical assistance is not an examination or supervisory activity and will be provided separate from examinations and supervision contacts. Technical assistance includes but is not limited to assistance in understanding applicable laws and regulations, agency processes, reporting requirements, supervisory guidance, accounting standards, supervisory findings and conclusions (only after the conclusion of the applicable examination or supervision contact), applications or requests for agency approval or action (such as field of membership, bidding on a failing institution, regulatory waivers, etc.), and assistance in receiving an MDI designation. In providing technical assistance, agency staff will not perform tasks expected of an institution's management or employees. And while they may help the institution understand how to apply for something or submit a bid, agency staff will not assist or guide the institution in developing the substance of such application or bid.

Examinations of MDIs

MDI-designated credit unions have a unique role in promoting the economic viability of minority and underserved communities, at times necessitating distinct approaches to taking and managing the related financial and operational risks. The NCUA expects examiners to recognize the distinctive characteristics and differences in core objectives of each financial institution and consider these when evaluating the institution's financial and operational condition and related management practices. Examiners are able to evaluate an MDI using peer metrics such as through the Financial Performance Report.

The NCUA provides examiners guidance to educate them about the unique challenges faced by MDIs and the support and services the NCUA offers to assist MDIs to address such challenges. The guidance acknowledges, at times, some MDIs may need more or different support from the NCUA than other credit unions. The guidance also lists specific types of technical assistance an MDI may request of the NCUA. It also advises that MDIs often have unique memberships and provide financial services to consumers and businesses in communities that might not otherwise have access to another federally insured financial institution. Therefore, the policies, processes, risks, and practices of MDIs may vary and comparison to other credit unions based solely on similar size may have limited value. Instead, examiners are instructed to assess each MDI based on its unique strategy and membership.

CDRLF Grants and Loans

The CDRLF provides loans and grants to low-income designated credit unions to expand outreach to underserved populations, improve digital services and cybersecurity, to provide staff training, and to support capacity-building programs for example. In 2023, MDIs without the low-income designation became eligible for CDRLF grants and loans.[12]

Training and Education

The NCUA offers training to credit unions through various formats such as webinars, online courses, videos, and in-person events. Through the Learning Management System, the agency offers training and educational resources to credit union board members, management,

[12] Refer to the Grants and Loans section of the NCUA website for eligibility requirements in future periods.

employees, and volunteers online and at no charge. Examples of the content provided include guidance on credit union operations, compliance, community partnerships, and strategic planning.[13]

Preservation of MDIs

With regard to a potentially failing MDI or the need for an assisted merger of an MDI, as with any insured credit union, the NCUA Board will consider providing Section 208 assistance to reduce the risk or avert a threatened loss to the National Credit Union Share Insurance Fund (NCUSIF), facilitate a merger or consolidation, or to prevent the closing of a credit union that the Board determines is in danger of closing.[14] Requirements concerning field of membership apply to most mergers. In addition, the NCUA must consider resolution costs and safety and soundness implications for all mergers.

The NCUA will attempt to preserve the minority character of failing MDIs during the resolution process. In the event of the potential failure of an MDI, the agency will contact MDIs in the NCUA's merger registry that qualify to bid on a particular failing institution. Agency staff will solicit interest in bidding on the failing MDI and offer technical assistance to any MDI desiring to bid. The NCUA will also provide MDIs interested in submitting a bid with an additional two weeks to submit a bid whenever possible. Except in the cases of conservatorships, liquidations, or assisted mergers, the MDI's board of directors is generally the decision maker on a merger partner provided the selection is consistent with regulatory and safety and soundness standards. For conservatorships, liquidations, or assisted mergers, in the selection process, the NCUA will

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[13] These training opportunities are accessible to all credit unions through the Learning section the NCUA's website.
[14] 12 U.S.C. 1788(a)(1)–(2).

consider all the requirements applicable to a merger or purchase and assumption, including FIRREA's general preference guidelines.[15]

c. MDI Designation Eligibility

The agency adopted the definition of an MDI in FIRREA section 308 that applies to a mutual institution.[16] Accordingly, a credit union is eligible to receive the MDI designation if it meets all the following criteria:

- A majority of its current members are from any of the eligible minority groups;
- A majority of the members of its board of directors are from any of the eligible minority groups; and
- A majority of the community it services, as designated in its field of membership, are from any of the eligible minority groups.

For minority representation to be a "majority," it must be greater than 50 percent.

The NCUA relies on the FIRREA section 308 "minority" definition to identify an eligible minority as any Black American, Asian American, Hispanic American, or Native American.[17] For the purpose of this IRPS, Asian American includes anyone who is Native Hawaiian or Other Pacific Islander, and Native American includes anyone who is American Indian or Alaska Native. Also, for the purpose of minority representation under the MDI definition, an individual

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[15] Generally, the NCUA is involved in the selection process when the transaction will cause a loss to the Share Insurance Fund or when the failing credit union is in conservatorship and the NCUA Board is the conservator. For additional information on the NCUA's selection process, see Letter to Credit Unions 10-CU-11, *Information on NCUA's Merger and Purchase & Assumption Process.*

[16] 12 U.S.C. 1463 note sec. (b)(1)(C).

[17] *Id.*

who falls into more than one of the minority categories will be considered as a single, eligible minority.

A credit union that meets the eligibility requirements can self-certify as an MDI by following agency guidelines as specified on the NCUA's website. The instructions to the NCUA's *Credit Union Profile* form, which credit unions use to self-certify as an MDI, contain detailed directions on how to make the designation.[18] An MDI may participate in the NCUA's MDI Program subject to the eligibility requirements of any specific initiative. An eligible credit union's decision to designate as an MDI or to participate in the MDI Program is voluntary.

A credit union defined as a "small credit union" by the NCUA under the Regulatory Flexibility Act (RFA) may self-certify greater than 50 percent representation among its current members, and within the community it services (potential members), based solely on knowledge of those members. Under the RFA, the NCUA currently defines a small credit union as a credit union with total assets of less than $100 million.[19]

A credit union not defined as a small credit union by the NCUA 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. The credit union must maintain documentation supporting its MDI self-designation.

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[18] NCUA Form 4501A, https://ncua.gov/files/publications/regulations/credit-union-profile-form-instructions-4501A-sept-2022.pdf.
[19] 80 FR 57512 (Sept. 24, 2015).

1. The credit union may ascertain the minority representation using demographic data from the U.S. Census Bureau website, based on the area(s) where the current or potential membership resides, such as a township, borough, city, county, or Metropolitan Statistical Area. If the U.S. Census data—for example, census tracts, zip codes, townships, boroughs, cities, or counties—shows the area's population comprises mostly eligible minorities, the credit union may assume that its current membership and the community it services each have the same minority composition as the Census data indicates.

2. The credit union may 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. If the share of minority representation among applicants is greater than 50 percent, the credit union may assume its current membership has the same minority composition as the HMDA data indicates. If a credit union grants a majority of its mortgage loans to minorities, it is likely the majority of the community the credit union services (its potential members) will consist of minorities.[20]

3. The credit union may elect to collect data from members who voluntarily choose to participate in such collection about their racial identity and use the data to determine minority representation among the credit union's membership. The credit union should consider using an unbiased third party to conduct such a collection. 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

[20] HMDA data can be obtained from the Federal Financial Institutions Examination Council website.

be retained in the members' files or with any personal identifiers, such as*,* names, accounts, or Social Security numbers. If a majority of its current members are minorities, it is likely the majority of the community the credit union services (its potential members) will consist of minorities.

4. The credit union may use any other reasonable form of data, such as membership address list analyses or an employer's demographic analysis of employees.

An MDI credit union must assess whether it continues to meet the required definition of an MDI whenever there is a significant change in its board of directors, or it changes its field of membership, and update its designation, if necessary, in the NCUA *Credit Union Profile*. In accordance with the regular examination process, the NCUA will review whether a credit union has updated its analysis and made any corresponding changes to its self-certification in the *Credit Union Profile*. Credit unions can expect to have the *Credit Union Profile* reviewed during routine evaluations. An MDI may elect to withdraw its designation by not completing the relevant questions in the *Profile*.

d. Monitoring and Reporting on MDIs

The NCUA will monitor MDIs and 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.[21] The report summarizes the NCUA's efforts

[21] 12 U.S.C. 1463 note sec. (c).

to obtain feedback from MDIs on the effectiveness of the agency's MDI support and preservation activities. The NCUA also maintains a list of MDIs on its website.

IV. Regulatory Procedures

Regulatory Flexibility Act

The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million)[22] and publishes its certification and a short, explanatory statement in the Federal Register together with the rule.

The Board fully considered the potential economic impact of the proposed changes during the development of the revised IRPS. As noted in the preamble, the revised IRPS would clarify the NCUA's current policy on MDI preservation and provide additional services to MDIs. The proposed rule would not impose any new significant burden on credit unions designated as MDIs and may provide some additional resources. The resources gained, however, are unlikely to result in a significant economic impact for affected credit unions. Small credit unions are also not obligated to participate in the MDI program. Accordingly, the NCUA certifies that it would not have a significant economic impact on a substantial number of small federally insured credit unions.

[22] See 80 FR 57512 (Sept. 24, 2015).

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new information collection or amends existing information collection requirements.[23] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The current information collection requirements for the MDI policy are approved under OMB control number 3133-0195, Minority Depository Institution Preservation Program.

The amendments in this proposed revision to IRPS 13-1 do not alter the information collection described under OMB control number 3133-0195, and the NCUA does not anticipate an increase in the burden based on the proposed revisions. There are no additional information collections resulting from these proposed changes.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The 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 revised IRPS will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the

[23] 44 U.S.C. 3507(d); 5 CFR part 1320.

distribution of power and responsibilities among the various levels of government. Although state-chartered credit unions are eligible to obtain the MDI designation and receive assistance based on it, the NCUA does not believe this affects state governments generally or state credit union regulators in particular. The NCUA will continue to work cooperatively with state credit union regulators to examine federally insured, state-chartered credit unions and does not expect the proposed IRPS to alter these relationships or allocation of responsibilities. The decision about whether to certify as an MDI or seek MDI program benefits will be an individual business decision for each credit union's board. The NCUA has determined that this revised IRPS does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that these proposed revisions to IRPS 13-1 will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.[24] The proposed revisions to IRPS 13-1 may increase the ability of MDIs to provide financial services to families. However, the Board does not have a means to quantify how this might affect family well-being as described in factors included in the legislation, which include the effects of the action on the stability and safety of the family; parental authority and rights in the education, supervision, and nurture of their children; the ability of families to support their functions or substitute governmental activity for these functions; and on increases or decreases to disposable income.

[24] Pub. L. 105-277, 112 Stat. 2681 (1998).

By the National Credit Union Administration Board on June 22, 2023.

Melane Conyers-Ausbrooks

Secretary of the Board