



NATIONAL CREDIT UNION ADMINISTRATION

[NCUA-2023-0070]

Minority Depository Institution Preservation Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final interpretive ruling and policy statement.

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

DATES: The revised IRPS is effective [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

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.

SUPPLEMENTARY INFORMATION

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 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;

¹ Public Law 101-73, 103 Stat. 183 (1989).

² *Id.* Title III, sec. 308, 103 Stat. 353, *codified at* 12 U.S.C. 1463 note, “Preserving Minority Ownership of Minority Financial 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.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 (NCUA) and the Board of Governors of the Federal Reserve System, in addition to the FDIC and the Office of the Comptroller of the Currency 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 minority depository institutions.⁷

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

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 section 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 Public Law 111-203, 124 Stat. 1376 (2010); 12 U.S.C. 5301 *et seq.*

⁶ 12 U.S.C. 1463 note sec. (a).

⁷ *Id.* sec. (c).

⁸ 78 FR 46374 (July 31, 2013).

Preservation Program, administered by the agency's Office of Minority and Women Inclusion (OMWI).⁹ Consistent with the statutory language, IRPS 13-1 required that for designation as a minority depository institution, the majority of a credit union's members, the majority of its board, and the majority of the "community it services, as defined in its charter" must be eligible minorities. An eligible minority, under FIRREA section 308, is any Black American, Asian American, Hispanic American, or Native American.

The Board restructured the agency in 2018. Among other changes, the restructuring created the Office of Credit Union Resources and Expansion (CURE). At that time, CURE assumed administration of the NCUA's Minority Depository Institution Preservation Program from OMWI.

In June 2023, the Board invited comment on proposed revisions to IRPS 13-1.¹⁰ The proposed revisions included:

- Updating the administering office to CURE to reflect the agency's current structure;
- Clarifying that the meaning of "community it services," means a credit union's field of membership;
- Adding a reference to agency guidance to examiners regarding supervision of minority depository institutions;
- Clarifying the process for reviewing a minority depository institution's designation status; and
- Adding new subsection headings and expanding the discussion of agency actions and policies in the areas of minority depository institution engagement, technical assistance, examinations of minority depository institutions, grants and loans, and training.

⁹ 80 FR 36356 (June 24, 2015).

¹⁰ 88 FR 42105 (June 29, 2023).

The Board invited comment on all aspects of the IRPS, including suggestions for any other information or resources the agency could provide to assist credit unions that are minority depository institutions.

II. Summary of Comments on Proposed Changes to IRPS 13-1 and Final IRPS

The NCUA received five comments on the proposed changes. All commenters were broadly supportive of minority depository institutions and the NCUA's Minority Depository Institution Preservation Program. Commenters noted that minority depository institution credit unions provide important benefits to their communities, including by offering services to those excluded from the mainstream financial system, providing safe and affordable alternatives to predatory lenders, and stimulating economic growth in the communities they serve. Most of the commenters also had suggestions for changes to the IRPS and ways in which the NCUA can better support minority depository institutions. After considering the comments, as discussed below, the Board is adopting the IRPS substantially as proposed.

One commenter requested that the NCUA extend or reopen the comment period, stating that some stakeholders may have been unaware of the proposed IRPS due to current industry and economic challenges. The Board is not extending or reopening the comment period. The original IRPS includes outdated references and the Board provided the standard 60 days for comments under NCUA rulemaking procedures.¹¹ Further, the comments received represented input from a variety of interested parties. One letter, from a trade association focused on community development and minority depository institution credit unions, had 42 co-signers, including 38 individual minority depository institution credit unions, a national credit union trade association, a state credit union trade association, and groups representing minority depository institution credit unions and credit union professionals. Another national trade association, a trade association for state credit union regulators, and one state-level trade association also

¹¹ IRPS 87-2, as amended by IRPS 03-2 and IRPS 15-1, *available at* <https://ncua.gov/files/publications/irps/IRPS1987-2.pdf>.

submitted comments. Every commenter expressed support for the IRPS and the mission and purpose of minority depository institutions. Additionally, many minority depository institution credit unions are members of one or more of the associations that submitted comments.

Considering the broad representation of credit union industry perspectives among the commenters, the Board finds that the comment period was adequate to ensure that it received sufficient feedback on the proposal.

Another commenter requested that the NCUA amend the eligibility standards so that credit unions that meet as few as one of the three required criteria could become minority depository institutions, instead of the requirement in the existing and proposed IRPS that all three criteria be met. This commenter noted challenges in establishing that a majority of “the community it services” is made up of minorities. This change is not supported by the statute, which requires that a mutual institution meet all three standards to become a minority depository institution. The statute specifically requires that for a mutual institution to qualify as a minority depository institution, a majority of the board of directors, a majority of the account holders, and a majority of “the community which it services” are minorities.¹² The Board’s longstanding interpretation of the statutory requirement is that credit unions are subject to the requirements for mutual institutions.¹³

Similarly, another commenter requested an expansion of the minority depository institution criteria to include all credit unions that commit to minority depository institution principles, that have some minority depository institution characteristics, or that have a minority depository institution credit union merge into them. The Board reiterates that the statute establishes the requirements for minority depository institution designation and permitting differing eligibility requirements would not comply with the statute.

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

¹³ 80 FR 36356, 36357 (June 24, 2015).

Another commenter commended the NCUA for recognizing the uniqueness of minority depository institutions and the need for a tailored approach to examination and supervision of them. This commenter recommended that the NCUA increase efforts to promote and support the minority depository institution mentorship program and be proactive in providing more resources to minority depository institutions, such as regulatory updates, best practices, and opportunities for training. Through CURE, the NCUA communicates opportunities and resources to minority depository institution credit unions, such as through social media and direct email. The NCUA offered a Minority Depository Institution Mentoring Program from 2020–2022 in conjunction with the then Minority Depository Institution Mentoring grant initiative. Feedback from participating mentees and mentors was overall positive, yet there was not sufficient participation to sustain the program. The agency will continue to seek opportunities to support minority depository institution credit unions and increase their awareness of opportunities.

One commenter suggested the NCUA consider offering technical assistance funding support to very small minority depository institution credit unions and minority depository institution credit unions that are managing significant challenges, such as identified in their examination reports. The Board notes that for the first time during 2023 a minority depository institution could receive Community Development Revolving Loan Fund funding regardless of its low-income designation status. Such funding may be used for technical assistance in accordance with grant requirements. The NCUA’s Small Credit Union and Minority Depository Institution Support Program offers technical assistance to address challenges such as those identified in their examination reports. This assistance is provided at no additional cost to participating credit unions.

Another commenter opined that it would be helpful if the agency provided additional transparency around examination standards for minority depository institution credit unions and explained how these examination standards differ from standard procedures. While examination standards for MDIs and non-MDI credit unions are the same, the Board notes that the NCUA

provides guidance for examiners to consider the MDI's mission, unique characteristics, and tailored strategies during an examination. This same commenter suggested creating a group of examiners focused on small minority depository institution credit unions and extending regulatory flexibility to all small minority depository institution credit unions. These suggestions go beyond the scope of the proposed revisions to the IRPS and were provided to applicable NCUA offices to consider. During 2023, the NCUA developed peer metrics in order for examiners to compare minority depository institutions with minority depository institutions. The agency also issued customized guidance to examiners to provide insights into minority depository institutions' unique business models and members' needs. The guidance assists examiners in understanding minority depository institutions' distinct business model compared to other mainstream financial institutions by providing instruction on how to use minority depository institution peer metrics instead of traditional peer metrics.

Commenters also requested the NCUA provide resources to minority depository institution credit unions for specific purposes, such as travel support to enable participation in the NCUA's in-person events, access to an interactive analysis tool that would simplify the process of determining whether an area meets the concentration of facilities test, and additional information about how to track and store member demographic data for purposes of minority depository institution certification. These suggestions were provided to applicable NCUA offices to consider.

Finally, one commenter requested that the NCUA consider supporting the establishment of a fund similar to the Mission-Driven Bank Fund.¹⁴ This commenter also encouraged the NCUA to advocate for more inclusion of minority depository institution credit unions in opportunities provided by the Economic Opportunity Coalition. As the Economic Opportunity Coalition is established and funded by the private sector, the Board believes it is not appropriate

¹⁴ The Mission-Driven Bank Fund is an initiative of the Federal Deposit Insurance Corporation developed for FDIC-insured Minority Depository Institutions and Community Development Financial Institutions.

to take an advocacy role with respect to this organization. The NCUA is researching the feasibility of the establishment of a fund similar to the Mission-Driven Bank Fund and will inform stakeholders of the outcome of the research. It should be noted that the NCUA engages with other federal agencies to educate them about credit unions, ensure access to applicable resources, and to host webinars about resources they offer minority depository institutions. Examples include engagement with the Community Development Financial Institutions (CDFI) Fund concerning changes to the requirements for CDFI certification, and engagement with the U.S. Department of the Treasury to facilitate credit union access to the Emergency Capital Investment Program. The NCUA will continue to engage with other government entities to further support minority depository institution credit unions, consistent with its mission and statutory authorities.

In summary, the Board appreciates the various suggestions from commenters and, as noted above, will consider whether and how to implement some of the suggestions. The final paragraph of the IRPS also states that the NCUA's annual report to Congress will include a discussion of the feedback it has solicited and received from minority depository institution credit unions on the effectiveness of the agency's minority depository institution support and preservation activities. The Board believes that, should it determine to adopt some of the suggestions, further changes to the IRPS would not be necessary.

After carefully considering the alternatives offered by these commenters, the Board adopts the revisions to IRPS 13-1 as proposed, with a few minor grammatical and stylistic changes and one correction. The stylistic changes are that the final IRPS consistently uses the phrase "field of membership," (FOM) instead of the phrase "potential members" that the proposed IRPS had carried over from the prior version. This change makes the language of the entire IRPS consistent with the clarification that "community it services" means FOM.

Additionally, the proposed IRPS mischaracterized the agency's practice in stating that technical assistance is offered annually to each minority depository institution credit union, and

the final version of the IRPS deletes this sentence. The Board emphasizes that the change in the language of the IRPS does not change the availability of technical assistance resources for minority depository institution credit unions, including through the Community Development Revolving Loan Fund's grants and loans and through the Small Credit Union and Minority Depository Institution Support Program.

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 follows:

a. Goals and Objectives of the Minority Depository Institution Preservation Program

Minority depository institutions play an important and unique role in promoting the economic viability of minority and underserved communities. Through its Minority Depository Institution Preservation Program, the NCUA engages in a range of efforts to preserve minority depository institutions and foster their success. The Minority Depository Institution Preservation Program is designed to comply with section 308 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which requires the NCUA to submit an annual report to Congress summarizing its actions taken in furtherance of section 308's goals to:¹⁵

- Preserve the present number of minority depository institutions;
- Preserve the minority character of minority depository institutions involved in mergers and acquisitions;
- Provide technical assistance to prevent insolvency of minority depository institutions that are not now insolvent;
- Promote and encourage the creation of new minority depository institutions; and

¹⁵ Title III, sec. 308, Public Law 101–73, 103 Stat. 353 (1989), as amended by title III, sec. 367(4), Public Law 111–203, 124 Stat. 1556 (2010), *codified at* 12 U.S.C. 1463 note.

- Provide training, technical assistance, and educational programs for minority depository institutions.

b. Description of the Minority Depository Institution Preservation Program

The NCUA’s Minority Depository Institution Preservation Program consists of proactive steps and outreach efforts to promote and preserve minority depository institutions in the credit union system. The NCUA’s Office of Credit Union Resources and Expansion (CURE) administers the agency’s Minority Depository Institution Preservation 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 minority depository institutions.

The NCUA offers minority depository institution-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 programs;
- Trainings; and
- Grants and loans through the NCUA’s Community Development Revolving Loan Fund (CDRLF), subject to eligibility.¹⁶

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

- Providing guidance in resolving examination concerns;
- Helping minority depository institutions locate new sponsors, mentors, or merger partners;
- Assisting with field of membership expansions;
- Supporting management in setting up new programs and services;

¹⁶ 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 minority depository institutions. However, not all minority depository institutions have a low-income designation.

- Attempting to preserve the minority character of failing institutions during the resolution process; and
- Aiding groups that are interested in chartering a new minority depository institution.

Engagement with Minority Depository Institutions

The NCUA's Minority Depository Institution Preservation Program will provide periodic engagement with minority depository institutions 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 the NCUA, minority depository institutions, and related organizations;
- seeking feedback on the NCUA's efforts under the Minority Depository Institution Preservation 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 a minority depository institution designation and aiding existing credit unions interested in receiving the minority depository institution designation.

Technical Assistance

The NCUA will provide technical assistance to a minority depository institution upon request. A minority depository institution should contact its assigned NCUA regional office, supervisory examiner, or district examiner to request technical assistance.

Technical assistance is not an examination or supervisory activity and will be provided separately from examination 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), and assistance in designating as a minority depository institution. 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 or bid, agency staff will not assist or guide the institution in developing the substance of such application or bid.

Examinations of Minority Depository Institutions

Minority depository institution-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 will evaluate a minority depository institution using, among other things, peer metrics such as through the Financial Performance Report.

The NCUA provides examiners guidance to educate them about the unique challenges faced by minority depository institutions and the support and services the NCUA offers to help minority depository institutions address such challenges. The guidance acknowledges, at times, some minority depository institutions may need more or different support from the NCUA than other credit unions. The guidance also lists specific types of technical assistance a minority depository institution may request of the NCUA. It also advises that minority depository institutions 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 minority depository institutions may vary and comparison to other credit unions based solely on similar

size may have limited value. Instead, examiners are instructed to assess each minority depository institution based on its unique strategy and membership.

CDRLF Grants and Loans

The CDRLF provides loans and grants to low-income designated credit unions, some of which are also designated as minority depository institutions, to expand outreach to underserved populations, improve digital services and cybersecurity, provide staff training, and support capacity-building programs, as examples. The Consolidated Appropriations Act for fiscal year 2023 made minority depository institutions without the low-income designation eligible for CDRLF grants and loans through September 30, 2024.¹⁷

Training and Education

The NCUA offers training to credit unions including minority depository institutions, through various formats such as webinars, online courses, videos, and in-person events. Through the NCUA Learning Management System, the agency offers training and educational resources to credit union board members, management, 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.¹⁸

Preservation of Minority Depository Institutions

With regard to a potentially failing minority depository institution or the need for an assisted merger of a minority depository institution, as with any insured credit union, the Board will consider providing section 208 assistance under the Federal Credit Union Act 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.¹⁹ Requirements concerning field of membership apply to

¹⁷ Div. E, title V, Public Law 117-328, 136 Stat. 4690 (2022). Refer to the Grants and Loans section of the NCUA website for eligibility requirements in future periods.

¹⁸ These training opportunities are accessible to all credit unions through the Learning section of the NCUA's website.

¹⁹ 12 U.S.C. 1788(a)(1)–(2).

most mergers. In addition, the NCUA must consider resolution costs and safety and soundness implications for all mergers.

The NCUA will make every effort to preserve the minority character of failing minority depository institutions during the resolution process. In the event of the potential failure of an minority depository institution, the agency will contact minority depository institutions 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 minority depository institution and offer technical assistance to any minority depository institution desiring to bid. The NCUA will also provide minority depository institutions 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 minority depository institution'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 consider all the requirements applicable to a merger or purchase and assumption, including FIRREA's general preference guidelines.²⁰

c. Minority Depository Institution Designation Eligibility

The agency adopted the definition of a minority depository institution in FIRREA section 308 that applies to a mutual institution.²¹ Accordingly, a credit union is eligible to receive the minority depository institution 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

²⁰ Generally, the NCUA is involved in the selection process when the transaction will cause a loss to the NCUSIF 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*.

²¹ 12 U.S.C. 1463 note sec. (b)(1)(C).

- 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.²²

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 minority depository institution definition, an individual 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-designate as a minority depository institution by following the guidelines as specified on the NCUA’s website. The instructions to the NCUA’s *Credit Union Profile* form, which credit unions use to self-designate as a minority depository institution, contain detailed directions on how to make the designation.²³ A minority depository institution may participate in the NCUA’s Minority Depository Institution Preservation Program subject to the eligibility requirements of any specific initiative. An eligible credit union’s decision to designate as a minority depository institution or to participate in the Minority Depository Institution Preservation Program is voluntary.

A credit union defined as a “small credit union” by the NCUA under the Regulatory Flexibility Act (RFA) may self-designate greater than 50 percent representation among its current members, and within the community it services (field of membership), 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.²⁴

²² *Id.*

²³ NCUA Form 4501A, <https://ncua.gov/files/publications/regulations/credit-union-profile-form-instructions-4501A-sept-2022.pdf>.

²⁴ 80 FR 57512 (Sept. 24, 2015).

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 minority depository institution self-designation.

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 membership or field of 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 field of membership) will consist of minorities.²⁵

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 be retained in the members’ files or with any personal identifiers, such as, names, accounts, or Social

²⁵ HMDA data can be obtained from the Federal Financial Institutions Examination Council website.

Security numbers. If a majority of its current members are minorities, it is likely the majority of the community the credit union services (its field of membership) 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.

A minority depository institution credit union must assess whether it continues to meet the required definition of a minority depository institution whenever there is a change in its board of directors, or it makes a significant change to 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-designation in the *Credit Union Profile*. A minority depository institution may elect to withdraw its designation by not completing the relevant questions in the *Credit Union Profile*.

d. Monitoring and Reporting on Minority Depository Institutions

The NCUA will monitor minority depository institutions and report to Congress annually on the number and overall financial condition of minority depository institutions, along with actions taken by the agency to preserve and strengthen them and to encourage the chartering of new ones.²⁶ The report will also summarize the NCUA's efforts to obtain feedback from minority depository institutions on the effectiveness of the agency's minority depository institution support and preservation activities. Additionally, the NCUA maintains a list of minority depository institutions on its website.

IV. Regulatory Procedures

Regulatory Flexibility Act

The RFA generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the

²⁶ 12 U.S.C. 1463 note sec. (c).

Federal Register. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.²⁷ 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 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 changes during the development of the revised IRPS. The revised IRPS would clarify the NCUA's current policy on minority depository institution preservation and provide additional services to minority depository institutions. The revised IRPS would not impose any new significant burden on credit unions designated as minority depository institutions 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 minority depository institution program. Accordingly, the NCUA certifies that the revised IRPS would not have a significant economic impact on a substantial number of small federally insured credit unions.

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.²⁸ 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

²⁷ See 80 FR 57512 (Sept. 24, 2015).

²⁸ 44 U.S.C. 3507(d); 5 CFR part 1320.

collection requirements for the minority depository institution policy are approved under OMB control number 3133-0195, Minority Depository Institution Preservation Program.

This revision to IRPS 13-1 does 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 revisions. There are no additional information collections resulting from these 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 distribution of power and responsibilities among the various levels of government. Although state-chartered credit unions are eligible to obtain the minority depository institution designation and receive assistance based on it, the NCUA does not believe this designation 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 revised IRPS to alter these relationships or allocation of responsibilities. The decision about whether to designate as a minority depository institution or seek minority depository institution 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 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,

1999.²⁹ The revisions to IRPS 13-1 may increase the ability of minority depository institutions 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 increases or decreases to disposable income.

Small Business Regulatory Enforcement Fairness Act—Congressional Review Act

The Congressional Review chapter of the Small Business Regulatory Enforcement Fairness Act of 1996 generally provides for congressional review of agency rules.³⁰ A reporting requirement is triggered in instances where the NCUA issues a final rule as defined in the Administrative Procedure Act.³¹ Besides being subject to congressional oversight, an agency rule may also be subject to a delayed effective date if it is a “major rule.” The NCUA does not believe this revised IRPS is a “major rule” within the meaning of the relevant sections of the statute. As required by the statute, the NCUA will submit this final IRPS to OMB for it to determine if this final IRPS is a “major rule” for purposes of the statute. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

By the National Credit Union Administration Board on February 15, 2024.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2024-03603 Filed: 2/23/2024 8:45 am; Publication Date: 2/26/2024]

²⁹ Public Law 105-277, 112 Stat. 2681 (1998).

³⁰ 5 U.S.C. 551.

³¹ *Id.*