November 15, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: November 20, 2019, "An Examination of Regulators' Efforts to Preserve and Promote Minority Depository Institutions"

The Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled, "An Examination of Regulators' Efforts to Preserve and Promote Minority Depository Institutions," at 10:00 a.m. on Wednesday, November 20 at 10:00 AM, in room 2128 of the Rayburn House Office Building. This will be a single-panel hearing with the following witnesses:

- **Beverly Cole**, Deputy Comptroller for the Northeastern District and Designated Federal Officer (DFO) for the Minority Depository Institutions Advisory Committee (MDIAC), Office of the Comptroller of the Currency (OCC)
- **Betty Rudolph**, National Director for MDIs and CDFIs, Federal Deposit Insurance Corporation (FDIC)
- **Arthur W. Lindo**, Deputy Director, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System (Federal Reserve or Fed)
- **Martha Ninichuk**, Director of the Office of Credit Union Resources and Expansion, National Credit Union Administration (NCUA)

Overview

On October 22, 2019, the Subcommittee on Consumer Protection and Financial Institutions held the first of two hearings focused on minority depository institutions (MDIs).[1] Members engaged a panel of witnesses, including a diverse mix of MDIs, on the unique challenges faced by these institutions and the communities they serve. These firms are overwhelmingly small, concentrated in low-income communities, and often struggle to compete with larger institutions. As a result, the communities they serve are disproportionately under-served, under-banked, and lack adequate access to personal and small business loan products, reinforcing a cycle of financial exclusion and poverty. This second hearing will focus on the prudential regulators that oversee MDIs, allowing the Subcommittee to assess whether or not they are achieving statutory goals Congress established in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) to preserve and promote MDIs.

[1] Subcommittee on Consumer Protection and Financial Institutions hearing entitled, "An Examination of the Decline of Minority Depository Institutions and the Impact on Underserved Communities," Oct. 22, 2019, https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404486.

Minority-Owned Banks and Credit Unions

Section 308 of FIRREA establishes several goals that prudential regulators: preserve the present number of minority depository institutions; preserve the minority character in cases of merger or acquisition; provide technical assistance to prevent insolvency of institutions not now insolvent; promote and encourage creation of new minority depository institutions; and provide for training, technical assistance, and educational programs.[2] Section 367 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) requires the Secretary of the Treasury and the prudential regulators to each submit annual reports describing actions taken to carry out Section 308 of FIRREA.

The FDIC Policy Statement Regarding Minority Depository Institutions defines MDIs as "any Federally insured depository institution where 51 percent or more of the voting stock is owned by minority individuals" or any such institution where "a majority of the Board of Directors is minority and the community that the institution serves is predominantly minority."[3] The terms "minority" means any "Black American, Asian American, Hispanic American, or Native American."[4]

The composition of MDIs has changed dramatically over the past two decades, with a notable near-disappearance of African-American MDIs over this period, as illustrated in Figures 1 and 2 in the appendix. MDI banks peaked in terms of number of institutions in 2008, at 215 institutions.[5] However, following the financial crisis and the disproportionate impact of the housing crisis and recession on minority communities, the number of MDI banks fell more than 30% over the following decade, to 148 as of the second quarter of 2019.[6] According to the FDIC, MDI banks were 2.5 times more likely to fail than all other banks, with most of the failures happening during the crisis, or immediately thereafter. On November 1, 2019, another MDI was closed when the deposits and branches of City National Bank of New Jersey were acquired by Industrial Bank.[7] Meanwhile, MDI credit unions have seen similar declines, with more than one-third of such institutions disappearing since 2013.[8]

Today, MDIs represent 2.8% of FDIC insured banking charters, 1.3% of assets, and 1.7% of banking offices.[9] By comparison, MDI credit unions represent a 10% of all federally insured credit unions, although they tend to be smaller than their peers, with 87% of MDI credit unions

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[2] FDIC, Policy Statement Regarding Minority Depository Institutions, available at https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso

[3] FDIC, https://www.fdic.gov/regulations/laws/rules/5000-2600.html#fdic5000policyso

[4] *Id*

[5] FDIC, "2019 Minority Depository Institutions: Structure, Performance, and Social Impact", 2019, available at https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf

[6] Of the 148 MDI banks as of the second quarter of 2019, there were 19 African American-owned banks, 26 Hispanic American-owned banks, 62 Asian/Pacific Islander American-owned banks, 19 Native American/Alaskan Native American-owned banks, 3 MDIs with a minority board that serve African-American communities, 9 MDIs with a minority board that serve Hispanic communities, and 10 MDIs with a minority board that serve Asian/Pacific Islander communities. See https://www.fdic.gov/regulations/resources/minority/mdi.html

[7] FDIC, Industrial Bank Assumes All of the Deposits of City National Bank of New Jersey, Nov. 1, 2019, https://www.fdic.gov/news/news/press/2019/pr19101.html.

[8] As of December 2018, there were 529 MDI credit unions, which compares to 805 such firms as of June 2013. See NCUA, Minority Depository Institutions Annual Report to Congress, 2013 and 2018.

[9] *Supra* note 5.

reporting total assets of $100 million or less.[10] What's more, MDI credit unions "underperformed in all growth categories – including assets, membership, shares, loans, and net worth – compared to low-income credit unions, small credit unions, and federally insured credit unions overall."[11]

Prudential Regulator Initiatives to Preserve and Promote MDIs

In seeking to achieve the statutory goals to preserve and protect MDIs outlined in Section 308 of FIRREA, each of the prudential regulators has implemented programs to address the unique circumstances faced by the MDIs they examine. In addition to the agency-specific programs/initiatives outlined below, the Fed, OCC and FDIC are also giving consideration for MDIs in the ongoing Community Reinvestment Act (CRA) modernization negotiations.[12]

- **FDIC:** the FDIC is the primary supervisor of 97 MDIs.[13] The FDIC has created a full-time position to lead MDI initiatives across the Corporation.
    - In 2019, the FDIC established a new MDIs Subcommittee of the Community Banking Advisory Committee to "both highlight the MDIs' efforts in their communities and to provide a platform for MDIs to exchange best practices."[14]
    - The FDIC published "2019 Minority Depository Institutions - Structure, Performance, and Social Impact",[15] a comprehensive report outlining detailed findings of a five-year research study on MDIs.
    - In June 2019, the FDIC began inviting MDIs to participate in regional roundtables with larger depository institutions also supervised by the FDIC, to "share expertise and to promote possible collaborative opportunities, including direct investments and deposits in MDIs."[16] The Federal Reserve is expected to begin participating in these roundtables going forward, offering their MDIs an opportunity to participate as well.
    - The FDIC is implementing a host of new processes and procedures to support minority groups in both the establishment of *de novo* banks, as well as being more competitive in bidding on institutions put into receivership. Specifically, to support minority groups in creating new banks, the FDIC has updated its *de novo* handbook, and invites interested groups to participate in roundtables to better understand what to expect when creating a new bank. For minority groups interested in bidding on MDIs that are put into receivership, the FDIC has implemented new systems and procedures that better prepare these groups for the bidding process and accessing data rooms, and allows them two weeks of due diligence of the failing institution before it is opened to the broader community.[17]

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[10] NCUA, "2018 Minority Depository Institutions Annual Report to Congress" available at https://www.ncua.gov/files/publications/2018-mdi-congressional-report.pdf

[11] *Id*

[12] For example, see ABA Banking Journal, "McWilliams Outlines FDIC Steps to Strengthen Minority Banks," Oct. 2, 2019, https://bankingjournal.aba.com/2019/10/mcwilliams-outlines-fdic-steps-to-strengthen-minority-banks/

[13] As of second quarter 2019, https://www.fdic.gov/regulations/resources/minority/mdi.html.

[14] https://www.fdic.gov/regulations/resources/minority/

[15] FDIC, "2019 Minority Depository Institutions: Structure, Performance, and Social Impact", 2019, available at https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf

[16] https://www.fdic.gov/regulations/resources/minority/

[17] Remarks by FDIC Chairman Jelena McWilliams to the National Bankers Association 92nd Annual Convention; Washington, D.C., Oct. 2, 2019, https://www.fdic.gov/news/news/speeches/spoct0219.html

  - The FDIC established FDiTech, an initiative which will allow the agency to engage with banks, technology service providers, and other stakeholders interested in new innovations intended to enhance the operations of financial institutions. This initiative will also allow the FDIC to consider new regulatory approaches to supervision. Among the planned priorities of FDiTech will be to work with MDIs on technology adoption and integration.[18]

- **OCC:** the OCC is the primary supervisor of 36 MDIs.[19] The OCC's Minority Depository Institutions Program is housed in the OCC's midsize and community bank line of business. This program incorporates supervision, and has access to senior leadership, policy, legal and human resources expertise from across the organization.[20]
  - The OCC MDI Advisory Committee "includes officers and directors of minority depository institutions and other depository institutions committed to supporting minority depository institutions of all types, sizes, operating strategies, and geographic areas."[21] The Advisory Committee serves as a feedback channel for OCC initiatives to provide technical assistance, training, and other activities to build partnerships between MDIs and large and midsized banks.
  - In 2016, the OCC began inviting local MDIs to participate in dedicated sessions with OCC's regional midsize banks, to allow MDIs and midsized banks operating in overlapping markets to build relationships, and develop partnerships including deposit support, transactions, fintech, technical assistance, and even equity investments.
  - The OCC regularly hosts regional collaboration workshops with OCC experts and MDI CEOs, senior technical experts, and outside board members. The selection of all three invitees aims to ensure senior management buy-in, participation by technical operations staff, and the board. These full-day seminars may include individual institution follow-up during which examiners (who may not be the MDI's examiners) spend time on-site to offer additional support and follow-up guidance.
  - The OCC facilitates technical assistance for MDI leadership on a number of topics including: Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance, strategic planning, technology integration, and bank examinations.[22]

- **Federal Reserve:** the Fed is the primary supervisor of 15 MDIs.[23] The Fed established the Partnership for Progress, a dedicated program "to preserve and promote minority-owned institutions and enhance their ability to thrive in an increasingly competitive banking environment."[24]

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[18] FDIC, "2018 Annual Report", February2019, https://www.fdic.gov/about/strategic/report/2018annualreport/2018ar-final.pdf
[19] As of second quarter 2019, https://www.fdic.gov/regulations/resources/minority/mdi.html.
[20] https://www.occ.treas.gov/topics/supervision-and-examination/bank-management/minority-depository-institutions/index-minority-depository-institutions.html
[21] https://www.occ.treas.gov/topics/supervision-and-examination/bank-management/minority-depository-institutions/minority-depository-institutions-advisory-committee.html
[22] OCC, "2018 Annual Report", November 2018, https://www.occ.gov/annual-report/download-the-full-report/2018-annual-report.pdf
[23] As of second quarter 2019, https://www.fdic.gov/regulations/resources/minority/mdi.html. Also see https://www.federalreserve.gov/publications/preserving-minority-depository-institutions.htm.
[24] https://fedpartnership.gov/

- The Fed seeks to leverage its core strength in research and prominence to publish in-depth research on MDIs and minority communities, as well as advocating for the role of MDIs. Given the relatively small number of MDIs under Fed supervision, the Fed relies in part on partnerships with other agencies to offer a platform for its MDIs to network with, and partner with other MDIs and depository institutions.
- Fed district coordinators are the primary point of contact for MDIs.
- The Fed does not have an MDIs Advisory Board or Committee. Starting in 2018, the Fed began inviting leadership from its State-Member MDIs to participate in an MDI Leaders Forum in Washington every two years. The meeting connects MDIs with each other and Fed staff, provides targeted technical assistance, and provides a forum for them to interact directly with Federal Reserve Governors (to express their views on the opportunities and challenges facing MDIs).[25]

- **NCUA:** the NCUA counts approximately 520 MDI credit unions, though the total number may be a bit higher as some minority credit unions are believed to not have self-designated. Despite the seemingly large number, minority credit unions are among the smallest category of credit unions, with 87% having less than $100 million in assets, and 58% having less than $10 million.[26]
  - The NCUA has a low-income designation (LID) for credit unions where more than 50% of the members are low income.[27] The LID confers certain benefits to credit unions, including accepting non-member deposits from any source, offering secondary capital accounts, exemption from the aggregate loan limit for member business loans, and eligibility for certain technical assistance grants and low-interest loans. Eighty percent of minority credit unions have a LID.
  - The NCUA is piloting an MDIs mentorship grant for credit unions under $100 million. Reimbursable grants of up to $25,000 will allow the credit union to pay for technical assistance from larger credit unions, including human resource development, systems and knowledge transfers, and other initiatives.
  - Five-year, low interest (1.5%) loans allow low-income credit unions to borrow up to $500,000 for capex investments, including for technology acquisition and new location expansions focused on under-served, low income communities.
  - The NCUA has implemented a streamlined process to allow low-income designated credit unions that qualify to apply for CDFI designation. This has increased the number of CDFI credit unions and allowed a growing number of credit unions to participate in CDFI Fund programs.
  - While the NCUA does not have an MDI Advisory Board, it implemented a series of conference calls with MDIs in 2019. The NCUA's MDIs office, Credit Union Resources and Expansion, was newly established in 2018. Historically, the NCUA has put a greater emphasis on low-income credit unions, many of which are also minority institutions.[28]

[25] Federal Reserve, "2018 Annual Report", June 2019, https://www.federalreserve.gov/publications/files/2018-annual-report.pdf
[26] https://www.ncua.gov/support-services/credit-union-resources-expansion/resources/minority-depository-institution-preservation
[27] https://www.ncua.gov/files/publications/resources-expansion/LowIncomeDesignationFactSheet.pdf
[28] National Credit Union Administration, "2018 Annual Report", March 2019, https://www.ncua.gov/files/annual-reports/annual-report-2018.pdf

Appendix

Figure 1. Number of MDI Bank Charters – 2001 to 2018[29]

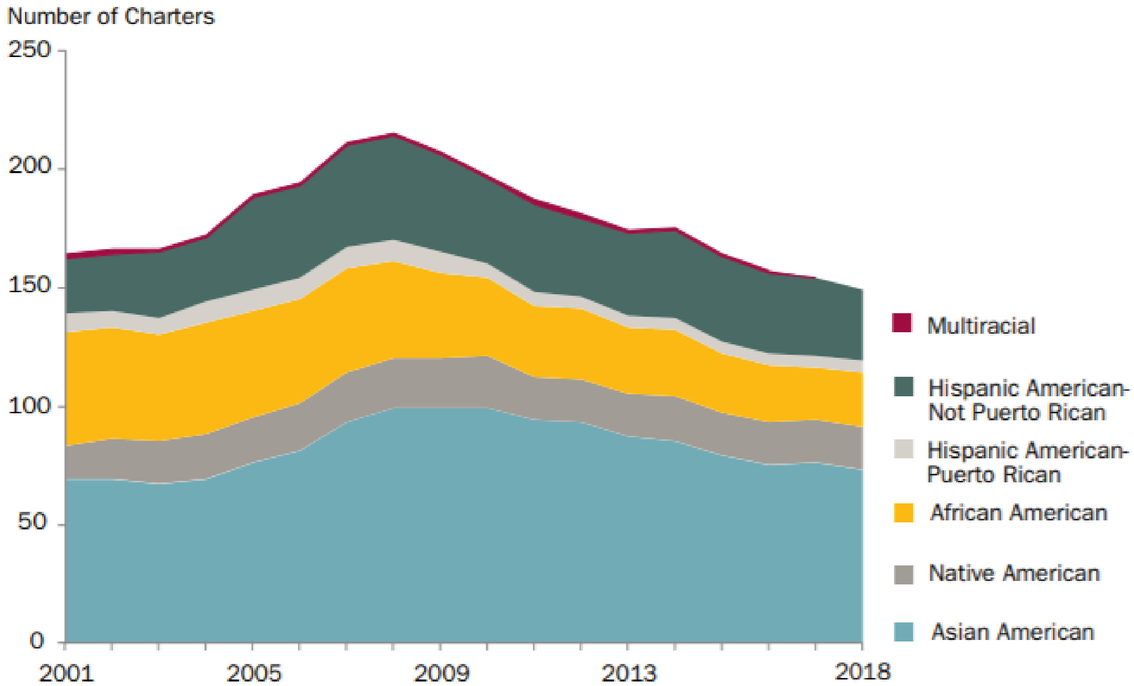
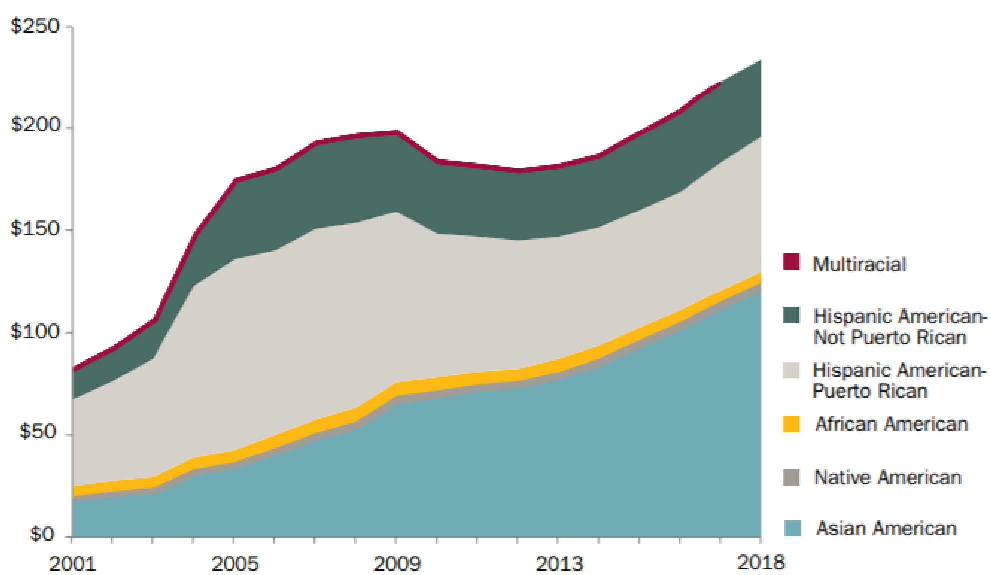


Figure 2. MDI Bank Assets ($billion) – 2001 to 2018[30]



[29] FDIC, "2019 Minority Depository Institutions: Structure, Performance, and Social Impact", 2019, available at https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.
[30] *Id*