

Mutual Alert



NCUA Proposes Alternative Capital Items for Credit Unions: AMB Urges Caution in Mutual Institutions Joining Bank Opposition

The NCUA has proposed allowing alternative capital for credit unions which has elicited staunch opposition from the ABA. In the advance notice of proposed rulemaking which can be found at <https://www.gpo.gov/fdsys/pkg/FR-2017-02-08/pdf/2017-01713.pdf>, the NCUA describes the basis for its belief that it has the latitude to include items for purpose of meeting the risk based capital requirement that would not meet the statutory definition of “net worth”. It says:

While the Act defined the term “net worth,” it did not define the risk-based net worth requirement, nor how to calculate any corresponding risk-based ratio. In contrast to the narrow definition of net worth, the lack of a statutory prescription for the risk-based net worth requirement gives the Board the latitude to include within that requirement items that would not meet the statutory definition of “net worth” but otherwise serve as capital in protecting the Share Insurance Fund from losses when a credit union fails. Given the statutory objective of prompt corrective action “to resolve the problems of insured credit unions at the least possible long-term loss” to the Share Insurance Fund, the Board believes it should explore expanded options for credit unions to build capital beyond retained earnings.

However, it notes the fundamental constraint on credit unions issuing any instruments other than debt instruments. Even here, it leaves the door open for alternative instruments such as mutual investment certificates that Canadian credit unions have been issuing and some US state chartered credit unions have employed. In the preamble it states:

Other than as a form of debt, there is no other explicit authority in the Act for federal credit unions to issue an instrument that is uninsured and could be structured as loss absorbing capital. As a result, the Board believes only the borrowing authority is available for federal credit unions to issue supplemental capital. This means that federal credit unions could only issue supplemental capital as subordinated debt. *However, the Board invites commenters to identify any other provisions of the Act they believe could provide alternative authority for federal credit*

unions to issue supplemental capital instruments other than as subordinated debt.(emphasis supplied)

While mutual FDIC insured institutions are often subjected to unfair tax advantaged competition by credit unions, we urge caution in reacting to this proposal. Mutual banks should not be on record as opposing alternative capital instruments for mutual organizations. We are very concerned that not only will the banking industry reaction be ineffective as it has so many times before in halting the expansion of credit unions but irreparably harm the efforts of mutual banks to preserve their own place in the industry by drawing a redline across the path to accessing the capital markets and stifling the growth of mutual banks. We are making progress in obtaining capital relief for mutual banks but that progress should not be sacrificed for the cause of preventing credit union expansion.