



July 8, 2020

Mr. Gerard Poliquin  
Secretary of the Board  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314

**Re: Subordinated Debt; RIN 3133–AF08**

Dear Mr. Poliquin,

The Ohio Credit Union League (OCUL) represents the collective interests of Ohio’s 257 credit unions and their more than three million members. Of those 257 credit unions, 141 are federally-chartered; 69 state-chartered, federally-insured; and, 47 state-chartered, privately-insured.

On behalf of Ohio’s credit unions, we are writing in support of the National Credit Union Administration’s (NCUA) notice of proposed rulemaking on subordinated debt. OCUL supports the authority of credit unions to build additional capital, either from members or nonmembers, in a way that does not dilute their cooperative ownership and governance structure. Now more than ever, at a time when low-income designated credit unions (LICUs), complex credit unions, and new credit unions are at risk of being undercapitalized due to the stress put on our economy, the ability to access additional capital could be crucial.

Such additional capital should be subordinate to credit unions’ share insurance funds. Credit unions must have the financial base to offer member services and adjust to fluctuating economic conditions. OCUL has long supported credit unions’ ability to utilize supplemental capital (such as subordinated debt) as an important tool, allowing them to supplement the only current source of capital they have, which is retained earnings.

Aside from the business and economic imperatives of providing credit unions with a means to access alternative capital, OCUL supports the NCUA’s and Credit Union National Association’s (CUNA) shared position that the NCUA has the authority under FCUA to authorize the proposed rule. Likewise, the FCUA grants federal credit unions the ability to borrow through various mechanisms, including through the issuance of subordinated debt.

As CUNA has correctly pointed out in its July 2, 2020 Comment Letter to the NCUA, the *Chevron* decision clearly grants government agencies discretion to create and change rules in order to enforce the nation’s laws in the absence of specific direction by Congress. Contrary to the arguments that cite Congressional intent as a reason to halt this rulemaking, Congress intended for credit unions to be able to borrow, including through subordinated debt, in order to meet their capital requirements.<sup>1</sup> Even if Congress was ambiguous with its language, the NCUA’s interpretation, as a federal agency, should be granted deference under the *Chevron* doctrine of the Supreme Court.<sup>2</sup>

Additionally, we support the NCUA’s promulgation of anti-fraud requirements for the issuance of securities with respect to subordinated debt. However, although we appreciate the value of the anti-fraud prohibitions included in Rule 10b-5, we caution against any additional requirements that are duplicative of those found in applicable securities laws. In these instances, we encourage the NCUA to adopt requirements laid out in established sources, such as the Securities Exchange Act of 1934.

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<sup>1</sup> 12 U.S.C. § 1757(9).

<sup>2</sup> *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).



Finally, OCUL joins CUNA in recommending that the NCUA reconsider its proposed blanket prohibition on a credit union both issuing and investing in subordinated debt. If the NCUA believes a restriction in this area is appropriate, we ask the agency to consider a threshold limit on a credit union's ability to issue and invest in subordinated debt rather than a blanket prohibition. We also support the position that, rather than implementing a one-year timeframe before rescinding approval of a credit union to issue subordinated debt, there should be a standard that would allow the NCUA to rescind its authority after a one-year period only if it determines the financial condition of the credit union has in fact experienced a materially adverse change.

OCUL thanks the NCUA for its proposed rulemaking with respect to subordinated debt. Access to alternative forms of capital is crucial to the long-term success of credit unions. Credit unions are better able to fulfill their mission and serve their communities if they are well-capitalized, and this rule will advance opportunities for alternative forms of capital generation. We appreciate your invitation to comment on this important issue. If you have further questions or would like to discuss OCUL's comments in more detail, please feel free to contact us at (800) 486-2917.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul L. Mercer".

Paul L. Mercer  
President

A handwritten signature in black ink, appearing to read "Chris Noble".

Chris Noble  
Regulatory Counsel