

BOARD ACTION MEMORANDUM

TO: NCUA Board **DATE:** January 18, 2017
FROM: Office of General Counsel **SUBJ:** ANPR
Office of Examination and Insurance Alternative Capital

ACTION REQUESTED: NCUA Board approval to publish the attached Advanced Notice of Proposed Rulemaking (ANPR) in the *Federal Register* with a 90-day comment period.

DATE ACTION REQUESTED: January 19, 2017

OTHER OFFICES CONSULTED: None

VIEWS OF OTHER OFFICES CONSULTED: N/A

BUDGET IMPACT, IF ANY: None.

SUBMITTED TO INSPECTOR GENERAL FOR REVIEW: Yes

RESPONSIBLE STAFF MEMBERS: Larry Fazio, Director Office of Examination and Insurance; Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance; and Justin Anderson, Senior Staff Attorney, Office of General Counsel.

SUMMARY: As discussed during the October 2016 Board meeting, NCUA is issuing this advanced notice of proposed rulemaking (ANPR) to solicit comments on alternative forms of capital federally insured credit unions could use in meeting capital standards required by statute and regulation. For purposes of this ANPR, alternative capital includes two different categories: secondary capital and supplemental capital. Secondary capital is currently permissible under the Federal Credit Union Act (Act) only for low-income designated credit unions to issue and to be counted toward both the net worth ratio and the risk-based net worth requirement of NCUA's prompt corrective action standards. The Board is considering changes to the secondary capital regulation for low-income designated credit unions. There are no other forms of alternative capital currently authorized. However, the Board is also considering whether or not to authorize credit unions to issue supplemental capital instruments that would only count towards the risk-based net worth requirement.

This ANPR provides relevant background information and seeks comment on a broad range of considerations with respect to alternative capital for federally insured credit unions. This ANPR addresses topics including: (1) NCUA's authority to include alternative capital for prompt corrective action purposes; (2) credit unions' authority to issue alternative forms of capital; (3) prudential standards regarding the extent to which various forms of instruments would qualify as capital for prompt corrective action purposes and credit union eligibility for the sale of alternative capital; (4) the utility and suitability of supplemental capital for credit unions; (5)

standards for investor protection, including disclosure requirements and investor eligibility criteria for the purchase of alternative capital; (6) implications of securities law for supplemental and secondary capital; (7) potential implications for credit unions, including the credit union tax exemption; and (8) overall regulatory changes the Board would need to make to permit supplemental capital, improve secondary capital standards, and provide or modify related supporting authorities. The Board has posed a number of specific questions on these and other topics, but invites comments on any and all aspects of alternative capital.

RECOMMENDED ACTION: NCUA Board issue the attached ANPR for public comment.

ATTACHMENT: Advanced notice of proposed rulemaking.