



AMERICA'S MUTUAL BANKS

October 23, 2025

VIA USPS:

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218,
Washington, DC 20219

Ann E. Misback, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Jennifer M. Jones, Deputy Executive Secretary
Attention: Comments - EGRPRA
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

**Re: Regulatory Publication and Review Under the Economic Growth and
Regulatory Paperwork Reduction Act of 1996:
Federal Reserve Docket No. OP-1828;
RIN 3064-ZA39;
Docket ID OCC-2023-0016**

Dear Sir or Madam:

As part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (hereinafter collectively referred to as the "Agencies") are reviewing Agency regulations to identify outdated or otherwise unnecessary regulatory requirements on insured depository institutions and their holding companies. The Agencies divided their regulations into twelve categories. Over a two-year period, the Agencies are publishing four Federal Register documents that request comment on multiple categories. This letter responds to the fourth request for comments from the Agencies and concerns the following three categories of banking regulations: Banking Operations, Capital and the Community Reinvestment Act.

The EGRPRA Review Process

America's Mutual Banks commends the banking agencies for innovating multiple channels to gather input from community bankers. We believe the virtual outreach meetings scheduled in the past are valuable channels to ensure that all community banks have an opportunity to express their opinions regarding the heavy burden they face from regulation. We encourage the agencies to divide their consideration between community and money center banks in organizing these sessions. We further urge the agencies to apply the principles of tailoring to the capital requirements to mutual banks.

EGRPRA requires the Federal Financial Institutions Examination Council and the Agencies to review their regulations every ten years to identify any outdated or otherwise unnecessary regulatory requirements for their supervised institutions. This is the fourth iteration of the EGRPRA review--the first two completed their reviews in 2006 and 2016 and also took two years to complete. This letter will focus on capital requirements for mutuals exclusively since we believe they dwarf the importance of other regulations applying to mutual associations and banks.

Mutual banks have no owners other than the inchoate rights of members to share in a surplus in the unlikely event of liquidation. A mutual cannot be bought or sold. Because they have no capital stock their ability to conform to capital requirements designed to apply to stock banks puts them at a competitive disadvantage.

As we noted in previous letters to the Agencies, the inception of new capital regulations following Dodd-Frank were designed to curb the practices of multinational banks and reduce international systemic risk. With the notable exception of the Community Bank Leverage Ratio ("CBLR") there has been little substantive regulatory relief for mutual banks with respect to capital requirements. This is partly due to elimination of a single federal thrift regulator and the deconstruction of the regulatory system devoted to that industry. The post Dodd-Frank failure to recognize traditional mutual capital instruments as capital, conversion to stock and resulting acquisitions of former mutual banks in a short time after conversion together with the practical elimination of de novo mutual bank applications are symptoms of the underlying problem. That is, the impact of inflexible burdensome capital requirements on mutual banks is causing a decline in the number of mutual banks and a stunting of their growth as compared with stock competitors. Some believe this presents an existential threat to their continued viability. If it is so, it will be to the detriment of the communities that depend on them. With no expectation of more than a token number of new mutuals the decline in the number of mutuals is inevitable.

AMB believes the number of regulations both on a federal and state level which require revision are too many to count. Reconciling, conflicting regulations applying to mutuals on a federal intra- mutual basis is a great challenge. Reconciling conflicting and inadequate policies with respect to mutual capital requirements may be even more challenging. As stated above, we believe it is too great for a routine EGRPRA review AMB welcomes the efforts of Federal Reserve Board Vice Chairman for Supervision, Bowman to tackle this task and applauds her

leadership. AMB believes this effort is greater than contemplated by a routine EGRPRA review and deserves a more significant dedication of agency resources.

Rather than a textual narrative of the various issues, we have chosen to format the remainder of our specific comments in the form of Answers to the specific Questions contained in the proposal as attachment A.

Respectfully,



Douglas Faucette
Washington Director
America's Mutual Banks

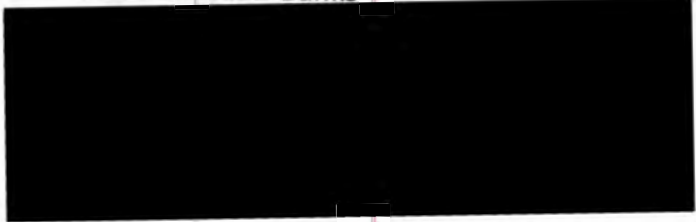


EXHIBIT A

- *Question 1:* Have there been changes in the financial services industry, consumer behavior, or other circumstances that cause any regulations in these categories to be outdated, unnecessary, or unduly burdensome? If so, please identify the (printed page 35244) regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.
 - Historical mutual loss experience does not justify requirements designed for systemic money center banks. Regulations regarding capital requirements and alternative capital instruments applying to mutuals are obsolete, contradictory, burdensome and in some cases, no longer supported by agency forms or guidelines. See 12 CFR 163.74 (Terms of Mutual Capital Certificates ("MCCs")) and 167.5(b)(1)(ii) (MCCs eligible for Tier 2 capital), compared with Appendix A to 12 CFR Part 225, FRB Capital Adequacy Guidelines pertaining to perpetual preferred stock as Tier I capital; See also: Sections 6.2-1132 Va code and Section 54C-146 NC Code, (MCCs as core capital); OCC Bulletin 2014-35 July 22, 2014 (describing MCCs as debt); Section 104A(d)(5)(B) Emergency Capital Investment Program, authority for eligible capital instruments vs the TARP Capital Purchase Program (conflicting treatment of subordinated debt as Tier 1 capital; 12 CFR 167.5 (pledged accounts as core capital); and the small bank holding company consolidated capital exemption(allowing bank holding companies with under \$3 billion in assets to downstream proceeds of sub debt as tier I capital.
- Also, 12CFR Part 239, Reg MM governing mutual holding companies ("MHC") presents a bar to a MHC issuing minority stock without Federal Reserve Board ("FRB") approval. See 12 CFR 239.1(c). Under that regulation any such issuance must comply with the subscription and valuation requirements of the rules unless the FRB grants a waiver for good cause. The recent FRB proposed guidelines preapproving charter amendments to MHC charters granting authority to issue MCCs at the MHC level should be followed by the other banking agencies.
- The greatest burden to a MHC raising capital is the practical difficulty in waiving dividends. MHCs thrived prior to the statutory imposition of dividend waiver requirements by Congress. While Congress prohibited waiver, the FRB requirement for a proxy approval of a dividend waiver for grandfathered MHCs (MHCs reorganized prior to December 1, 2009) is costly, unnecessary and burdensome. See 12 CFR 239.8(d). Ironically, Reg MM and its voluminous requirements do not apply to mutual savings banks reorganizing to a MHC under state law. This is a Congressional inconsistency that is difficult to reconcile and hardly needs to be compounded by additional non- statutory provisions of Reg MM.
- On a quantitative basis in November 2019, the agencies implemented section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) to adopt the Community Bank Leverage Ratio. Under this rule, banking organizations with less than \$10 billion in total consolidated assets that meet the qualifying criteria, including maintaining leverage ratio greater than nine percent, may elect to use the simplified community bank leverage ratio framework. This was a significant lessening of the burden in analyzing complex capital requirements for small banks. AMB believes experience with the requirement argues for lowering the range of capital to between 6%-8% rather

than the current 8% to 10%. See H.R. 5276 ("THE LIFT ACT") a Bill which passed the House Financial Services Committee.

- **Question 2:** Do any of these regulations impose burdens not required by their underlying statutes? If so, please identify the regulations and indicate how they should be amended.

- The governing statutes for capital prescribe general requirements which prescribe authority for agency implementation. Indeed, in the case of mutuals the regulations are counter to the intent and language of the statutes governing mutual capital requirements by the agencies, as they ignore a number of statutory provisions pertaining to eligible capital instruments.

- **Question 3:** With respect to the regulations in these categories, could an agency use a different regulatory approach to lessen the burden of the regulations and achieve statutory intent?

- One size does not fit all and one style is not appropriate for all. Mutual capital requirements need to be tailored to mutuals and defined clearly as tier 1 capital. The regulations prescribing their terms must be conformed to the realities of the marketplace while safeguarding safety and soundness. For example, prohibitions on cumulative dividends on MCCs and perpetual preferred stock for mutual banks and MHCs have far less justification than for stock companies which have outstanding common stock. More importantly principles which balance the need for mutual capital with the risk to the FDIC fund should be adopted which will allow instruments more like Net Worth Certificates and Mutual Investment Certificates to qualify as Tier 1 capital. See America's Mutual Banks, October 22, 2012 comment letter to the OCC, FDIC and FRB on the Joint Proposal to implement the Basel III capital rules.

- **Question 4:** Do any of these rules impose unnecessarily inflexible requirements? If so, please identify the regulations and indicate how they should be amended.

- The capital rules omit mention of mutual capital certificates, income capital certificates, net worth certificates, and pledged accounts all which are traditional mutual capital instruments and should be appropriate for inclusion in capital. The rules that exist are prescriptive and do not take into account market acceptability or the tax treatment of various alternative capital instruments.

Cumulative effects

Overly restrictive capital regulations have all but eliminated de novo mutuals and retarded mutual bank growth. They have served as an impetus for stock conversion and ultimate elimination of community mutual banks by acquisition.

- **Question 5:** Looking at the regulations in a category as a whole, are there any requirements that are redundant, inconsistent, or overlapping in such a way that taken together, impose an unnecessary burden that could potentially be addressed? If so, please identify those regulations, provide any available quantitative analyses or data, and indicate how the regulations should be amended.

- Individual regulations providing for the terms of alternative capital are counterproductive. Examples are MCC regulations which are obsolete and overweighted toward assuring no risk of default to the detriment of their marketability, the absence of any guidance or records held by the OCC regarding pledged accounts and more liberal perpetual preferred stock rules which conflict with MCC rules and numerous contradictions with Federal rules on the eligibility of alternative capital instruments and state law. A principles-based approach which liberalizes those provisions of an alternative capital instrument issued by mutual banks qualifying for Tier 1 capital, that are acceptable for mutual banks regardless of their nomenclature, is preferable.

○ *Question 6:* Have the agencies issued similar regulations in the same area that should be considered together as bodies of regulation, when assessing the cumulative effects on an insured depository institution or holding company? If so, please identify the regulations, why they should be considered together, and any available analyses or data for the agencies' consideration.

- Any instrument that is includible in meeting capital requirements should be subject to the same basic terms. Regulations pertaining to tier 1 eligibility are inconsistent. For example, See 12 CFR 163.74 (Terms of MCCs) and 167.5(b)(1)(ii) (MCCs eligible for Tier 2 capital), compared with Appendix A to 12 CFR Part 225, FRB Capital Adequacy Guidelines pertaining to perpetual preferred stock as Tier I capital. See the distinctions between OCC, FDIC and FRB regulations for the terms of alternative capital instruments such as MCCs, perpetual and redeemable preferred stock and subordinated debt.

○ *Question 7:* Could any regulations or category of regulations be streamlined or simplified to reduce unduly burdensome or duplicative regulatory requirements?

- Capital regulations should be tailored to apply to banks in different size ranges offering no or minor systemic risk allowing alternative instruments to qualify as Tier 1 capital with immaterial diminution of their loss absorption capacity.

Effect on competition

This change would make mutual banks more competitive and offer small businesses and retail customers more choices.

○ *Question 8:* Do any of the regulations in these categories create competitive disadvantages for one part of the financial services industry compared to another or for one type of insured depository institution compared to another? If so, please identify the regulations and indicate how they should be amended.

- Mutual banks are unable to issue the equivalent of capital stock as currency to fund mergers. Essentially, they are restricted to cash mergers. This puts them at a competitive disadvantage in sourcing merger partners and stunts their growth. It is no accident that there are no mutuals banks save one MHC with assets over \$10 billion. Changes in accounting rules abolishing poolings have stunted mutual growth. Further, de novo mutuals are all but extinct.

Reporting, recordkeeping, and disclosure requirements.

Disclosure and special proxy solicitation requirements for MHC dividend waivers {See 12 CFR 239(d)} are unnecessarily burdensome and costly.

- *Question 9: Do any of the regulations in these categories impose outdated, unnecessary, or unduly burdensome reporting, recordkeeping, or disclosure requirements on insured depository institutions or their holding companies?*
 - Most regulations pertaining to traditional mutual capital instruments have outdated and burdensome or nonexistent application requirements. The OCC seems to have destroyed almost all records pertaining to pledged accounts as capital as part of a post OTS merger files purge. Further, it has no application form for MCCs or requests to include in capital innovative alternative instruments.
- *Question 10: Could an insured depository institution or its holding company fulfill any of these requirements through new technologies (if they are not already permitted to do so) and experience a burden reduction? If so, please identify the regulations and indicate how they should be amended.*
 - No.
Unique characteristics of a type of institution

Practically, as stated above, mutuals are currently limited to retained earnings as their sole source of Tier 1 capital as existing alternative capital regulations are ineffectual.
- *Question 11: Do any of the regulations in these categories impose requirements that are unwarranted by the unique characteristics of a particular type of insured depository institution or holding company? If so, please identify the regulations and indicate how they should be amended.*
 - Mutual community banks exhibit low risk and no systemic impact as they represent a small percentage of all FDIC bank assets. This is due to a number of reasons. As there are no owners to profit personally from growth, the management temptation to swing for the fences is limited. If not, it is typically checked by the Board of Directors. Further, the capital requirements are designed for large stock companies and fail to recognize the absence of capital stock in the mutual form of organization.
- *Question 12: Are the regulations in these categories clear and easy to understand?*
 - No, as stated above there is little rhyme or reason to the overall body of regulations pertaining to bank capital or alternative capital instruments for mutual banks. This very fact resulted in the CBLR.
- *Question 13: Are there specific regulations for which clarification is needed? If so, please identify the regulations and indicate how they should be amended.*
 - Both the quantitative requirements and qualitative requirements need to be simplified and tailored to mutual banks and other small, insured depository institutions. The regulations are too numerous to list.

- Question 14: Are there regulations in these categories that impose outdated, unnecessary, or unduly burdensome requirements on a substantial number of community banks, their holding companies, or other small, insured depository institutions or holding companies?
 - Yes, they do and affect almost 500 banks. See above.
- Question 15: Have the agencies issued regulations pursuant to a common statute that, as applied by the agencies, create redundancies or impose inconsistent requirements?
 - Yes, see answer to Question 1.
- Question 16: Should any of these regulations issued pursuant to a common statute be amended or repealed to minimize this impact? If so, please identify the regulations and indicate how they should be amended.
 - Alternative capital instrument regulations for mutual banks are outdated, inconsistent, vague, and contradictory on a federal and state level. New regulations based on a principles-based approach are needed to replace regulations which attempt to define particular alternative capital instruments by their nomenclature. Consequently, the principles embodied in these various regulations are often inconsistent. Compare 12 CFR 163.74 vs Appendix A to 12 CFR 225. See also, subordinated debt regulations.
- Question 17: Have the effects of any regulations in these categories changed over time that now have a significant economic impact on a substantial number of small, insured depository institutions or holding companies? If so, please identify the regulations and indicate how they should be amended. The agencies seek information on (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (4) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.
 - Yes. As stated in the AMB October 22, 2012 comment letter, the voluminous preamble to the proposal to implement Basel III capital requirements barely mentioned mutual banks in three short paragraphs. Indeed, the original proposal recognized common equity, retained earnings and capital surplus as the sole determinate of capital. This oversight must be corrected after a decade of indifference toward the unique requirements of mutual banks.

Capital regs

Given the reasons stated above the capital regulations applying to mutuals and other small banks are in critical need of a comprehensive overhaul.

Alternative capital instruments

Also, there have been no recorded instances of the use of pledged accounts as capital since the OCC assumed the chartering authority of OTS under the Dodd-Frank Act. Not surprisingly, the OCC has failed to charter a de novo savings association since it acquired that power under Dodd-Frank. The OCC has

destroyed or misplaced the records such as relevant forms and guidelines for pledged accounts for mutuals as part of a non-digital files purge and rejected any need to adopt new guidelines or forms for pledged accounts to replace those lost.

For all practical purposes there are no alternative capital instruments for mutual banks or MHCs. For example, there has been only one MCC issuance in over 40 years due to the unattractiveness of the OCC regulatory mandated investment terms and agency indifference. The FDIC recently approved the first such instrument for capital for a de novo mutual.

Community bank leverage requirement

The Community Bank Leverage Ratio requirement asset size threshold is still too low and subjects small banks to extremely complicated calculations for no ascertainable purpose. As stated above a new approach similar to HR 5276 reducing the capital ratio needed to qualify is needed.

Scope of rules

○ Question 18: Is the scope of each rule in these categories consistent with the intent of the underlying statute(s)?

- For the reasons stated above no. The overarching purpose of the underlying statutes is safety and soundness and the promotion of a viable banking system that serves the nations economy. With so many non-bank financial companies now competing with banks and the development of new technologies such as cryptocurrency, the continued shrinkage of the number of community banks does not serve that purpose.

○ Questions 19: Could the agencies amend the scope of a rule to clarify its applicability or reduce the burden, while remaining faithful to statutory intent? If so, please identify the regulations and indicate how they should be amended.

- Yes. There has been little sincere effort at tailoring and weighing the actual systemic risk that mutuals pose.