

Supervisory Letter

NCUA | Office of Examination & Insurance
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SL No. 21-02
October 20, 2021

TO: All Field Staff

SUBJECT: Emergency Capital Investment Program Participation

This Supervisory Letter articulates the NCUA’s position on participation by low-income credit unions (LICUs) in the U.S. Department of the Treasury’s (Treasury) Emergency Capital Investment Program (ECIP). Effective immediately, the agency permits LICUs to issue 30-year subordinated debt notes under the ECIP. A LICU may receive secondary capital treatment for a 30-year subordinated debt ECIP note, in accordance with the NCUA’s regulations, provided that any LICU receiving secondary capital treatment has an NCUA-approved secondary capital plan by December 31, 2021.

I. Emergency Capital Investment Program

In December 2020, Congress passed the Consolidated Appropriations Act, 2021 (CAA).¹ The CAA, among other things, created the ECIP. Under the ECIP, Congress appropriated funds and directed Treasury to make investments in “eligible institutions” to support their efforts to “provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities.”² The definition of “eligible institutions” includes federally insured credit unions that are minority depository institutions or community development financial institutions, provided such credit unions are not in troubled condition or subject to any formal enforcement actions related to unsafe or unsound lending practices.³

II. Prior Agency Position

Federally chartered LICUs issue secondary capital under their authority to borrow from any source.⁴ While federally insured, state-chartered credit unions (FISCUs) may have broader authority, federally insured, state-chartered LICUs typically issue secondary capital under similar borrowing authority. As such, the agency has taken certain precautions to ensure that issuances under the ECIP that receive secondary capital treatment are considered debt. Such precautions have included the agency prohibiting LICUs from receiving secondary capital treatment for issuances under the ECIP’s 30-year option. As discussed in the next section, after further consideration and review of the unique status of the ECIP and recognition of the exigent

¹ Consolidated Appropriations Act, 2021, Pub. L. 116–260 (H.R. 133), Dec. 27, 2020.

² *Id.* Codified at 12 USC § 4703a *et seq.*

³ 12 USC § 4703a(a)(2).

⁴ *Id.* at § 1757(9).

circumstances created by the COVID-19 pandemic, the agency is recalibrating this position to provide more flexibility to participating low-income credit unions to serve their members.

III. Recalibrated Agency Position

In recent weeks, the agency has engaged in in-depth discussions with stakeholders and industry professionals who have expressed their opinions on the extremely positive impact the ECIP funds would have on low- and moderate-income communities. The agency has also consulted with Treasury staff on the implementation and terms of the ECIP. As a result of these conversations, the agency has reevaluated the unique status of the ECIP and determined that the agency can provide additional flexibility while ensuring federal credit unions act within their statutory authority.

The agency's recalibration in policy reflects the further recognition of the unique status and characteristics of the ECIP, making the agency confident that the ECIP instruments are permissible debt instruments. The ECIP is a congressionally appropriated program administered by Treasury with the sole purpose of addressing the financial hardships created by the COVID-19 pandemic, particularly in low- and moderate-income communities. In addition, the NCUA worked closely with Treasury to develop the terms for credit unions participating in the ECIP program that are not only fair and flexible but that also comply with the Federal Credit Union Act.

The agency has always recognized that no one term or factor of an ECIP instrument is dispositive in characterizing the nature of the instrument. As such, the agency is satisfied that the close collaboration between the NCUA and Treasury, the unique status of the ECIP, and the terms of the instrument have resulted in an instrument that complies with the Federal Credit Union Act, even with a 30-year term. As such, the agency is able to offer this enhanced flexibility while ensuring that federal credit unions are not engaging in an impermissible activity.

While the agency is pleased to announce this added flexibility for the ECIP because of its unique status and characteristics, the agency notes that this position does not extend beyond the ECIP and does not affect or contradict anything the NCUA Board or the agency has said elsewhere. In addition, while other secondary capital programs may share some common features with the ECIP, the agency reserves judgment on those other programs and will evaluate each on its own merits and particular circumstances to determine if such program is permissible under the Federal Credit Union Act and the NCUA's regulations.

IV. LICU Procedures

In accordance with NCUA Letter to Credit Unions 21-CU-11, LICUs that have already had their secondary capital plans approved for issuances under the ECIP must notify their respective state supervisory authority and/or NCUA regional office, in writing, to include the following information no later than 30 days from the date of this letter:

1. The stated maturity of the ECIP subordinated debt note (choose 15 years or 30 years);

2. The length of regulatory capital treatment for the ECIP issuance;⁵ and
3. A statement that the credit union will not materially deviate from the strategies outlined in its previously approved secondary capital plan. If a credit union chooses a maturity that is longer than the maturity used in its originally approved secondary capital plan and the longer maturity will cause the credit union to materially deviate from the strategies documented in the approved plan, then the credit union must submit a revised secondary capital plan in accordance with 12 C.F.R. §701.34(b), for federally chartered credit unions, or 12 C.F.R. §741.204(c) for federally insured, state-chartered credit unions.

Please direct questions on the information presented in this letter to your immediate supervisor or regional management.

Sincerely,

/s/

Myra Toeppe
Director
Office of Examination & Insurance

⁵ As of the date of this letter, under the final Subordinated Debt rule, secondary capital issued under the current secondary capital rules will receive regulatory capital treatment for a period up to 20 years from January 1, 2022 (86 FR 11060, 11074 (Feb. 23, 2021)). In addition, the NCUA Board recently proposed to extend the starting period of the 20 years for ECIP issuances to the later of the date of issuance or January 1, 2022.