

October 5, 2026

Benjamin W. McDonough  
Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

**RE: Comments—RIN 7100-AH26, Regulatory Modernization and Relief for Mutual Holding Companies**

Dear Secretary McDonough:

The Independent Community Bankers of America (“ICBA”)<sup>1</sup> appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System’s (the “Board”) Notice of Proposed Rulemaking concerning Regulatory Modernization and Relief for Mutual Holding Companies (“Proposal” or “Proposed Rule”).<sup>2</sup>

Mutual banks (“Mutuals”) comprise approximately 10 percent of the more than 4,000 federally insured banks in America<sup>3</sup> and are established and maintained for the benefit of their communities, depositors and borrowers. As the Proposal notes, Mutuals “focus uniquely on their members and their local communities and can prioritize long-term stability over near-term profits.”<sup>4</sup> Because Mutuals are member-owned, these institutions are driven naturally by long-term financial health and stability. However, Mutuals cannot readily access the capital markets. They rely almost entirely on retained earnings to build capital, leaving them at a disadvantage to stock-form banks.

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<sup>1</sup> The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation’s community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America’s community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers’ financial goals and dreams. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

<sup>2</sup> Board of Governors of the Federal Reserve System, *Regulatory Modernization and Relief for Mutual Holding Companies*, 91 Fed. Reg. 49490 (Aug. 4, 2026) (to be codified at 12 C.F.R. pts 217, 239).

<sup>3</sup> Federal Deposit Insurance Corporation, *Mutual Institutions, Excel 2023* (2023), <https://www.fdic.gov/banker-resource-center/mutual-institutions.As.of.2023>, there were 426 Mutual Banks. The FDIC has not updated its count since 2023.

<sup>4</sup> Regulatory Modernization, *supra* note 2, at 49491.

Seeking to mitigate these regulatory disadvantages, this Proposal gives much-needed relief on reducing unnecessary regulatory burdens to Mutual Bank Holding Companies (“MHCs”). Specifically, the Proposed Rule would eliminate certain dividend waiver requirements, revise certain post-conversion requirements, eliminate MHC subsidiary requirements, amend capital treatment, and revise or clarify other provisions of regulation governing Mutuals.

ICBA welcomes these proposed changes and applauds the Board for its attention to these issues, which have not been visited in more than 15 years. While ICBA believes this Proposed Rule is essential, we urge the Board to consider: (1) further expanding mutual banks’ ability to access capital; (2) coordinating with the Federal Deposit Insurance Corporation (“FDIC”), the Office of the Comptroller of the Currency (“OCC”), and state banking agencies to create a unified approach to how regulators treat Mutuals; and (3) continuing to pursue reforms that strengthen the long-term viability of the mutual bank charter.

## **ICBA’s Recommendations:**

### **I. Further Expand Mutual Banks’ Ability to Access Capital**

ICBA appreciates the Board’s efforts to provide greater clarity regarding the regulatory capital treatment of mutual capital instruments. The Proposal would clarify that mutual capital certificates (“MCCs”) and special deposits may qualify as common equity tier 1, additional tier 1, or tier 2 capital when the applicable eligibility criteria are satisfied, while also codifying model term sheets for mutual capital certificates. These changes represent an important step toward providing mutual banking organizations with greater capital-raising flexibility. Nevertheless, as discussed below, ICBA believes the Board can build upon these important reforms by ensuring that mutual institutions can access these capital-raising opportunities without first being required to organize a MHC.

ICBA encourages the Board to establish a framework that permits Mutuals to issue qualifying capital instruments directly, provide clear and predictable regulatory capital treatment for these instruments, preserve flexibility among permissible forms of capital, and ensure that the resulting instruments are viable for both Mutuals and certificate owners.

#### **a. Allow Mutual Banks to Issue MCCs Directly Without Forming a MHC**

Mutual institutions should be permitted to issue MCCs directly rather than having to create a MHC to issue such instruments. The process to create a MHC is currently overly burdensome, requiring Mutuals to spend significant time and resources on legal counsel to structure and create a MHC. This can be a deterrent for Mutuals, particularly if the MHC is formed for the sole purpose of issuing MCCs.

ICBA recommends that the Board standardize a set of guardrails that satisfy the applicable regulatory capital requirements while providing a clear road map for raising capital and avoiding lengthy regulatory review.

b. Standardize the Core Requirements for MCCs

ICBA recommends that the Board establish standardized core features for mutual capital instruments. Mutual institutions that issue instruments consistent with those standards should have a clear and predictable path to regulatory capital treatment, without the need for costly and time-consuming institution-specific review. While the explicit inclusion of regulatory text requirements and key terms are certainly helpful in establishing core requirements, ICBA encourages the Board to consider adding more expansive model form language or boilerplate agreements that could serve as the basis for MHC's MCCs. While MHCs would likely engage legal counsel and other professionals to curate instrument language that is bespoke to a particular institution, such model forms could provide a baseline for expediency (discussed below). Of course, ICBA would strongly recommend that the Board include language that any such model form is voluntary and not exclusive to MCC approval.

c. Establish Streamlined Processes for Issuing Qualifying Instruments

ICBA appreciates the Board's efforts to provide greater certainty regarding the regulatory capital treatment of mutual capital instruments. The Board should build upon this approach by establishing a streamlined issuance framework that allows institutions whose instruments satisfy clearly defined criteria to access capital without unnecessary delay, expense, or regulatory uncertainty. For example, if a MCH objectively satisfies the requirements discussed above, such as adoption of a model form MCC, ICBA recommends that the Board make a final determination of MCC's adequacy within a predetermined timeframe. This would be akin to the 'shot clock' framework the FDIC recently established with its merger activity proposed rule. Under this framework, a MCC application would be deemed 'accepted and approved' if the Board does not indicate otherwise by a certain predetermined timeframe, such as 90 days.

d. Provide Clear and Predictable Tier 1 Capital and Regulatory Capital Treatment

ICBA has long encouraged federal banking regulators to issue uniform rules to allow Mutuals to issue capital instruments that would qualify as common equity tier 1 capital without prior approval.<sup>5</sup> ICBA supports the Board's proposal to clarify that MCCs and special deposits may qualify as Common Equity Tier 1 or Additional Tier 1 Capital. This is an important step towards providing Mutuals with greater access to permanent, loss-absorbing capital while preserving their structure. However, ICBA encourages the Board to go further by establishing clear and standardized terms under which qualifying mutual capital instruments will receive Tier 1 treatment, thereby reducing the need for costly, lengthy review. As examples, a model form certificate language, discussed in section (a)(1), and the 'shot clock,' discussed in (a)(2), would

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<sup>5</sup> Indep. Cmty. Bankers. Of Am., *Mutual and Savings Institutions*, <https://www.icba.org/mutual-and-savings-institutions> (last visited Sept. 22, 2026).

be two mechanisms to achieve such standardization and certainty.

A framework that combines predictable capital treatment with flexibility on the permissible instruments would allow Mutuals to better select instruments appropriate to their circumstances while operating within clear regulatory parameters.

e. Reduce Barriers to Raising Capital While Preserving the Mutual Model

Current capital constraints create pressure to convert to stock form. This Proposal is a positive step, but more modernization is needed. Mutual institutions should be able to grow and serve their community while preserving their mutual identity. Standardizing capital authority, as discussed above, would enable Mutuals to refinance the high-cost, outstanding subordinated debt, likely benefiting from the much more advantageous rates and terms of mutual certificates. Modernized capital rules would allow Mutuals to offset the naturally higher interest rates and duration risks carried on their balance sheets.

The Board should establish an ongoing policy of evaluating future capital rules and capital-support programs for the application to mutual institutions. This flexibility is important to achieve the ultimate objective of these reforms which should be to expand meaningful access to capital, rather than simply establishing forms that are difficult for Mutuals to use in practice.

f. Clarify ability to Invest in Mutual Capital Instruments

ICBA recommends the Board confirm the ability for mutual banks and other, non-mutual banks, to invest in mutual capital instruments, and that such investments may qualify as Public Welfare Investments ("PWI") or other activities eligible for CRA credit. Under PWI authority, national banks are permitted to make direct or indirect investments that benefit low- and moderate- income ("LMI") individuals, LMI areas, or efforts that spur economic development or job creation.<sup>6</sup>

**II. Coordinate with the FDIC, OCC, and State Banking Agencies to Establish a Unified Regulatory Approach for Mutual Banks**

ICBA encourages the Board to collaborate with the FDIC, OCC, and state banking agencies to establish a consistent regulatory approach to Mutuals and mutual capital instruments. A coordinated and consistent treatment of capital would provide Mutuals with certainty when evaluating capital-raising opportunities and ensure that institutions do not receive different regulatory treatment based solely on their regulator or corporate structure. The current structure does not provide Mutuals with clear guidance creating uncertainty for Mutuals.

The Board along with the FDIC, OCC, and state banking agencies should set standard terms that allow a mutual institution (in the form of federally or state chartered mutual banks, mutual

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<sup>6</sup> 12 C.F.R. 24.

holding companies, or subsidiaries of mutual holding companies) to rely on a predictable process to determine whether an institution qualifies for capital treatment. This would create consistent treatment without having separate independent review. The treatment should also be consistent when a mutual institution undergoes an otherwise permissible organizational or regulatory change.

Absent inter-agency coordination, mutual institutions face risk of regulatory arbitrage. A joint standard would eliminate the duplicative and uncertain treatment of mutual instruments across regulators, thereby better ensuring marketability. These reforms would establish a more consistent federal framework in which Mutuals can operate.

### **III. Continue Reforms that Preserve and Strengthen the Long-Term Viability of the Mutual Bank Charter**

#### **a. Preserve and Strengthen the Mutual Charter**

ICBA requests that the Board evaluate every aspect of the Proposed Rule through the lens of preserving mutual institutions' long-term viability. Many Mutuals over the past several decades have converted their charter due to constraints or inability to raise capital.<sup>7</sup> There is consistent pressure on Mutuals to convert to stock holding banks due to the regulatory requirements, costs, and expenses of trying to provide for their communities.<sup>8</sup> To ensure conversions do not occur as a result of regulatory burden, regulatory modernization should strengthen the mutual model and ensure their continuing viability.

#### **b. Unfair Competition for the Same Services**

In the Proposal, the Board acknowledges that the mission and structure of Mutuals closely resemble credit unions. Yet, as the Board also recognizes, “[m]utual banking organizations . . . are for-profit corporations that pay standard federal and state corporate taxes” while also being subject to “more stringent regulatory requirements.”<sup>9</sup> Because of this, mutual banking organizations are at a “competitive disadvantage when [they] compete with credit unions for deposits and lending opportunities.”<sup>10</sup> Plainly stated, while Mutuals may closely resemble credit unions, a significant competitive difference exists between these entities because Mutuals pay corporate taxes whereas credit unions do not.

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<sup>7</sup> See Stavros Peristiani and Thierry A. Wizman, “*Mutual-to-stock conversions in the thrift industry in the 1990s*,” *Journal of Economics and Business*, March–April 1997, pg., 95-116, Vol 49, Issue 2, finding that whereas mutuals in the 1980s were driven to convert as part of a general program to increase loanable funds for the purpose of increasing investment returns, conversions in the 1990s were driven more by the need to raise equity capital

<sup>8</sup> Worcester Business Journal, *Community Banks Hold Pat*, (Jan. 29, 2026),

<https://wbjournal.com/article/community-banks-hold-pat/>.

<sup>9</sup> Regulatory Modernization, *supra* note 2, at 49505.

<sup>10</sup> *Id.*

ICBA has long protested that credit unions receive benefits from tax exemptions and a comparatively less stringent framework, which allows larger credit unions to displace community banks and reduce competition and consumer choice.<sup>11</sup> Despite this, community banks routinely outperform credit unions in high-poverty areas that credit unions receive a federal tax exemption to serve.<sup>12</sup> In light of this disparity, the Board should make it easier for Mutuals to serve their communities and avoid unnecessary acquisitions by credit unions.

c. Expand Regulatory Relief Beyond MHCs

The Board should ensure regulatory relief benefits all mutual institutions, not only those operating in an MHC structure. Many Mutuals are not MHCs, or do not have MHCs. Relief should be available to the broader mutual sector. ICBA recommends that the Board expand the issuance authority to the mutual bank level, rather than exclusively to MHCs, so that relief does not hinge on an institution's corporate structure.

d. Easing Dividend Waivers

ICBA commends the Board on its Proposal regarding dividend waivers. Dividend waivers allow MHCs to decline a dividend that its subsidiary pays to other shareholders. Rather than distributing the MHC's share of the dividend to the MHC, the funds may be paid to the subsidiary holding company's shareholders or retained as capital.

Under current regulations, MHCs that waived dividends before 2009 (i.e., 'legacy waiver MHCs') are subject to a less onerous process than non-legacy MHCs. Now, the Board would narrow the disparate treatment between the two by providing non-legacy MHCs a more viable pathway to waiving dividends. In particular, the Proposed Rule would permit non-legacy MHCs to rely on member vote within the previous 10 years and use majority of votes cast as the approval threshold (rather than majority of all eligible members).

ICBA welcomes these proposed changes, as reducing the burdens associated with dividend waivers would facilitate their greater use. In the alternative, Mutuals are required to make a tough decision: either pay a dividend to investors and the MHC or pay no dividend at all. Greater flexibility to waive dividends can make the subsidiary holding company's share more marketable, increasing their value and making it easier for the MHC to raise capital without converting to stock ownership.

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<sup>11</sup> Indep. Cmty. Bankers of Am., Credit Union Tax Exemption Advocacy, <https://www.icba.org/credit-unions-advocacy> (last visited Sept. 22, 2026).

<sup>12</sup> Indep. Cmty. Bankers of Am., ICBA Releases Data Showing Credit Union Acquisitions Harm Communities, <https://www.icba.org/w/icba-releases-data-showing-credit-union-acquisitions-harm-communities> (last visited Sept. 22, 2026).

## **CONCLUSION**

ICBA appreciates the opportunity to provide comments to the Board on the Proposal to modernize regulations and provide relief for mutual holding companies. ICBA supports the Board's proposed changes to Regulations Q and MM as a vital step toward reducing unnecessary regulatory burdens and modernizing the rules for MHCs. By streamlining and removing certain duplicative forms, the rule will allow MHCs to operate more efficiently and provide appropriate relief.

We appreciate the Board's consideration of these comments and look forward to continued engagement on this matter. As explained in our comment, we ask the Board to further expand mutual banks' ability to access capital, for the Board to coordinate with the FDIC, OCC, and state banking agencies to create a collaborative approach to reduce the burdens placed on Mutuals, and, finally, to create an environment that strengthens the mutual bank charter by allowing institutions to thrive.

If you have any questions about the comments provided in this letter, please reach out to Michael Emancipator ([michael.emancipator@icba.org](mailto:michael.emancipator@icba.org)) or Emma Ciric ([emma.ciric@icba.org](mailto:emma.ciric@icba.org)).

Respectfully submitted,

/s/

Michael Emancipator  
Senior Vice President, Regulatory Counsel

/s/

Emma Ciric  
Manager, Paralegal