December 29, 2021

Via Electronic Submission

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

RE: Issues Specific to Subchapter S and Mutual CDFI Banks, per Amendment to the Capital Rule to Facilitate the Emergency Capital Investment Program (ECIP); Docket No. R-1741 and RIN No. 7100-AG11

Dear Chairman Powell:

The undersigned bank trade associations and bank support organization (Associations) respectfully submit this joint letter on behalf of Community Development Financial Institution (CDFI) and Minority Depository Institution (MDIs) Subchapter S and Mutual banks, regarding the regulatory treatment of investment monies provided to these banks under the Department of the Treasury's (Treasury) Emergency Capital Investment Program (ECIP). Our comments elaborate on positions that were submitted to the Federal Reserve by the Associations, including by the Community Development Bankers Association (CDBA) on May 14, 2021, and by the Subchapter S Bank Association on May 12, 2021, in response to the interim final rule (IFR) request for comments from the Board of Governors of the Federal Reserve System (the Board).[1] We strongly urge the Board to amend the Debt to Equity / Leverage Ratio and Double Leverage Ratio for Subchapter S and Mutual bank ECIP recipients, and to clarify its position as soon as possible. As we expand on below, this amendment is necessary to ECIP's success, and has precedent under the Temporary Asset Relief Program (TARP).

We are concerned that the Board has not yet issued guidance on this crucial matter. Time is of the essence. On December 14, Treasury announced the list of institutions approved to receive ECIP investments. We understand that Treasury will want to move toward closing on the investments right in the beginning of the New Year. Subchapter S and Mutual banks require time to knowledgably consider the Board's position in a careful manner. We believe that further delays may harm the banks.

[1] Identified by Docket No. R-1741 and RIN No. 7100-AG11, and due as of May 21, 2021

As you know, the ECIP was created to encourage low- and moderate-income community financial institutions to augment their efforts to support small businesses and consumers in their communities. Under the program, Treasury is providing up to $9 billion in capital directly to depository institutions that are certified CDFIs or MDIs to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, that may be disproportionately impacted by the economic effects of the COVID-19 pandemic.

Sub S structures are common throughout the CDFI bank and MDI industries, and they are strongly represented among ECIP recipients – 34 out of the 101 bank recipients have Sub Chapter S elections (One is a Mutual) – 28 are CDFIs, and 6 are MDIs. However, these banks are heavily disfavored (versus C Corps) under the terms of the ECIP program and existing Board regulatory requirements, especially due to their limitation to receiving Sub Debt only, rather than preferred equity. Without the adjustments outlined below, tremendous opportunity will be lost and ECIP will fall short of meeting its Congressionally mandated purpose. Distressed communities served by Subchapter S and Mutual CDFI and MDI banks will see only a fraction of the benefit relative to those served by C Corps without material changes to the regulatory treatment of ECIP capital.

RECOMMENDATION: AMEND THE DEBT TO EQUITY / LEVERAGE RATIO AND DOUBLE LEVERAGE RATIO FOR SUB S AND MUTUAL BANKS

We strongly recommend that the Board modify the Small Bank Holding Company Policy Statement (the Policy Statement) and create an ECIP-specific exception under Section 2.C (Dividend restrictions). This exception should allow S Corp and Mutual bank holding companies to exceed a 1.0:1 debt-to equity ratio and still issue dividends. Because S Corp and Mutual CDFI banks and MDIs are small organizations, it will be impossible for many of them to keep their debt-to-equity ratios at 1.0:1 while accepting the amounts Congress authorized and Treasury has offered. As an example, some banks estimate that the current regulations would variously limit S Corp and Mutual banks' ECIP capital to only 2% or 5% of assets, a fraction of the potential (up to 15% for banks with assets greater than $2 billion, 25% for those $500 million to $2 billion, and 30% for those under $500 million) allowed under ECIP rules.

Providing such an exception to exclude 100% of ECIP Sub Debt from the Board's Debt to Equity and Double Leverage Ratios would be consistent with the position the Board took with respect to the Temporary Asset Relief Program (TARP), established by the Emergency Economic Stabilization Act of 2008. At the time TARP was established, the Board amended Section 2.A of the Policy Statement to add language clarifying that:

> *"Notwithstanding any other provision of this policy statement and for the purposes of compliance with paragraphs 2.C [Dividend Restrictions]… a bank holding company that has made a valid election to be taxed under Subchapter S…may exclude from debt subordinated debentures issued to the United States Department of the Treasury under [TARP]".*

Further, we urge the Board to modify the bank holding company double-leverage ratio as part of its overall safety and soundness supervisory review of the organization. The double-leverage ratio is generally computed by dividing the bank holding company's investment in the banking subsidiary by its total equity capital. A double-leverage ratio will be considered by the Board to be high once it exceeds 120%. At this point, the bank holding company may become subject to additional regulatory scrutiny by

the Board's supervision and regulation team. We recommend that the Board modify the definition of the double-leverage ratio to exclude from the ratio some portion, or all, of an ECIP-related BHC investment into a banking subsidiary.

If the Board does not make these amendments at this time to acknowledge ECIP and exclude ECIP Sub Debt from the overall debt calculation for the purposes of calculating these ratios, S Corp and Mutual CDFI banks and MDIs will be forced to limit the ECIP capital they accept, or terminate their S election or Mutual status which will have a negative effect on their shareholders, their banks and the communities they serve. **Up to a third of ECIP-recipient banks may be affected**. The organizations closest to the underserved communities will be materially curtailed in their ability to participate in ECIP, expand services in needy communities, and reach deep to address systemic economic challenges.

In conclusion, we appreciate the thoughtful consideration of the Board and its staff as ECIP is implemented. This is a wonderful opportunity to expand the positive influence of a long-standing market-based solution within COVID-impacted communities, and we sincerely appreciate the opportunity to comment and offer feedback. We look forward to future discussion on these important issues.

If you have any questions, please contact Jeannine Jacokes, Chief Executive Officer of the Community Development Bankers Association, at (202) 689-8935 ext. 222 or jacokesj@pcgloanfund.org, or Patrick J. Kennedy, Jr., President, the Subchapter S Bank Association at (210) 213-0279.

Sincerely,

American Bankers Association
Alabama Bankers Association
Community Development Bankers Association
Independent Community Bankers of America
Louisiana Bankers Association
Mississippi Bankers Association
Missouri Bankers Association
National Bankers Association
National Community Investment Fund
Oklahoma Bankers Association
Subchapter S Bank Association
Texas Bankers Association

Cc: Dr. Eric Belsky, Director, Division of Consumer and Community Affairs
Mr. Mark Van Der Weide, General Counsel