April 15, 2022

Via Electronic Submission

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20005

RE: Issues Specific to Subchapter S and Mutual CDFI Banks

Dear Secretary Yellen:

The undersigned bank trade associations (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 closing process and regulatory treatment of investment monies provided to these banks under the Department of the Treasury's (Treasury) Emergency Capital Investment Program (ECIP).

This letter is a follow up to concerns previously submitted to the Federal Reserve and shared with Treasury officials by the Associations, including letters from the Community Development Bankers Association (CDBA) dated May 14, 2021, and by the Subchapter S Bank Association dated 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), and by the Associations jointly on December 29, 2021. Each of these letters urged the Board to uniformly waive the Debt to Equity Leverage Ratio and Double Leverage Ratio for Subchapter S and Mutual bank that are ECIP participants. To date, the Federal Reserve has failed to provide policy guidance on this matter. By default, many affected individual banks have submitted requests for waivers from these policies through their respective regional Federal Reserve banks. Only a very small number have received responses while the large majority have requests pending.

Late last week several Sub S banks were notified by Treasury that they were assigned to one of the two first ECIP Closing Windows (closing dates **4/26/22** and **5/3/22**). These banks are still awaiting a response from their regional Federal Reserve banks. This very short notice has resulted in an urgent need for immediate action to finalize the Qualified Lending baseline, prepare and submit the Initial Supplemental Report, assemble and review closing deliverables, and draft closing documents. Furthermore, some of Treasury's typical deadlines for pre-closing deliverables had already passed or were mere days away when this notice was given.

Treasury subsequently scheduled calls with these banks to discern whether the institutions had a pending waiver request and the anticipated date for a response. The banks informed Treasury that their status was pending and they did not have information about the timing of a response. Treasury personnel informed the banks that despite the pending status of their waiver requests, that they will be required to declare their final investment amount one week before closing regardless of whether they have received Federal Reserve approval. The options presented were to: (1) take less money to be in compliance with the 1:1 ratio or (2) accept more money and take the risk that the Fed may not approve their waiver request. Treasury further indicated that there is no flexibility to move the closing date because it desires to ascertain final investment amounts for the S corps early to facilitate reallocation of any unused ECIP funds to other applicants with later closing dates.

We fully appreciate the Treasury Department's desire to deploy ECIP funds in an expeditious fashion. We support the efforts of Treasury officials to stand up and implement a highly complex program in a very short time frame. We compliment the accessibility and willingness of officials to listen to the concerns of the industry. ECIP promises to be transformative to participating institutions and the communities they serve; and to that end, the Associations are well aligned with Treasury in the desire to make this program is a success. Yet, we believe the unnecessarily rushed closing process, coupled with the ultimatum to select a final investment amount while waiver requests are pending, and rigid closing dates place undue stress on the small institutions that are eager to participate in the program.

We note that this treatment of the Sub S banks is in contrast to the stated desires of the agency to work in partnership with the CDFI and MDI banks. Many banks were initially reluctant to participate in ECIP due to past experience working with Treasury under the Troubled Asset Relief Program (TARP) and the Community Development Capital Investment (CDCI) Program. Treasury officials have worked to create an environment of trust, open communication, and flexibility to encourage ECIP participation. We urge Treasury to renew this sense of partnership and work with us and the banks to ensure every bank has the opportunity to maximize its investment without risking good standing with their regulators.

We strongly urge the Treasury to recognize the unique circumstances of each bank seeking to participate in ECIP. We ask that Treasury make every effort to grant any requests by these recipients for additional time and/or accommodations during the closing process.

Thank you for your consideration on this matter. We look forward to working with you to make ECIP a success.

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
Subchapter S Bank Association
Tennessee Bankers Association
Texas Bankers Association