



## Mutual Alert

### **Joint Agency Rule for capital treatment of ECIP sub debt effectively excludes mutual MDIs and CDIFs**

The banking agencies issued an emergency rule intended to facilitate the participation of banks in the ECIP. The rule which is attached provides preferred stock will be treated as tier 1 capital but treats sub debt as tier 2 capital. This rule is more stringent than the rule issued under TARP that allowed sub debt issue to Treasury to count as tier 1. This is in contrast with the NCUA rule Part 701.34 which permits inclusion of the sub debt as secondary capital accounts upon application. This is yet another example of either a complete misunderstanding of the fundamental legal structure of mutuals or a stubbornness to hold the line on the treatment of sub debt. Regardless, it effectively denies participation in the program to mutual banks. We are in contact with the agencies and Treasury to address the flaw in their approach. We believe whether or not the a mutual can qualify as a MDI or sponsors a CDFI this is an important issue to plant a stake in the ground for alternative capital instruments for mutual banks qualifying as tier 1 capital.

Douglas Faucette  
America's Mutual Banks  
202 220 6961  
701 8th Street, N.W.  
Suite 700  
Washington D. C. 20001  
dfaucette@lockelord.com  
www.americasmutualbanks.com