



Mutual Alert

Treasury Issues Rules Governing Emergency Capital Infusions For Mutual MDIs and CDFIs

The Treasury adopted an emergency rule last Friday to provide for direct capital infusions in qualifying MDIs and CDFIs pursuant to its ECIP.

<https://home.treasury.gov/system/files/136/ECIP-interim-final-rule.pdf>

The sub debt term sheet accompanying the effective immediately rule Subordinated Debt Term Sheet for Mutual Institutions and S Corporations.pdf (treasury.gov) omitted an important feature for mutual banks i.e. the qualification of the sub debt as tier one capital. Historically, as part of implementing the TARP sub debt program, a program the design of which I served as Treasury's principal adviser and special counsel, the Treasury collaborated with the banking agencies to obtain a rare rule permitting sub debt issued under TARP to Treasury to be included as tier one capital. There are indications that a similar effort is underway but yet to bear fruit. Given the first week of May deadline for applications, we urge those of you with affiliates that qualify as CDFIs or whose banks are MDI's to investigate this program at once. There are many more unanswered questions and if TARP is any guide, participation may come with some unpleasant strings attached. However, initial indications are that requirements regarding executive compensation, repurchase of stock, payment of dividends, employment contracts and lavish expenses are consistent with existing federal banking requirements. ECIP Restrictions on Executive Compensation, Share Buybacks, and Dividends.

We are corresponding with staff to obtain more guidance on issues peculiar to mutuals.

The good news is Treasury included mutuals in its initial rule which is great progress from the TARP era when it waited until after the crisis ended to design the TARP mutual program. Hopefully, those of you that do not otherwise qualify as MDIs will be able to benefit by the formation of CDFI affiliates.

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