ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

July 9, 2019

Commissioner Charles P. Rettig
Internal Revenue Service
CC:PA:LPD:PR
Room 5203
Post Office Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Community bank exclusion from section 481(d) relief

Dear Commissioner Rettig:

On behalf of the Independent Community Bankers of America (ICBA), I write to request that you craft an administrative solution to a drafting error in Internal Revenue Code section 481(d), added by section 13543 of the Tax Cuts and Jobs Act ("TCJA"), Pub. L. No. 115-97. Without a solution, the relief intended by Congress under section 481(d) will be unavailable for many C corporation banks that have recently converted from S corporation status. We do not believe it was the intention of Congress to single out these banks for exclusion from relief that is available to non-bank corporate taxpayers. Like these other taxpayers, banks should be free to choose the corporate form most suitable for them and their community mission without regard to an oversight in the drafting of the TCJA.

Following enactment of the TCJA, a number of S banks have chosen to revoke their S election and convert to C corporations. Additional banks may still make that election in 2019 as they weigh the advantages of the pass-through deduction under 199A versus the new corporate rate and which corporate model will allow them to best serve their communities prospectively. When a bank that has previously used cash method accounting has gross receipts of more than $25 million, conversion to C corporation status requires the bank to change to accrual accounting under the gross receipts test of section 448(c).

Changes in methods of accounting typically give rise to adjustments in taxable income, positive or negative. Rules for recognition of these adjustments are set forth in section 481. Under section 481(b), a taxpayer may spread positive adjustments over a period of four years to ease the tax impact of the change. As part of the TCJA, Congress created a special rule for taxpayers that have terminated S corporation status during a window of two-years following enactment of the law. Under this special rule, set forth in section 481(d), the taxpayer may spread the positive adjustment over six years rather than four years. Congress clearly wanted to facilitate conversion from S to C corporate status in light of significant changes to the taxation of the two corporate forms.

The problem for converted S corporation banks is that this transition relief is unavailable to S corporations that operate in the form of a holding company with one or more qualified subsidiaries (QSubs), a structure commonly used by banks. The reason for the unavailability of 481(d) relief in these circumstances is beyond the scope of this letter but has been explained in detail in recent comment letters to the IRS, notably the letter submitted by the law firm of Ivins, Phillips & Barker on April 9, 2019.

Unfortunately, workaround solutions suggested by IRS representatives that would involve the liquidation of QSubs into the parent or "check the box" elections for these subsidiaries to be treated as disregarded entities for tax purposes so that the former QSubs are treated as part of their parent S corporation prior to revocation of the S election are not feasible for banks. In the banking industry, state law typically requires a bank with multi-state branches or operating separate non-banking businesses to operate those separate branches or non-banking businesses through separate legal entities that are organized in the form of traditional corporations. As a result, there is no practical way for banks with organizational structures involving QSubs to avail themselves of the relief afforded by section 481(d).

Moreover, not only are these taxpayers denied the extended six-year amortization period provided by section 481(d), they are also denied the normal four-year amortization period that is ordinarily available with respect to accounting method changes that have positive section 481(a) adjustments. Instead, the entire amount of the adjustment would be included in the taxpayer's taxable income in a single year.

There is no conceivable rationale for excluding banks from 481(d) transition relief. We do not believe that such a punitive, arbitrary exclusion was intended by Congress. With regard to the scope of this problem, we have seen research that indicates that approximately 300 community banks could be affected, many of which serve rural communities.

Given what's at stake for the success of the TCJA in providing tax relief and spurring community investment as intended by Congress, we would greatly appreciate administrative action on the part of the IRS to address the problem outlined above and create equal access to 481(d) relief for taxpayers in all industries.

Thank you for your consideration. We would be happy to meet with you to discuss further.

Sincerely,

J. Alan Keller
First Vice President for Legislative Policy

Cc: Krishna Vallabhaneni
Acting Tax Legislative Counsel
Office of Tax Legislative Counsel

U.S. Treasury Department

Ellen Martin
Attorney-Advisor
Office of Tax Legislative Counsel
U.S. Treasury Department

Colin Campbell
Attorney-Advisor
Office of Tax Legislative Counsel
U.S. Treasury Department

John Moriarty
Acting Associate Chief Counsel
Income Tax and Accounting
Internal Revenue Service

Holly Porter
Associate Chief Counsel
Passthroughs and Special Industries
Internal Revenue Service