

EMERGENCY CAPITAL INVESTMENT PROGRAM

Proposed Disposition Guidelines

U.S. Department of the Treasury

August 13, 2024

NOTE: These proposed guidelines are a preliminary draft and are subject to change. Treasury expects to issue final disposition guidelines that may vary from the terms and conditions set forth below.

Through the Emergency Capital Investment Program (ECIP), Treasury has made approximately \$8.57 billion in investments in community development financial institutions (CDFIs) and minority depository institutions (MDIs) that are federally insured depository institutions, bank holding companies, or savings and loan holding companies (referred to as “ECIP participants”). The purpose of these investments is to enable participants to provide loans, grants, and forbearance to small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, including persistent poverty counties, that may have been disproportionately impacted by the economic effects of the COVID–19 pandemic. As depository institutions, ECIP participants are regulated and supervised by the federal banking regulators. ECIP was established under section 522 of the Consolidated Appropriations Act, 2021 (the “ECIP statute”), and the ECIP investments are subject to the terms of the purchase agreement each participant executed with Treasury. Treasury’s investments under the ECIP take the form of preferred stock or subordinated debt issued by participating institutions.

Treasury’s ability to sell, dispose of, or transfer¹ the ECIP investments is subject to restrictions in the ECIP statute and ECIP agreements. These guidelines describe certain circumstances and processes under which Treasury may sell an ECIP investment to the issuer or any other entity. An ECIP participant that does not meet the criteria in these guidelines may also redeem its ECIP instruments subject to regulatory requirements and the terms of the ECIP transaction agreements. Treasury may amend or supplement these guidelines at any time.

1. Mission-aligned Nonprofit Affiliate

As provided in the ECIP statute, Treasury may transfer or sell ECIP investments for no or de minimis consideration to a “mission aligned nonprofit affiliate” of an applicant that is an insured CDFI, with the issuer’s permission.² Following are definitions applicable to this provision. Any such disposition is also subject to the terms of sections 2 and 3 below.

“Affiliate” means any company that controls, is controlled by, or is under common control with another company. For purposes of this definition, “control” of a company means: (1)

¹ The ECIP statute refers to Treasury selling, disposing of, and transferring ECIP investments. For ease of reading, these guidelines generally use those terms interchangeably.

² 12 U.S.C. § 4703a(e)(4)(A)(iii). “Insured community development financial institution” or “insured CDFI” means any CDFI that is an insured depository institution, as defined in 12 U.S.C. § 1813(c)(2), or an insured credit union, as defined in 12 U.S.C § 1752(7). 12 U.S.C. § 4702(13).

ownership, control, or power to vote 25% or more of the outstanding shares of any class of voting securities of the company, directly or indirectly or acting through one or more other persons; (2) control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company; or (3) power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of the company. For the purposes of these guidelines, Treasury will consider indicia that a company exercises a “controlling influence” over another company, including (i) management and director interlocks between the companies; and (ii) for credit unions, whether the affiliate is a sponsoring organization of the credit union.

An affiliate is “mission-aligned” if its primary purpose is to provide financial products, financial services, or other services to, or make investments in, low- and moderate-income, minority, rural, and underserved communities, including persistent poverty counties, and the activities of the affiliate are purposefully directed toward improving the social and/or economic conditions of underserved people and/or residents of economically distressed communities. In determining whether an affiliate is mission-aligned, Treasury will consider the activities and the governing documents (such as articles of incorporation, bylaws, and mission statement) of the entity. Newly formed entities are not categorically excluded from this definition.

“Nonprofit” means an organization or entity that is exempt from taxation and described in Section 501(c)(3) of the Internal Revenue Code.

2. Requests for a Sale to a Third Party or Repurchase by the ECIP Participant

An ECIP participant may request that Treasury sell its ECIP investment in that participant to an affiliate (including a mission-aligned nonprofit affiliate of the participant as described above), to another third party selected by the ECIP participant, or to the ECIP participant (any such sale, a “repurchase”).

Thresholds for sale or repurchase. An ECIP participant may request that Treasury sell its ECIP investment in that participant at the applicable sale price described below if the ECIP participant meets either of the following thresholds for deep impact or qualified lending (as defined in the ECIP Rate Reduction Incentive Guidelines) during the first 10 years following the participant’s ECIP closing (the “ECIP period”):

- the ECIP participant demonstrates that an average of 60% of its overall lending for four consecutive years during the ECIP period is deep impact lending (the “deep impact threshold”); or
- the ECIP participant demonstrates that an average of 85% of its overall lending for six consecutive years during the ECIP period is qualified lending, including deep impact lending³ (the “qualified lending threshold”).

To remain eligible for a sale, the participant will be required to maintain these thresholds of deep impact or qualified lending through the end of the fiscal quarter covered by the most recent

³ For the purposes of the qualified lending threshold, deep impact lending and qualified lending will count equally; deep impact lending will not receive 200% credit towards the threshold.

Quarterly Supplemental Report submitted by the ECIP participant prior to the closing of the proposed sale or repurchase.

A participant that demonstrates that an average of 60% of its overall lending for two consecutive years during the ECIP period is deep impact lending may request that Treasury enter into an agreement to sell the ECIP investment in that institution to a third party selected by the ECIP participant or to the ECIP participant contingent on the participant meeting the deep impact threshold in the future. Under such an agreement, the sale of the ECIP investment will only occur after the participant has met the deep impact threshold. Treasury will consider data on Schedule A of the Quarterly Supplemental Reports submitted by ECIP participant for the relevant quarters in determining whether the deep impact threshold or qualified lending threshold has been met. For participants that have completed a merger, acquisition, or other business combination since the original issuance of the ECIP investment to Treasury, Treasury will use the Quarterly Supplemental Reports that include the lending of the acquired or acquiring institution, as applicable, consistent with the Instructions for the Quarterly Supplemental Report.⁴

Determinations regarding whether an ECIP participant meets either of the two thresholds specified above will be made by Treasury in its sole discretion.

After the ECIP period, any ECIP participant may request that Treasury sell the ECIP investment in that institution to either a third party or the ECIP participant itself at the applicable sale price described below.

Narratives. In determining whether to sell an ECIP investment, Treasury will also consider information regarding how the proposed sale would help accomplish the goals of the ECIP statute and mission of the participant. An ideal narrative may include the following:

- A narrative description, approved by the board of directors (or similar governing body) of the ECIP participant, explaining how the sale will strengthen the ability of the ECIP participant to expand or maintain significant lending or investment activity in low- or moderate-income, minority, rural, and underserved communities, and to borrowers that have significant unmet capital or financial services needs; and
- A plan to provide community outreach and engagement regarding the products and services that will be offered by the participant, updated from the plan included in the ECIP participant's Emergency Investment Lending Plan submitted to Treasury in connection with the participant's ECIP application.

Treasury may request additional information or documentation from the participant before determining whether to approve a request for a sale or repurchase. An ECIP participant requesting a sale of Treasury's investment should take into account, for planning purposes, the need for Treasury to review the ECIP participant, the proposed transaction, and other information prior to approval.

⁴ Instructions for the Quarterly Supplemental Report, available at <https://home.treasury.gov/system/files/136/QSR-Instructions-BHC-2.0.pdf>.

Ineligibility. An ECIP participant may be ineligible for a sale of the ECIP investment in that participant under these guidelines if Treasury determines that:

1. The participant is not in compliance with the terms of the ECIP transaction agreements or the ECIP Interim Final Rule at 31 CFR Part 35, Subpart B;
2. The participant is no longer certified as a CDFI or designated as an MDI;
3. During the preceding three years, the participant has been determined by a federal agency or court to have violated the requirements of a federal grant or financial assistance program, including any program administered by the CDFI Fund;
4. During the preceding three years, the participant has been determined by a federal agency or court to have violated any consumer financial protection law, including fair lending laws;
5. The participant does not have at least a “satisfactory” rating under the Community Reinvestment Act;
6. The participant is designated in Troubled Condition by its primary federal regulator, or is subject to a formal enforcement action with its primary federal regulator that addresses unsafe or unsound lending practices;
7. The participant is not well-capitalized under the applicable Prompt Corrective Action Rules;⁵
8. The participant has not paid in full all dividends or interest payments that were payable at any time to Treasury under the ECIP instruments; or
9. Treasury determines that the sale poses risks to ECIP or would not further the goals of the program.

Regulatory treatment and requirements. Treasury will consult with the federal banking regulators or the National Credit Union Administration (NCUA), as applicable, regarding the structure of potential dispositions and will generally attempt, to the extent feasible, to structure transactions in a manner intended to maintain the regulatory capital treatment of the ECIP investments. For ECIP participants that are insured depository institutions (IDIs), bank holding companies, or savings and loan holding companies, the transaction must comply with applicable requirements of Sections 23A and 23B of the Federal Reserve Act and Regulation W. In the interest of preserving the regulatory capital treatment of the ECIP investments and minimizing regulatory complexity, the following entities are ineligible to purchase ECIP investments: (i) an IDI subsidiary of an ECIP participant that is a holding company, or a subsidiary of such IDI the financial statements of which are required to be consolidated with the financial statements of such IDI; and (ii) a credit union service organization. For the avoidance of doubt, the regulatory capital treatment of ECIP investments following a sale to an affiliate of the issuer will be subject to generally applicable regulatory capital requirements; this guidance does not constitute a commitment regarding the regulatory capital treatment after such a sale.

Interest and dividends. Interest or dividends on ECIP investments will continue to accrue and be due and payable consistent with the terms of the instruments notwithstanding any pending disposition by Treasury of the investments.

⁵ 12 CFR § 324.403 (Federal Deposit Insurance Corporation); 12 CFR § 6.4 (Office of the Comptroller of the Currency); 12 CFR § 208.43 (Board of Governors of the Federal Reserve System); 12 CFR § 702.102 (National Credit Union Administration).

Transaction documentation. To minimize administrative burdens, Treasury generally expects to develop and use standard forms of transaction documents for dispositions.

3. Determination of Sale Price

In the case of an ECIP participant that is an insured CDFI whose investment will be sold to a mission-aligned nonprofit affiliate as described above, the purchase price will be payable in cash in an amount equal to 0.5% of the outstanding principal amount of the subordinated debt or of the aggregate liquidation preference of the preferred stock, as applicable. Such amount will be calculated as of the date of the closing of the sale.

For any other sale, including a repurchase by the issuer, the purchase price will be payable in cash in an amount equal to the present value of the expected payments on the investment, as determined by Treasury. As of March 2024, Treasury estimates that this would result in a purchase price of between 7% and 28% of the outstanding principal amount of the subordinated debt or of the aggregate liquidation preference of the preferred stock. The purchase price will be calculated by Treasury as of the date of the closing of the sale and will depend on factors at that time, including the projected interest or dividend rate, then-prevailing interest rates, and the remaining time to maturity of the subordinated debt, if applicable.

Institutions obtaining CDFI certification. An ECIP participant that obtains CDFI certification prior to a sale of the ECIP investment may be eligible for a sale under the first paragraph of this section 3 if (1) it has maintained CDFI certification for at least three consecutive years immediately prior to the sale; or (2) it agrees to maintain CDFI certification for at least three years after the closing of the sale. A breach of the latter agreement will require the institution immediately to repay Treasury the difference between the sale price and the sale price that would have applied if the institution had not been a CDFI.

Tax, accounting, etc. ECIP participants are strongly encouraged to consult with legal, tax, accounting, financial, and other relevant advisors regarding the terms of potential sales of Treasury's ECIP investments. Among other considerations, for ECIP participants that issued subordinated debt and that are not tax-exempt (that is, mutual institutions and S corporations), if Treasury sells the instrument to an affiliate of the issuer or the instrument is repurchased by the issuer at a discount, the ECIP participant may need to record any difference between the sale price and the principal amount of the subordinated debt as taxable income. If the affiliate that purchases the subordinated debt is not itself tax-exempt, it may also need to record this difference as taxable income. This guidance does not constitute tax advice.