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EMERGENCY CAPITAL INVESTMENT PROGRAM

Frequently Asked Questions

U.S. Department of the Treasury

The U.S. Department of the Treasury (Treasury) is issuing this document to address frequently asked questions about the Emergency Capital Investment Program (ECIP), which was established by Section 104A of the Community Development Banking and Financial Institutions Act of 1994 (added by the Consolidated Appropriations Act, 2021). Treasury intends to provide timely guidance to address questions concerning all aspects of the ECIP and will update this document periodically.

1. Eligibility

1.1 What types of institutions are eligible to participate in the ECIP?

To be eligible for the ECIP, an institution must be either a certified community development financial institution (CDFI) or a minority depository institution (MDI). In addition, every eligible institution must be:

- a federally insured depository institution that is not controlled by a bank holding company (BHC) or savings and loan holding company (SLHC) that is also eligible for the ECIP;
- a BHC;
- an SLHC; or
- a federally insured credit union.

Financial institutions that are not banking institutions and depository institutions that are not federally insured are not eligible to participate in the ECIP. For example, the following types of financial institutions are ineligible: CDFIs that are not banking institutions; *cooperativas* based in Puerto Rico; and privately insured credit unions.

1.2 Is any credit union that has a low-income designation eligible to participate in the ECIP?

To be eligible to participate in the ECIP, a credit union must be federally insured and must be either a CDFI or an MDI. Therefore, a credit union that has a low-income designation, is federally insured, and is either a CDFI or an MDI may be eligible to participate in the ECIP.

1.3 What are the criteria to be an MDI for purposes of participation in the ECIP?

An MDI is an institution that is any of the following:

- A "minority depository institution," as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note). A depository institution satisfies this definition if it is (1) a privately owned institution, 51 percent of which is owned by one or more socially and economically disadvantaged individuals; (2) a publicly owned institution, 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; or (3) a mutual institution of which the majority of the board of directors, account holders, and the community which it services is predominantly minority (defined by statute as Black American, Native American, Hispanic American, or Asian American).

- An institution considered to be an MDI by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve), or the National Credit Union Administration (NCUA), as applicable.
- An institution listed in the FDIC's MDIs List published for the third quarter of 2020, available at https://www.fdic.gov/regulations/resources/minority/2020q3.xlsx.

Institutions that are listed in the FDIC's MDIs List published for the fourth quarter of 2020,[1] or credit unions listed on the NCUA's list of MDIs for the fourth quarter of 2020,[2] are considered to be MDIs by those agencies and are therefore eligible to participate in the ECIP.

1.4 Is a de novo bank or credit union eligible to participate in the ECIP?

A bank or credit union's de novo status does not impact its eligibility for the ECIP, provided the institution meets all the eligibility requirements of the ECIP. De novo financial institutions must have sufficient historical financial data to complete the ECIP application and emergency investment lending plan, which, among other information, requires lending data for the past two fiscal years (see Question 3.3).

1.5 Is a BHC or SLHC that has not yet been certified as a CDFI or designated as an MDI eligible to participate in the ECIP?

If a BHC or SLHC is not a CDFI or designated as an MDI, it is ineligible to participate in the ECIP. However, if an ineligible BHC or SLHC has a subsidiary depository institution that is a CDFI or designated as an MDI and that is FDIC insured, that subsidiary is eligible to participate in the ECIP.

1.6 Can more than one affiliate of a BHC or SLHC separately apply to the ECIP?

If a BHC or SLHC is eligible to participate in the ECIP, no insured depository institution that is controlled by that BHC or SLHC is eligible. However, if a BHC or SLHC is ineligible to participate in the ECIP, each insured depository institution that it controls may be eligible and may apply separately.

[1] See https://www.fdic.gov/regulations/resources/minority/2020q4.xlsx.
[2] See https://www.ncua.gov/support-services/credit-union-resources-expansion/resources/minority-depository-institution-preservation/mdi.

1.7 As of what date must an ECIP applicant be a CDFI or MDI to be eligible to participate in the ECIP?

An institution relying on CDFI status for eligibility must (1) be certified by Treasury's Community Development Financial Institutions Fund (CDFI Fund) as of the date the institution's ECIP application is submitted and (2) must have submitted its application for CDFI certification no later than December 27, 2020. Any institution that submitted an application for CDFI certification after December 27, 2020 will not be considered.

An institution relying on MDI status must have such designation as of the date it submits its ECIP application.

If an institution ceases to be a CDFI or an MDI after it submits its ECIP application but before Treasury acquires preferred stock or subordinated debt from the institution under the ECIP, Treasury may determine, in its discretion, that the institution is no longer eligible to participate in the ECIP.

2. Application and Emergency Investment Lending Plan

2.1 How do I submit an ECIP application and emergency investment lending plan?

All applicants for the ECIP must submit an application and emergency investment lending plan through the ECIP application portal, available at https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-program.

2.2 The ECIP application requires applicants to submit an Incumbency Certificate; what is the certificate required to state?

An Incumbency Certificate should (1) list the names of the applicant's chief executive and chief financial officers who certified the applicant's ECIP application; (2) certify that such officers are authorized to enter into binding commitments and transactions with Treasury with respect to the ECIP; and (3) be signed by the certifying officers and corporate secretary (or person fulfilling a similar function) of the applicant.

2.3 Will Treasury provide an applicant's primary federal financial regulator with a copy of the applicant's Emergency Investment Lending Plan that is submitted together with the ECIP application?

Yes. Treasury will share the Emergency Investment Lending Plan with the OCC, FDIC, Federal Reserve, or NCUA, as applicable, and consult with them, as required by statute, to determine whether the institution may receive an investment in the ECIP. However, determinations regarding whether to approve an institution to participate in the ECIP will be made by Treasury.

2.4 For purposes of the ECIP application and the Emergency Investment Lending Plan, what does "fiscal year" mean?

References to "fiscal year" in the ECIP application and in the Emergency Investment Lending Plan mean the fiscal year used by the applicant for financial reporting purposes.

2.5 Is an institution eligible to participate in the ECIP if its Emergency Investment Lending Plan does not definitively prove that at least 30 percent of the institution's lending over the past two fiscal years, both by total number and dollar amount, was made directly to low- and moderate-income (LMI) borrowers (as defined in the ECIP application), to borrowers that create direct benefits for LMI populations, to Other Targeted Populations (as defined in the application form), or to any combination thereof?

ECIP applicants are statutorily required to submit, with their application, a lending plan that "demonstrates that not less than 30 percent of the lending of the applicant over the past 2 fiscal years was made directly to [LMI] borrowers, to borrowers that create direct benefits for [LMI] populations, to other targeted populations as defined by the [CDFI] Fund, or any combination thereof, as measured by the total number and dollar amount of loans." This information is important to promote Treasury's ability to assess an applicant's record of meeting the needs of LMI and minority borrowers. An applicant that does not complete and submit the Emergency Investment Lending Plan together with its application will not be considered for participation in the ECIP.

An applicant should use all feasible efforts to collect and report definitive evidence that it meets this 30 percent threshold, as requested by Question 1(a) of the Emergency Investment Lending Plan. In the event that an applicant is unable to provide the requested data, the applicant must, in Question 1(c) of the Emergency Investment Lending Plan, describe in detail why the data is unavailable or would be unduly burdensome to collect. In those cases, the applicant may complete Question 1(a) of its Emergency Investment Lending Plan by applying one of the two methodologies described below to reasonably estimate the number and amount of loans to LMI and minority borrowers; however, as noted in Question 3.1 below, the use of these methodologies may result in a less favorable rating of the Emergency Lending Plan, which could in turn result in a reduction in the amount of the investment an applicant is eligible for under the ECIP.

The first methodology is to use data or information that indicates a reasonable probability regarding the LMI or minority status of the borrower or beneficiary. Some examples include:

- If the applicant does not have data about minority status of a borrower, the applicant may apply reasonable methods to use borrower addresses as a proxy for minority status, based on available data regarding minority populations. For example, if the borrower's address is in a census tract that is majority minority, the applicant may, if applicable, include such borrower's loan in row 5 of Question 1(a) of the Emergency Investment Lending Plan ("Applicant's lending made to borrowers in census tracts that are majority Other Targeted Populations not already included 2, 3, and 4").

- If the applicant does not have data on the income of a sole proprietor, the applicant may reasonably estimate such income based on the sole proprietor's revenue or net income.

The second methodology is for the applicant to use documentation submitted by it to the CDFI Fund in connection with its CDFI certification or CDFI awards as a proxy for LMI or minority borrower status. Documentation in connection with CDFI certification should include the applicant's annual certification reports for the previous two years; documentation in connection with CDFI awards should include the applicant's transaction level reports for the previous two years.

If an applicant has data about the characteristics of some borrowers but applies one of the two alternative methodologies described above with respect to other borrowers, the applicant should complete Questions 1(a) and 1(c) in the Emergency Investment Lending Plan.

2.6 For purposes of Question 1(a) in the Emergency Investment Lending Plan, what are the standards for determining whether loans are to borrowers or projects that "create direct benefits for LMI populations?"

Question 1(a) of the Emergency Investment Lending Plan requests information on an applicant's total loans and lending in the following categories:

- Applicant's total loans
- Applicant's lending made directly to LMI borrowers
- Applicant's lending made directly to "Other Targeted Populations" not already included above
- Applicant's lending made to borrowers or projects that create direct benefits for LMI populations not already included above
- Applicant's lending made to borrowers in census tracts that are majority "Other Targeted Populations" not already included above

Question (1)(a) is designed to identify each loan made by an applicant that falls within one of the four specific lending categories listed above. No loan should be reported in more than one lending category; each loan should be included in the table only once.

An applicant should report on row 4 of Question 1(a) of the Emergency Investment Lending Plan "lending made to borrowers or projects that create direct benefits for LMI populations." Footnote 3 in the Emergency Investment Lending Plan states that "borrowers that create direct benefits for LMI populations" refers to borrower financing that is underwritten on the basis of primarily serving low-income households; applicants may also report on row 4 of Question 1(a) borrower financing that is underwritten on the basis of primarily serving moderate-income households. A loan falls within this category if (1) more than 50% of the beneficiaries of the financing are LMI individuals or (2) the financing was made with an express, bona fide intent to serve LMI individuals as beneficiaries, the activity was structured to achieve this purpose, and the activity accomplishes or is reasonably designed to accomplish the purpose. Beneficiaries mean occupants of housing units or commercial tenants in a real estate financing; employees of a business; and board members, staff, clients, or customers in a nonprofit financing. For lending in which less than 50% of the beneficiaries are LMI individuals, applicants may include the pro rata portion of the financing attributable to LMI individuals.

2.7 For purposes of rows 2 and 3 in Question 1(a) in the Emergency Investment Lending Plan, are loans to businesses majority owned by LMI individuals or by Other Targeted Populations considered "lending made directly to" LMI borrowers or Other Targeted Populations?

Yes, loans to businesses that are majority owned by LMI individuals should be counted in row 2 of Question 1(a) of the Emergency Investment Lending Plan as loans made "directly to LMI borrowers." Similarly, loans made to businesses that are majority owned by individuals who are in Other Targeted Populations should be counted in row 3 of Question 1 of the Emergency Investment Lending Plan as loans made "directly to Other Targeted Populations."

2.8 For purposes of Question 1 in the Emergency Investment Lending Plan, may an applicant include loans originated under the Small Business Administration's Paycheck Protection Program (PPP)?

A borrower may elect whether to include the loans it originated under the PPP for purposes of Question 1 in the Emergency Lending Investment Plan. If a borrower includes any PPP loans for this purpose, it must include all PPP loans it made.

2.9 For Purposes of Question 1(a) rows 3 and 5 in the Emergency Investment Lending Plan, may an applicant include all lending made in "investment areas," as defined in CDFI regulations (12 CFR 1805.201(b)(3)(ii)), as lending made directly to "Other Targeted Populations"?

No. The Application Instructions for Emergency Capital Investment Program define "Other Targeted Population" based on the characteristics of the borrower, not the borrower's location. This approach to defining "Other Targeted Population" is consistent with the CDFI Fund's definition of this term, which currently includes the following: Black Americans, Hispanics, Asian Americans, Native Americans, Native Alaskans residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in Other Pacific Islands.

3. Investment Decisions

3.1 How will Treasury decide how to allocate the available capital among applicants that meet the thresholds for eligibility?

To determine investment amounts for eligible applicants, Treasury will use information submitted in ECIP applications (including in Emergency Investment Lending Plans) and information made available to Treasury by applicants' regulators to assess three key factors: (1) the suitability of the requested investment amount; (2) the applicant's capacity to implement the operating goals in its Emergency Investment Lending Plan; and (3) the applicant's responsiveness to community needs. Treasury may verify the information provided by applicants using publicly available information or information provided by regulators, and may make investment decisions based on the data and information available to it.

Information relevant to the assessment of the suitability of the requested investment amount will include the applicant's capital, asset quality, management, earnings, and liquidity, together with comparisons to the applicant's CDFI or MDI peer group. In addition, Treasury will assess an applicant's viability as a going concern and its expected ability to pay dividends and interest in the amounts contemplated by the terms of the preferred stock or subordinated debt to be issued by the applicant under the ECIP.

To evaluate an applicant's capacity to implement the operating goals in its Emergency Investment Lending Plan, Treasury will assess the applicant's responses in all four parts of the Emergency Investment Lending Plan. This may include information about the applicant's internal capacity (such as staffing levels and networks), reasonable projections based on the size of the market, and track record of lending and investing in targeted communities identified in the Emergency Investment Lending Plan. An applicant's ability to provide precise and robust data to demonstrate that it satisfies or exceeds the 30 percent threshold described in question 2.5 above will also indicate the applicant's capacity to invest in the target markets.

Treasury's evaluation of an applicant's responsiveness to community needs will involve an assessment of how well the applicant has tailored its Emergency Investment Lending Plan to historical and future community needs, especially those needs that have arisen as a result of the COVID-19 pandemic. An applicant should provide quantitative and qualitative data in the Emergency Investment Lending Plan that demonstrates how its lending will provide access to capital to address community needs and opportunities, including in response to the impacts of the COVID-19 pandemic, and any previous or proposed consultations or partnerships in targeted communities to identify community needs. Each applicant should include available documentation supporting this information with its application. For example, applicants are encouraged to submit community benefits agreements or other evidence of partnerships or meaningful engagement (past and present) with organizations, businesses, and individuals that work to benefit or strengthen minority, LMI, or rural communities. In addition, if applicable, information showing an applicant's responsiveness to community needs may include the extent to which the applicant has made loans that qualify as "deep impact lending" under the ECIP, as described at https://home.treasury.gov/system/files/136/Rate-Reduction-Incentive-Guidelines.pdf. An applicant's ability to provide loan data that aligns with the deep impact lending metrics will be viewed as a strong indication of capacity.

In addition to these three factors, Treasury may also take applicants' locations, target markets, and sizes into account to determine the final investment amount. Treasury will review the list of potential investment recipients to determine whether the pool of recipients collectively meets the following objectives:

- potential recipients' proposed target markets represent broad geographic and coverage throughout the United States, including urban and rural areas;
- potential recipients demonstrate the capacity to invest in a diversity of Other Targeted Populations;

- the distribution of investments under the ECIP are consistent with statutory asset-based set-asides for ECIP participants.

Treasury may modify investment amounts or the potential recipient pool if necessary or appropriate to achieve these objectives. Further, Treasury may modify the amounts of potential ECIP investments in order to comply with statutory asset-based set-asides for ECIP participants. If appropriate to accomplish the objectives listed above, Treasury may also determine initially to invest only a portion of the total available amount of funding available under the ECIP and to make additional funding available under a separate application round at a later date.

3.2 When will Treasury begin making investment decisions?

Treasury currently expects to begin approving ECIP applications beginning in early summer 2021.

4. Terms of Preferred Stock and Subordinated Debt

4.1 Can an institution choose whether to issue preferred stock or subordinated debt in the ECIP?

No. In general, institutions will issue preferred stock to Treasury in the ECIP. However, if Treasury determines that an institution cannot feasibly issue preferred stock, the institution may instead issue subordinated debt to Treasury in the ECIP. For example, mutual institutions, subchapter S corporations, and federally insured credit unions generally cannot issue preferred stock and may apply to issue a subordinated debt instrument in the ECIP.

4.2 What are the terms for the preferred stock and subordinated debt to be issued by institutions participating in the ECIP?

Preliminary term sheets and other materials relating to the terms of the preferred stock and subordinated debt to be issued in the ECIP are available at https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-program.

4.3 What are the dividend or interest rates for preferred stock and subordinated debt issued in the ECIP?

The dividend and interest rates for preferred stock and subordinated debt are described in the financial instrument term sheets, available at https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-program.

The dividend or interest rate may be reduced if a participating institution achieves certain levels of qualified lending. Further dividend or interest rate reductions are available based on an institution's "deep impact lending," which is a subset of qualified lending. Lists of the types of lending that meet the standards for qualified lending and deep impact lending are available at https://home.treasury.gov/system/files/136/Rate-Reduction-Incentive-Guidelines.pdf. Additional guidance on qualified lending and deep impact lending will be published as it becomes available.

5. Compliance and Reporting

5.1 Are there additional requirements that apply to the ECIP?

As required by law, Treasury issued a rule to set restrictions on executive compensation, share buybacks, and dividend payments for recipients of investments under the ECIP. Members of the public may submit comments on the rule prior to the deadline by following the instructions set forth in the rule, available at https://home.treasury.gov/system/files/136/ECIP-interim-final-rule.pdf.

In addition, all participants in the ECIP will enter into certain agreements with Treasury that will set forth additional requirements, such as compliance and reporting obligations.

6. Other Information

6.1 How can I contact Treasury to ask questions regarding the ECIP or to ask to receive updates regarding the ECIP?

For questions about the ECIP and to be informed about ECIP updates, please contact Treasury at ECIPInquiries@treasury.gov.

6.2 Where can I find more information on ECIP?

Information regarding ECIP is available at https://home.treasury.gov/policy-issues/cares/emergency-capital-investment-Program.