EMERGENCY CAPITAL INVESTMENT PROGRAM

Disposition Guidelines

U.S. Department of the Treasury

November 20, 2024

Through the Emergency Capital Investment Program (ECIP), Treasury 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. ECIP participants are regulated and supervised by the federal banking regulators and the National Credit Union Administration (NCUA). 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 ECIP investments take the form of preferred stock or subordinated debt issued by participating institutions.

Treasury's ability to sell, dispose of, or transfer[1] the ECIP investments is subject to restrictions in the ECIP statute and ECIP purchase agreements. These Disposition Guidelines describe certain circumstances and processes under which Treasury may sell an ECIP investment to the issuer or any other entity.[2] Treasury may amend or supplement these Disposition Guidelines at any time.

ECIP investments are having a substantial impact in communities across the country.[3] These Disposition Guidelines are intended to further support ECIP participants with the strongest track record of lending in underserved communities.

1. Mission-aligned Nonprofit Affiliate

As provided in the ECIP statute, with the ECIP participant's permission, Treasury may transfer or sell ECIP investments for no or de minimis consideration to a "mission aligned nonprofit

[1] The ECIP statute refers to selling, disposing of, and transferring ECIP investments. For ease of reading, these Disposition Guidelines generally use those terms interchangeably. These guidelines implement Treasury's statutory authority to "sell, dispose of, transfer, exchange," or "enter into … other financial transactions in regard to" ECIP investments acquired by Treasury, "upon terms and conditions and at a price determined by the Secretary" of the Treasury. See 12 U.S.C. § 4703a(o)(6).
[2] The ECIP program has closed to new applicants, so these Disposition Guidelines only apply to existing participants.
[3] Treasury, "ECIP: 2023 Investing for Impact Report" (July 12, 2024), available at https://home.treasury.gov/system/files/136/ECIP-2023-Report-Final-07.12.24.pdf.

affiliate" of an applicant that is an insured CDFI.[4] 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) 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 Disposition Guidelines, Treasury will consider indicia that a company exercises a "controlling influence" over another company, including (1) management and director interlocks between the companies; (2) for credit unions, whether the affiliate is a sponsoring organization of the credit union; (3) for credit unions, whether the company was created by the credit union for the express purpose of providing mission-aligned services to its members; and (4) other indicia noted in the Federal Reserve's regulations on control in 12 CFR § 225.32 and 12 CFR § 238.22. For credit unions, affiliates do not include "credit union service organizations," as defined by the NCUA. For the avoidance of doubt, these Disposition Guidelines do not affect any applicable federal or state law related to the creation of an affiliate or the acquisition by an affiliate of ECIP instruments.

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.

Determinations regarding whether an entity is a mission-aligned nonprofit affiliate will be made by Treasury in its sole discretion.

"Insured CDFI," for purposes of these Disposition Guidelines, means a CDFI that is (1) an insured depository institution, as defined in 12 U.S.C. § 1813(c)(2); (2) an insured credit union, as defined in 12 U.S.C § 1752(7); or (3) a bank holding company or savings and loan holding company.

CDFI certification requirement. For a mission-aligned nonprofit affiliate to purchase the ECIP investment at the "*de minimis* price" (as defined below in Section 3), the ECIP participant must be an insured CDFI. An ECIP participant that obtains CDFI certification prior to a sale of the ECIP investment—including an institution that is not a CDFI at the time a sale agreement is

[4] 12 U.S.C. § 4703a(e)(4)(A)(iii).

executed but obtains CDFI certification prior to the closing of the sale—may be eligible for a sale at the *de minimis* price 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 consecutive years, including (to the extent applicable) 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 "present-value price" (as defined below in Section 3).

Three-year holding period. A mission-aligned nonprofit affiliate that acquires an ECIP investment from Treasury for a *de minimis* price will be required to hold the ECIP investment for at least three years following the acquisition from Treasury. If the affiliate sells the investment within three years, including to a third party or to the ECIP participant, the affiliate or the ECIP participant will be required immediately to pay Treasury the difference between the sale price and the present-value price.

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, referred to as a repurchase).

Thresholds for sale or repurchase. An ECIP participant may request that Treasury sell its ECIP investment in that participant during the first 10 years following the participant's ECIP closing (the ECIP period) at the applicable sale price described below if the ECIP participant meets any of the following thresholds for "deep impact lending" or "qualified lending" (as defined in the ECIP Rate Reduction Incentive Guidelines and the Instructions for the Quarterly Supplemental Report) or based on its interest or dividend rate reduction:

- over any four-year period during the ECIP period, at least 60% of the ECIP participant's overall lending is deep impact lending (the deep impact threshold);
- over any six-year period during the ECIP period, at least 85% of the ECIP participant's overall lending is qualified lending, including deep impact lending[5] (the qualified lending threshold); or
- the ECIP participant achieves a 0.5% interest or dividend rate on its ECIP investment each year for six consecutive years (the rate-reduction threshold).

Any ECIP participant may request that Treasury enter into an agreement to give the ECIP participant—or third party selected by the ECIP participant—the right to purchase the ECIP investment in that institution contingent on the ECIP participant meeting any of the three thresholds above in the future. Under such an agreement, the sale of the ECIP investment will only occur after the participant has met one of those three thresholds. Treasury will prioritize entering into agreements with participants as follows: first, institutions that have met the deep impact threshold for at least two consecutive years; second, institutions that have met the qualified lending threshold for at least two consecutive years; third, institutions that have

[5] 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.

achieved a 0.5% interest or dividend rate at any annual reset date; and fourth, all other institutions.

Treasury will consider data on Schedule A of the Quarterly Supplemental Reports submitted by an 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.[6] For the avoidance of doubt, the deep impact threshold and qualified lending threshold will be calculated as an average over the four- or six-year period, as applicable.

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

After the ECIP period, any ECIP participant, including a participant that has not met any of the thresholds specified above during the ECIP period, may request that Treasury sell the ECIP investment in that institution to a third party, including a mission-aligned nonprofit affiliate of the participant, or the ECIP participant itself. An ECIP participant that does not meet any of the thresholds during the ECIP period will not be eligible for a sale at the *de minimis* price; the purchase price for any sale of the ECIP investment in such a participant, including a sale to a mission-aligned nonprofit affiliate of the participant, will be the present-value price.

At any time, an ECIP participant, including a participant that does not meet any of the three thresholds described above, may redeem its ECIP instruments at par value (100% of the principal amount of the subordinated debt or 100% of the liquidation preference of the preferred stock, as applicable), subject to regulatory or other legal requirements and the terms of the ECIP transaction agreements.

<u>Narratives</u>. In determining whether to sell an ECIP investment to a mission-aligned nonprofit affiliate at the *de minimis* price described in section 3 below, 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.

---

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

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.

Ineligibility. An ECIP participant may be ineligible for a sale of the ECIP investment in that participant under these Disposition 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 court to have violated, or is subject to a formal enforcement action with a federal agency regarding, 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;[7]
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 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 or improve the regulatory capital treatment of the ECIP investments. For ECIP participants or proposed transferees 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: (1) 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 (2) a credit union service organization, as defined by the NCUA. For the avoidance of doubt, the regulatory capital treatment of ECIP investments following a sale to an

[7] 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).

affiliate of the issuer will be subject to generally applicable regulatory capital requirements; these Disposition Guidelines do 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.

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

Reporting requirements and other obligations. ECIP participants will be required to continue to comply with the reporting obligations set forth in the ECIP Securities Purchase Agreement and with the ECIP Interim Final Rule at 31 CFR Part 35, Subpart B, for the entirety of the 10-year ECIP period, even if the ECIP instruments are repurchased and redeemed. Any violation of these obligations may be reported to the CDFI Fund or to an ECIP participant's federal regulators.

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, as of the date of the closing of the sale by Treasury (the *de minimis* price).

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 the date of the closing of the sale by Treasury (the present-value price).

For ECIP preferred stock, the present-value price equals (D ÷ (KE - G)) * ALV, the standard dividend discount model formula. This price will be calculated using the zero-growth form of the dividend discount model, with the parameters in Table 1 below. The "Closing Date" refers to the date of the closing of the sale. The price will be adjusted as necessary to account for accrued and unpaid dividends for any closings that occur between dividend payment dates.

Table 1: Parameters for Preferred Stock Present-Value Price

Parameter	Value	Description
D (dividend rate)	D = the issuer's dividend rate as of the annual reset date immediately preceding the Closing Date	N/A
KE (cost of equity)	KE = RFR + β(ERP)	The standard capital asset pricing model formula

RFR (risk-free rate)	RFR = the higher of (1) the prevailing Kroll-recommended U.S. normalized RFR; or (2) the spot yield on 20-year U.S. Treasury bonds as of three business days before the Closing Date	The Kroll-recommended U.S. normalized RFR can currently be found at https://www.kroll.com/en/insights/publications/cost-of-capital/recommended-us-equity-risk-premium-and-corresponding-risk-free-rates. The spot yield on 20-year U.S. Treasury bonds can be obtained by referencing the Daily Treasury Par Yield Curve Rates published on the Treasury website.[8]
β (beta)	β = 0.5	This is an estimate of the beta for the average ECIP participant, derived from the median five-year historical beta of publicly traded ECIP participants' stock price volatility in relation to the S&P 500 index
ERP (equity risk premium)	ERP = the Kroll-recommended U.S. equity risk premium as of three business days before the Closing Date	The Kroll-recommended U.S. Equity Risk Premium can currently be found at https://www.kroll.com/en/insights/publications/cost-of-capital/recommended-us-equity-risk-premium-and-corresponding-risk-free-rates.
G (dividend growth rate)	G = 0 (zero)	G equals zero because dividends on ECIP instruments are not expected to increase over time
ALV (aggregate liquidation value)	ALV = aggregate liquidation value of the ECIP preferred stock as of the Closing Date	N/A

For ECIP subordinated debt, the present-value price equals $\sum \frac{C}{(1+r)^t} + \frac{F}{(1+r)^T}$, the standard bond pricing model calculating the present value of the expected cash flows, with the parameters in Table 2 below. The price will be adjusted as necessary to account for accrued and unpaid interest for any closings that occur between interest payment dates. To promote consistency, for ECIP participants that issued subordinated debt with a 15-year maturity, the present-value price will be calculated as if the participant issued subordinated debt with a 30-year maturity.

Table 2: Parameters for Subordinated Debt Present-Value Price

Parameter	Value	Description
C (coupon)	C = (the issuer's interest rate as of the annual reset date immediately preceding the Closing Date) ÷ 4 * outstanding principal amount of the subordinated debt	The quarterly interest payment on the outstanding subordinated debt as of the most recent annual reset date
r (discount rate)	r = (KE from Table 1 above + 300 basis points (i.e., 3.0 percentage points)) ÷ 4	The additional 300 basis points reflects the current relationship between the KE

[8] https://home.treasury.gov/resource-center/data-chart-center/interest-rates/TextView?type=daily_treasury_yield_curve&field_tdr_date_value=2024.

		(calculated in accordance with Table 1 above) and the yield to maturity on subordinated long-term bonds issued by community banks, and accounts for the possibility that the issuer may not redeem 100% of the principal at maturity
t (time periods)	For issuers of 30-year subordinated debt: t = number of quarterly interest payments remaining until the maturity of the note as of the Closing Date. For issuers of 15-year subordinated debt: t = number of quarterly interest payments remaining until the maturity of the note as of the Closing Date + 60.	N/A
F (face value)	F = outstanding principal amount of the subordinated debt as of the Closing Date	N/A
T (time to maturity)	For issuers of 30-year subordinated debt: T = number of quarterly periods remaining until the maturity of the note as of the Closing Date. For issuers of 15-year subordinated debt: T = number of quarterly periods remaining until the maturity of the note as of the Closing Date + 60.	N/A

<u>Tax, accounting, etc.</u> 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. In the case of a nonprofit affiliate that purchases the ECIP investment, the difference between the present-value price and the *de minimis* price would generally be considered a gift from a governmental unit for the purpose of the public support test for public charities under the Internal Revenue Code and implementing regulations; however, ECIP participants and any nonprofit affiliates should consult their own tax advisors. These Disposition Guidelines do not constitute tax advice.