

EMERGENCY CAPITAL INVESTMENT PROGRAM

U.S. Department of the Treasury

Frequently Asked Questions on Legal Agreements and Closing Process

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1. If an ECIP recipient effectuates a charter change or conversion, becomes owned by a new holding company, or undergoes another corporate transaction after closing the transaction, can the ECIP instruments remain outstanding?

If the issuer of ECIP instruments undergoes a corporate transaction but will continue to exist as a legal entity, the ECIP instruments are not required to be redeemed.

If the issuer of ECIP instruments sells, transfers, conveys, or leases all or substantially all of its assets to any other party (including to a newly formed entity or to a holding company), then Section 4.2(a) of the Securities Purchase Agreement would be triggered, requiring the successor, transferee or lessee party to assume the due and punctual performance and observance of the covenants, agreements and conditions of the Securities Purchase Agreement, including, if applicable, the issuance by the successor party of equivalent ECIP instruments. Any such successor entity must also be eligible, at the time of the transaction, to participate in the ECIP unless Treasury's prior written approval is obtained.

2. Can ECIP instruments be redeemed at the option of an ECIP recipient, or at the direction of Treasury?

Redemptions of the ECIP instruments are governed by the transaction documents – Section 5 of the Senior Preferred Certificate of Designations; Section 6.10 of the Credit Union Securities Purchase Agreement; and Section 6.10 of the S-Corp/Mutual Securities Purchase Agreement. Under those provisions, holders of the ECIP instruments “have no right to require redemption or repurchase of any” of the instruments.

3. Will Treasury exercise the registration rights in Annex E of the Securities Purchase Agreement for banking organizations?

As stated in Section 4.1(h) of the Senior Preferred Securities Purchase Agreement and 4.1(i) of the S-Corp/Mutual Securities Purchase Agreement, the recipient must comply with the terms and conditions of Annex E only upon the request of Treasury or any holder of the instruments to which the registration rights are assigned. Treasury may determine at a future date whether to exercise its registration rights.

4. One of the closing conditions in the Securities Purchase Agreement is that the recipient must deliver to Treasury a written opinion from counsel to the recipient in substantially the form as in an Annex to the Securities Purchase Agreement. Will all institutions be required to provide this legal opinion?

Treasury intends to waive the requirement for recipients to provide a legal opinion at closing for institutions that meet all three of the following conditions: (i) the institution is issuing subordinated debt; (ii) the institution has \$500 million or less in total assets, based on the

methodology and data used by Treasury during the application review process; and (iii) Treasury's ECIP investment in the institution is \$25 million or less.

5. The deadline for approved institutions to confirm their intent to participate, the amount of ECIP instruments they intend to issue, and their preferred transaction closing windows is April 4, 2022. Will institutions be able to modify their responses after this date?

Institutions may modify their responses at any time on or before April 4, 2022 by contacting ecip@treasury.gov. Treasury will use the information received in the closing response forms to plan and schedule closings, and our expectation is that all institutions will issue the amount indicated in their closing response form. Any deviation from those amounts may affect the institution's ability to close the transaction.

6. Under the ECIP Securities Purchase Agreements, an ECIP recipient that is a CDFI as of the ECIP closing date is prohibited from revoking its status as a CDFI and must "use its reasonable best efforts to prevent its status as a CDFI from being changed." How does an ECIP recipient remain in compliance with this provision if it loses its CDFI certification?

If an ECIP recipient loses its CDFI certification but reapplies for certification with a complete and accurate application within 18 months from the date of decertification, Treasury will deem the ECIP recipient to be using its reasonable best efforts to prevent its status as a CDFI from being changed. Treasury may provide further guidance on additional steps an ECIP recipient that is decertified as a CDFI should take to continue to remain in compliance with this requirement under the ECIP Securities Purchase Agreement if its re-application for CDFI certification is unsuccessful.