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(g) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the state in which the acquisition will take place.

§ 34.804 Noncompliance.

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient corrects the violation.

(c) As a condition of receiving funds, recipients and subrecipients shall make available their records and personnel to Treasury in order to carry out the purposes of this section.

§ 34.805 Treasury Inspector General.

In addition to other authorities available under the Act, the Office of the Inspector General of the Department of the Treasury is authorized to conduct, supervise, and coordinate audits and investigations of activities funded through grants under the Act.

PART 35—PANDEMIC RELIEF PROGRAMS

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

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APPENDIX A TO PART 35—EMERGENCY CAPITAL INVESTMENT PROGRAM MODEL EXCESSIVE OR LUXURY EXPENDITURES POLICY

AUTHORITY: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; 12 U.S.C. 5701–5710; Division N, Title V, Subtitle B, Pub. L. 116–260, 134 Stat. 1182 (12 U.S.C. 4703a); Section 104A, Pub. L. 103–325, 108 Stat. 2160, as amended (12 U.S.C. 4701 *et seq.*); Pub. L. 117–2, 135 Stat. 4 (42 U.S.C. 802 *et seq.*).

SOURCE: 86 FR 13455, Mar. 9, 2021, unless otherwise noted.

Subpart A—Coronavirus State and Local Fiscal Recovery Funds

SOURCE: 87 FR 4446, Jan. 27, 2022, unless otherwise noted.

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Pub. L. 117–2), which amends Title VI of the Social Security Act (42 U.S.C. 801 *et seq.*) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to states, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Capital expenditures has the same meaning given in 2 CFR 200.1.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase. A change in law includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a state or territory, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State or territory in which all funds received by the State or territory from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID–19 means the Coronavirus Disease 2019.

COVID–19 public health emergency means the period beginning on January 27, 2020 and lasting until the termination of the national emergency concerning the COVID–19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or childcare; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or

hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID–19 mitigation and containment; work in a mortuary; and work in critical clinical research, development, and testing necessary for COVID–19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional non-public sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, territory, or Tribal government, workers in any additional non-public sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal Government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Low-income household means a household with:

(1) Income at or below 185 percent of the Federal Poverty Guidelines for the size of its household based on the poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 40 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Micro-business means a small business that has five or fewer employees, one or more of whom owns the small business.

Moderate-income household means a household with:

(1) Income at or below 300 percent of the Federal Poverty Guidelines for the size of its household based on poverty guidelines published most recently by the Department of Health and Human Services; or

(2) Income at or below 65 percent of the Area Median Income for its county and size of household based on data published most recently by the Department of Housing and Urban Development.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States for that reporting year.

Nonentitlement unit of local government means a ''city,'' as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) or 501(c)(19) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Period of performance means the time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed $25,000 in total over the period of performance with respect to any single eligible worker. Premium pay may be awarded to non-hourly and part-time eligible workers performing essential work. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 per hour that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the worker's current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia.

Small business means a business concern or other organization that:

(1) Has no more than 500 employees or, if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Title I eligible schools means schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U–3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

§ 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing.* The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the period of performance, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In general.* A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable, including those enumerated in § 35.6, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024. A recipient must also return funds obligated by December 31, 2024 but not expended by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In general.* Subject to §§ 35.7 and 35.8, a recipient may use funds for one or more of the purposes described in paragraphs (b) through (f) of this section.

(b) *Responding to the public health emergency or its negative economic impacts.* A recipient may use funds to respond to the public health emergency or its negative economic impacts if the use meets the criteria provided in paragraph (b)(1) of this section or is enumerated in paragraph (b)(3) of this section; provided that, in the case of a use of funds for a capital expenditure under paragraphs (b)(1) or (b)(3) of this section, the use of funds must also meet the criteria provided in paragraph (b)(4) of this section. Treasury may also articulate additional eligible programs, services, or capital expenditures from time to time that satisfy the eligibility criteria of this paragraph (b), which shall be eligible under this paragraph (b).

(1) *Identifying eligible responses to the public health emergency or its negative economic impacts.* (i) A program, service, or capital expenditure is eligible under this paragraph (b)(1) if a recipient identifies a harm or impact to a beneficiary or class of beneficiaries caused or exacerbated by the public health emergency or its negative economic impacts and the program, service, or capital expenditure responds to such harm.

(ii) A program, service, or capital expenditure responds to a harm or impact experienced by an identified beneficiary or class of beneficiaries if it is reasonably designed to benefit the beneficiary or class of beneficiaries that experienced the harm or impact and is related and reasonably proportional to the extent and type of harm or impact experienced.

(2) *Identified harms: Presumptions of impacted and disproportionately impacted beneficiaries.* A recipient may rely on the following presumptions to identify beneficiaries presumptively impacted or disproportionately impacted by the public health emergency or its negative economic impacts for the purpose of providing a response under paragraph (b)(1) or (b)(3) of this section:

(i) Households or populations that experienced unemployment; experienced increased food or housing insecurity; qualify for the Children's Health Insurance Program (42 U.S.C. 1397aa *et seq.*), Childcare Subsidies through the Child Care and Development Fund Program (42 U.S.C. 9857 *et seq.* and 42 U.S.C. 618), or Medicaid (42 U.S.C. 1396 *et seq.*); if funds are to be used for affordable housing programs, qualify for the National Housing Trust Fund (12 U.S.C. 4568) or the Home Investment Partnerships Program (42 U.S.C. 12721 *et seq.*); if funds are to be used to address impacts of lost instructional time for students in kindergarten through twelfth grade, any student who did not have access to in-person instruction for a significant period of time; and low- and moderate-income households and populations are presumed to be impacted by the public health emergency or its negative economic impacts;

(ii) The general public is presumed to be impacted by the public health emergency for the purposes of providing the uses set forth in subparagraphs (b)(3)(i)(A) and (b)(3)(i)(C); and

(iii) The following households, communities, small businesses, and nonprofit organizations are presumed to be disproportionately impacted by the public health emergency or its negative economic impacts:

(A) Households and populations residing in a qualified census tract; households and populations receiving services provided by Tribal governments; households and populations residing in the territories; households and populations receiving services provided by territorial governments; low-income households and populations; households that qualify for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), the Supplemental Nutrition Assistance Program (7 U.S.C. 2011 *et seq.*), Free and Reduced Price School Lunch and/or Breakfast programs (42 U.S.C. 1751 *et seq.* and 42 U.S.C. 1773), Medicare Part D Low-income Subsidies

(42 U.S.C. 1395w–114), Supplemental Security Income (42 U.S.C. 1381 *et seq.*), Head Start (42 U.S.C. 9831 *et seq.*), Early Head Start (42 U.S.C. 9831 *et seq.*), the Special Supplemental Nutrition Program for Women, Infants, and Children (42 U.S.C. 1786), Section 8 Vouchers (42 U.S.C. 1437f), the Low-Income Home Energy Assistance Program (42 U.S.C. 8621 *et seq.*), Pell Grants (20 U.S.C. 1070a), and, if SLFRF funds are to be used for services to address educational disparities, Title I eligible schools;

(B) Small businesses operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories; and

(C) Nonprofit organizations operating in a qualified census tract, operated by Tribal governments or on Tribal lands, or operating in the territories.

(3) *Enumerated eligible uses: Responses presumed reasonably proportional.* A recipient may use funds to respond to the public health emergency or its negative economic impacts on a beneficiary or class of beneficiaries for one or more of the following purposes unless such use is grossly disproportionate to the harm caused or exacerbated by the public health emergency or its negative economic impacts:

(i) Responding to the public health impacts of the public health emergency for purposes including:

(A) COVID–19 mitigation and prevention in a manner that is consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including vaccination programs and incentives; testing programs; contact tracing; isolation and quarantine; mitigation and prevention practices in congregate settings; acquisition and distribution of medical equipment for prevention and treatment of COVID–19, including personal protective equipment; COVID–19 prevention and treatment expenses for public hospitals or health care facilities, including temporary medical facilities; establishing or enhancing public health data systems; installation and improvement of ventilation systems in congregate settings, health facilities, or other public facilities; and assistance to small businesses, nonprofits, or impacted industries to implement mitigation measures;

(B) Medical expenses related to testing and treating COVID–19 that are provided in a manner consistent with recommendations and guidance from the Centers for Disease Control and Prevention, including emergency medical response expenses, treatment of long-term symptoms or effects of COVID–19, and costs to medical providers or to individuals for testing or treating COVID–19;

(C) Behavioral health care, including prevention, treatment, emergency or first-responder programs, harm reduction, supports for long-term recovery, and behavioral health facilities and equipment; and

(D) Preventing and responding to increased violence resulting from the public health emergency, including community violence intervention programs, or responding to increased gun violence resulting from the public health emergency, including payroll and covered benefits associated with community policing strategies; enforcement efforts to reduce gun violence; and investing in technology and equipment;

(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(*1*) Assistance for food; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;

(*2*) Paid sick, medical, or family leave programs, or assistance to expand access to health insurance;

(*3*) Childcare, early learning services, home visiting, or assistance for child welfare-involved families or foster youth;

(*4*) Programs to address the impacts of lost instructional time for students in kindergarten through twelfth grade;

(*5*) Development, repair, and operation of affordable housing and services or programs to increase long-term housing security;

(*6*) Financial services that facilitate the delivery of Federal, State, or local benefits for unbanked and underbanked individuals;

(*7*) Benefits for the surviving family members of individuals who have died

from COVID–19, including cash assistance to surviving spouses or dependents of individuals who died of COVID–19;

(*8*) Assistance for individuals who want and are available for work, including those who are unemployed, have looked for work sometime in the past 12 months, who are employed part time but who want and are available for full-time work, or who are employed but seeking a position with greater opportunities for economic advancement;

(*9*) Facilities and equipment related to the provision of services to households provided in subparagraphs (b)(3)(ii)(A)(1)–(8);

(*10*) The following expenses related to Unemployment Trust Funds:

(*i*) Contributions to a recipient Unemployment Trust Fund and repayment of principal amounts due on advances received under Title XII of the Social Security Act (42 U.S.C. 1321) up to an amount equal to the difference between the balance in the recipient's Unemployment Trust Fund as of January 27, 2020 and the balance of such account as of May 17, 2021 plus the principal amount outstanding as of May 17, 2021 on any advances received under Title XII of the Social Security Act between January 27, 2020 and May 17, 2021; provided that if a recipient repays principal on Title XII advances or makes a contribution to an Unemployment Trust Fund after April 1, 2022, such recipient shall not reduce average weekly benefit amounts or maximum benefit entitlements prior to December 31, 2024; and

(*ii*) Any interest due on such advances received under Title XII of the Social Security Act (42 U.S.C. 1321); and

(*11*) A program, service, capital expenditure, or other assistance that is provided to a disproportionately impacted household, population, or community, including:

(*i*) Services to address health disparities of the disproportionately impacted household, population, or community;

(*ii*) Housing vouchers and relocation assistance;

(*iii*) Investments in communities to promote improved health outcomes and public safety such as parks, recreation facilities, and programs that increase access to healthy foods;

(*iv*) Capital expenditures and other services to address vacant or abandoned properties;

(*v*) Services to address educational disparities; and

(*vi*) Facilities and equipment related to the provision of these services to the disproportionately impacted household, population, or community.

(B) Assistance to small businesses, including:

(*1*) Programs, services, or capital expenditures that respond to the negative economic impacts of the COVID–19 public health emergency, including loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, or providing technical assistance; and

(*2*) A program, service, capital expenditure, or other assistance that responds to disproportionately impacted small businesses, including rehabilitation of commercial properties; storefront and façade improvements; technical assistance, business incubators, and grants for start-ups or expansion costs for small businesses; and programs or services to support microbusinesses;

(C) Assistance to nonprofit organizations including programs, services, or capital expenditures, including loans or grants to mitigate financial hardship such as declines in revenues or increased costs, or technical assistance;

(D) Assistance to tourism, travel, hospitality, and other impacted industries for programs, services, or capital expenditures, including support for payroll costs and covered benefits for employees, compensating returning employees, support for operations and maintenance of existing equipment and facilities, and technical assistance; and

(E) Expenses to support public sector capacity and workforce, including:

(*1*) Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID–19 public health emergency;

(*2*) Payroll, covered benefit, and other costs associated with programs

or services to support the public sector workforce and with the recipient:

(*i*) Hiring or rehiring staff to fill budgeted full-time equivalent positions that existed on January 27, 2020 but that were unfilled or eliminated as of March 3, 2021; or

(*ii*) Increasing the number of its budgeted full-time equivalent employees by up to the difference between the number of its budgeted full-time equivalent employees on January 27, 2020, multiplied by 1.075, and the number of its budgeted full-time equivalent employees on March 3, 2021, provided that funds shall only be used for additional budgeted full-time equivalent employees above the recipient's number of budgeted full-time equivalent employees as of March 3, 2021;

(*3*) Costs to improve the design and execution of programs responding to the COVID–19 pandemic and to administer or improve the efficacy of programs addressing the public health emergency or its negative economic impacts; and

(*4*) Costs associated with addressing administrative needs of recipient governments that were caused or exacerbated by the pandemic.

(4) *Capital expenditures.* A recipient, other than a Tribal government, must prepare a written justification for certain capital expenditures according to Table 1 to paragraph (b)(4) of this section. Such written justification must include the following elements:

(i) Describe the harm or need to be addressed;

(ii) Explain why a capital expenditure is appropriate; and

(iii) Compare the proposed capital expenditure to at least two alternative capital expenditures and demonstrate why the proposed capital expenditure is superior.

TABLE 1 TO PARAGRAPH (b)(4)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than $1 million	No Written Justification required	No Written Justification required.
Greater than or equal to $1 million, but less than $10 million.	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury.	Written Justification required and recipients must submit as part of regular reporting to Treasury.
$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury.	

(c) *Providing premium pay to eligible workers.* A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers that have eligible workers who perform essential work, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID–19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID–19 public health emergency if:

(1) The eligible worker's total wages and remuneration, including the premium pay, is less than or equal to 150 percent of the greater of such eligible worker's residing State's or county's average annual wage for all occupations as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics;

(2) The eligible worker is not exempt from the Fair Labor Standards Act overtime provisions (29 U.S.C. 207); or

(3) The recipient has submitted to the Secretary a written justification that explains how providing premium pay to the eligible worker is responsive to the eligible worker performing essential work during the COVID–19 public health emergency (such as a description of the eligible workers' duties, health, or financial risks faced due to COVID–19, and why the recipient determined that the premium pay was responsive despite the worker's higher income).

(d) *Providing government services.* A recipient may use funds for the provision of government services to the extent of the reduction in the recipient's general

revenue due to the public health emergency, calculated according to this paragraph (d). A recipient must make a one-time election to calculate the amount of the reduction in the recipient's general revenue due to the public health emergency according to either paragraph (d)(1) or (d)(2) of this section:

(1) *Standard allowance.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance will be deemed to be ten million dollars; or

(2) *Formula.* The reduction in the recipient's general revenue due to the public health emergency over the period of performance equals the sum of the reduction in revenue, calculated as of each date identified in paragraph (d)(2)(i) of this section and according to the formula in paragraph (d)(2)(ii) of this section:

(i) A recipient must make a one-time election to calculate the reduction in its general revenue using information as of either:

(A) December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023; or

(B) The last day of each of the recipient's fiscal years ending in 2020, 2021, 2022, and 2023.

(ii) A reduction in a recipient's general revenue for each date identified in paragraph (d)(2)(i) of this section equals:

Max {*[Base Year Revenue* * (1 + *Growth Adjustment)^(n*$_t$*/12)] – Actual General Revenue;* 0}

Where:

(A) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVID–19 public health emergency;

(B) Growth Adjustment is equal to the greater of 5.2 percent (or 0.052) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID–19 public health emergency;

(C) n equals the number of months elapsed from the end of the base year to the calculation date;

(D) Subscript t denotes the specific calculation date; and

(E) Actual General Revenue is a recipient's actual general revenue collected during the 12-month period ending on each calculation date identified in paragraph (d)(2)(i) of this section, except:

(1) For purposes of all calculation dates on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue;

(2) For purposes of any calculation date on or after April 1, 2022, in the case of any change made after January 6, 2022 to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue;

(3) If the recipient makes a one-time election to adjust general revenue to reflect tax changes made during the period beginning on January 27, 2020 and ending on January 6, 2022, for purposes of each calculation date identified in paragraph (d)(2)(i) of this section:

(i) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase and that the recipient assesses has had the effect of decreasing the amount of tax revenue collected during the 12-month period

ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must add to actual general revenue the amount of such decrease in tax revenue; and

(ii) In the case of any change made during such prior period to any law, regulation, or administrative interpretation that increases any tax (by providing for an increase in a rate, the reduction of a rebate, a deduction, or a credit, or otherwise) or accelerates the imposition of any tax or tax increase and that the recipient assesses has had the effect of increasing the amount of tax revenue collected during the 12-month period ending on the calculation date relative to the amount of tax revenue that would have been collected in the absence of such change, the recipient must subtract from actual general revenue the amount of such increase in tax revenue; and

(4) With respect to any calculation date during the period beginning on January 6, 2022 and ending on March 31, 2022, if the recipient makes the election in paragraph (d)(3) of this section, the recipient must also make the adjustments referenced in paragraph (d)(3) of this section with respect to any such changes in law, regulation, or administrative interpretation during the period beginning on January 6, 2022 and ending on such calculation date.

(e) *Making necessary investments in water, sewer, and broadband infrastructure.* A recipient may use funds to make the following investments in water, sewer, and broadband infrastructure.

(1) *Water and sewer investments*—(i) *Clean Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c));

(ii) *Additional stormwater projects.* Projects to manage, reduce, treat, or recapture stormwater or subsurface drainage water regardless of whether such projects would improve water quality if such projects would otherwise meet the eligibility requirements of section 603(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)(5));

(iii) *Drinking Water State Revolving Fund projects.* Projects or activities of the type that meet the eligibility requirements of section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12) as implemented by the regulations adopted by the Environmental Protection Agency (EPA) under 40 CFR 35.3520, provided that:

(A) The recipient is not required to comply with the limitation under 40 CFR 35.3520(c)(2) to acquisitions of land from willing sellers or the prohibition under 40 CFR 35.3520(e)(6) on uses of funds for certain Tribal projects; and

(B) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line.

(iv) *Additional lead remediation and household water quality testing.* Projects or activities to address lead in drinking water or provide household water quality testing that are within the scope of the programs the EPA is authorized to establish under sections 1459A(b)(2), 1459B(b)(1), 1464(d)(2), and 1465 of the Safe Drinking Water Act (42 U.S.C. 300j–19a(b)(2), 300j–19b(b)(1), 300j–24(d)(2), and 300j–25), provided that:

(A) In the case of lead service line replacement projects, the recipient must replace the full length of the service line and may not replace only a partial portion of the service line; and

(B) In the case of projects within the scope of the program the EPA is authorized to establish under section 1459B(b)(1) of the Safe Drinking Water Act, the recipient may determine the income eligibility of homeowners served by lead service line replacement projects in its discretion.

(v) *Drinking water projects to support increased population.* Projects of the type that meet the eligibility requirements of 40 CFR 35.3520 other than the requirement of subparagraph (b)(1) of such regulation to address present or prevent future violations of health-based drinking water standards, if the following conditions are met:

(A) The project is needed to support increased population, with need assessed as of the time the project is undertaken;

(B) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise;

(C) The project is a cost-effective means for achieving the desired level of service; and

(D) The project is projected to continue to provide an adequate level of drinking water over its estimated useful life.

(vi) *Dams and reservoirs.* Rehabilitation of dams and reservoirs if the following conditions are met:

(A) The project meets the requirements of 40 CFR 35.3520 other than the following requirements:

(*1*) The prohibition on the rehabilitation of dams and reservoirs in 40 CFR 35.3520(e)(1) and (3); and

(*2*) The requirement in 40 CFR 35.3520(b)(1) that the project is needed to address present or prevent future violations of health-based drinking water standards, provided that if the dam or reservoir project does not meet this requirement, the project must be needed to support increased population, with need assessed as of the time the project is undertaken, and the project must be projected to continue to provide an adequate level of drinking water over its estimated useful life;

(B) The primary purpose of the dam or reservoir is for drinking water supply;

(C) The project is needed for the provision of drinking water supply, with need assessed as of the time the project is initiated;

(D) The project is designed to support no more than a reasonable level of projected increased need, whether due to population growth or otherwise; and

(E) The project is a cost-effective means for achieving the desired level of service.

(vii) *Private wells.* Rehabilitation of private wells, testing initiatives to identify contaminants in private wells, and treatment activities and remediation projects that address contamination in private wells, if the project meets the requirements of 40 CFR 35.3520 other than the limitation to certain eligible systems under 40 CFR 35.3520(a).

(2) *Broadband investments*—(i) *General.* Broadband infrastructure if the following conditions are met:

(A) The broadband infrastructure is designed to provide service to households and businesses with an identified need, as determined by the recipient, for such infrastructure;

(B) The broadband infrastructure is designed to, upon completion:

(*1*) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(*2*) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

(*i*) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(*ii*) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed; and

(C) The service provider for a completed broadband infrastructure investment project that provides service to households is required, for as long as the SLFRF-funded broadband infrastructure is in use, by the recipient to:

(*1*) Participate in the Federal Communications Commission's Affordable Connectivity Program (ACP) through the lifetime of the ACP; or

(*2*) Otherwise provide access to a broad-based affordability program to low-income consumers in the proposed service area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP through the lifetime of the ACP.

(ii) *Cybersecurity infrastructure investments.* Cybersecurity infrastructure investments that are designed to improve the reliability and resiliency of new and existing broadband infrastructure. Such investments may include the addition or modernization of network security hardware and software tools designed to strengthen cybersecurity for the end-users of these networks.

(f) *Meeting the non-federal matching requirements for Bureau of Reclamation projects.* A recipient may use funds to

meet the non-federal matching requirements of any authorized Bureau of Reclamation project.

§ 35.7 Pensions.

A recipient (other than a Tribal government) may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation.* Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the de minimis threshold.* The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in net tax revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of other changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and revenue reduction cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i) and (ii) of this section.

§ 35.9 Compliance with applicable laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10 Recoupment.

(a) *Identification of violations*—(1) *In general.* Any amount used in violation of § 35.5, 35.6, or 35.7 may be identified at any time prior to December 31, 2026.

(2) *Annual reporting of amounts of violations.* On an annual basis, a recipient that is a State or territory must calculate and report any amounts used in violation of § 35.8.

(b) *Calculation of amounts subject to recoupment*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.5, 35.6 or 35.7 as the amounts used in violation of such restrictions.

(2) *Violations of § 35.8.* The Secretary will calculate any amounts subject to recoupment resulting from a violation of § 35.8, equal to the lesser of:

(i) The amount set forth in § 35.8(c); and,

(ii) The amount of funds received by such recipient.

(c) *Initial notice.* If the Secretary calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient an initial written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of an initial notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to the Secretary requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to the Secretary a written request that includes:

(1) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(2) A discussion of supporting reasons, along with any additional information.

(e) *Final amount subject to recoupment.* Unless the Secretary extends or accelerates the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section or the expiration of the period for requesting reconsideration provided under paragraph (d), the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided. A recipient must invoke and exhaust the procedures available under this subpart prior to seeking judicial review of a decision under § 35.10.

(f) *Repayment of funds.* Unless the Secretary extends or accelerates the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by the Secretary:

(1) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section; or

(2) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

(g) *Other remedial actions.* Prior to seeking recoupment or taking other appropriate action pursuant to paragraph (c), (d), (e), or (f) of this section, the Secretary may notify the recipient of potential violations and provide the recipient an opportunity for informal consultation and remediation.

§ 35.11 Payments to States.

(a) *In general.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until at least May 10, 2022 and not more than twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of withheld amount.* In order to receive the amount withheld

under paragraph (a) of this section, the State or Territory must submit to the Secretary the following information:

(1) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and

(2) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12 Distributions to nonentitlement units of local government and units of general local government.

(a) *Nonentitlement units of local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of local government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget cap.* A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. For purposes of this section 35.12, a nonentitlement unit of local government's most recent budget shall mean the nonentitlement unit of local government's total annual budget, including both operating and capital expenditure budgets, in effect as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this section 35.12.

(c) *Units of general local government.* Each State or Territory that receives a payment from the Secretary pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional conditions.* A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Subpart B—Compensation and Capital Distributions

§ 35.20 Purpose, applicability, and general provisions.

(a) *Purpose.* Pursuant Section 104A of the Community Development Banking and Financial Institutions Act of 1994 (Act), as added by the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), this subpart establishes restrictions on executive compensation, dividend payments, and share buybacks for recipients of capital investments under the Department of the Treasury's Emergency Capital Investment Program (ECIP or Program), as well as additional criteria for participation in the Program that the Secretary has determined are appropriate in furtherance of the Program goals.

(b) *Applicability.* This subpart applies on a consolidated basis to any insured depository institution, bank holding company, savings and loan holding company, or federally insured credit union that issues preferred stock or a subordinated debt instrument to the Department of the Treasury under the Program (an ECIP recipient, as defined in § 35.21 of this subpart). An ECIP recipient must comply with the requirements of this subpart during the ECIP period.

(c) *Limitation of authority*. Nothing in this subpart shall be interpreted to limit the authority of the appropriate Federal banking agency to take action under other provisions of law, including action to address unsafe or unsound practices or conditions, deficient capital levels, or violations of law or regulation, under section 8 of the Federal Deposit Insurance Act, section 8 of the Bank Holding Company Act, or section 10 of the Home Owners' Loan Act, or the Federal Credit Union Act, as may be applicable.

§ 35.21 Definitions.

Except as modified in this regulation or unless the context otherwise requires, the terms used in this regulation have the same meaning as set forth in the relevant statutes. For purposes of this subpart:

Act means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*).

Appropriate Federal banking agency has the same meaning as in 12 U.S.C. 1813 and also includes the NCUA with respect to a federally insured credit union.

Capital distributions means:

(1) Dividends, including discretionary dividends, on non-senior securities and any other payments on a share of stock or other equity or equivalent interest;

(2) Payments, including interest payments, on non-senior securities, that the issuer has full discretion to permanently or temporarily suspend without triggering a default;

(3) Redemptions or repurchases of non-senior securities; or

(4) Any similar transaction that the Department of the Treasury determines to be in substance a capital distribution;

(5) Provided, that a ''capital distribution'' does not include:

(i) Redemptions or repurchases of shares that are part of an employee stock ownership plan for an ECIP recipient that is not publicly traded, provided that the repurchase is required solely by virtue of the Employee Retirement Income Security Act of 1974, as amended;

(ii) In the case of federally insured credit unions:

(A) Payments of dividends and interest (as defined by 12 CFR 707.2(h) and (o)) on accounts held by their members; provided that this exclusion does not apply to any extraordinary or special dividend by a credit union; or

(B) Redemptions of membership share interests upon voluntary or involuntary terminations of membership by a credit union or its members, as applicable; and

(iii) Solely in the case of § 35.23(b) (Limit on amount of capital distributions), redemptions or repurchases of non-senior securities if the issuer of the non-senior securities being repurchased or redeemed fully funds the redemption or repurchase by issuing at least a corresponding amount of new non-senior securities that rank equally in liquidation with, receive the same capital treatment as and, if applicable, have a stated maturity date no earlier than the non-senior securities being redeemed or repurchased.

ECIP means the Emergency Capital Investment Program established under Section 104A of the Community Development Banking and Financial Institutions Act of 1994, as amended.

ECIP investment means any preferred stock, subordinated debt, or other instrument (including any successor to any such instrument) issued by an ECIP recipient to the Department of the Treasury under the ECIP.

ECIP investment agreement means the agreement between an ECIP recipient and the Department of the Treasury with respect to the ECIP investment in that ECIP recipient.

ECIP investment date means the date on which an ECIP recipient first issued an ECIP investment.

ECIP period means the period from the ECIP investment date until the earliest of:

(1) The date on which the ECIP recipient has fully redeemed or repaid the ECIP investment received under ECIP;

(2) The date on which the investment the ECIP recipient received under the ECIP is no longer held, in full or in part, by the Department of the Treasury or any affiliate thereof; and

(3) Ten years after the ECIP investment date.

ECIP recipient means any entity that has received a capital investment under the ECIP.

Excessive or luxury expenditures means:

(1) Excessive expenditures on any of the following to the extent such expenditures are not reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the ECIP recipient's business operations:

(i) Entertainment or events;

(ii) Office and facility renovations;

(iii) Aviation or other transportation services;

(iv) Tax gross-ups; and

(v) Other similar items, activities, or events for which the ECIP recipient may reasonably anticipate incurring expenses, or reimbursing an employee for incurring expenses;

(2) Provided, that reasonable capital investments in technology, equipment, and similar items that expand the long-term capability of an ECIP recipient to provide products and services to its customers and community are not excessive or luxury expenditures.

Excessive or luxury expenditures policy means written standards applicable to the ECIP recipient and its employees that address the five categories of expenses set forth in the definition of ''excessive or luxury expenditures,'' and that are reasonably designed to eliminate excessive and luxury expenditures. Such written standards must:

(1) Identify the types or categories of expenditures which are prohibited (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event);

(2) Identify the types or categories of expenditures for which prior approval is required (which may include a threshold expenditure amount per item, activity, or event or a threshold expenditure amount per employee receiving the item or participating in the activity or event);

(3) Provide reasonable approval procedures for expenditures requiring prior approval;

(4) Require the ECIP recipient to deliver a certification, executed by two senior executive officers (one of which must be its principal executive officer or principal financial officer) certifying that the approval of any expenditure requiring the prior approval of any senior executive officer, any executive officer of a substantially similar level of responsibility, or the ECIP recipient's board of directors (or a committee of such board of directors), was properly obtained with respect to each such expenditure;

(5) Require the prompt internal reporting of violations to an appropriate person or persons identified in this policy; and

(6) Mandate accountability for adherence to the policy.

FDIC means the Federal Deposit Insurance Corporation.

Federal Reserve Board means the Board of Governors of the Federal Reserve System.

NCUA means the National Credit Union Administration.

Non-senior security means any equity interest or equivalent interest (including but not limited to membership share interests in the case of a credit union) or any other interest in, or instrument issued by, an ECIP recipient that is *pari passu* with, or junior to, the ECIP investment with respect to capital distributions or ranking in liquidation, including but not limited to the common stock (or equivalent equity interest) of the ECIP recipient, or any equity interest or equivalent interest or any other interest in or instrument issued by a depository institution holding company of which the ECIP recipient is a subsidiary.

OCC means the Office of the Comptroller of the Currency.

Principal executive officer means the chief executive officer of an ECIP recipient (or individual performing a similar function).

Principal financial officer means the chief financial officer of an ECIP recipient (or individual performing a similar function).

Senior executive officer means an ECIP recipient's president, any vice president in charge of a principal business unit, division or function, any other officer who performs a policy making

function, or any other person who performs similar policy making functions.

Severance payment means any payment or benefit provided to an officer or employee of an ECIP recipient in connection with any termination of such officer or employee's employment with the ECIP recipient (including resignation, severance, retirement, or constructive termination), except for payment for services performed or benefits accrued. A severance payment includes cash payments, health care benefits, perquisites, the enhancement or acceleration of any payment or vesting of any payment or benefit, or any other in-kind benefit payable or provided in connection with any termination of an officer or employee of the ECIP recipient.

Total compensation means all compensation, other than any severance payment, provided by an ECIP recipient to an officer or employee, including salary, wages, bonuses, awards of stock, deferred compensation, and other financial benefits.

§ 35.22 Restrictions on compensation.

(a) *Restriction on executive compensation.* An ECIP recipient must ensure that the total compensation paid to its senior executive officers is appropriate and not excessive. Unless informed otherwise by the Department of the Treasury, an ECIP recipient is considered to have satisfied the requirements regarding executive compensation in this section if it, and, if applicable, all insured depository institution subsidiaries of the ECIP recipient, maintains compliance with the following (or any successor requirement, as applicable):

(1) For an ECIP recipient or subsidiary of an ECIP recipient that is an insured depository institution, except for federally insured credit unions, the Interagency Guidelines Establishing Standards for Safety and Soundness as issued by the appropriate Federal banking agency for the ECIP recipient or subsidiary (*i.e.*, for national banks and Federal savings associations, 12 CFR part 30, appendix A; state member banks, 12 CFR part 208, appendix D–1; insured state nonmember banks and state savings associations, 12 CFR part 364, appendix A);

(2) For an ECIP recipient that is a bank holding company, the requirements for corporate practices of bank holding companies as issued by the Federal Reserve Board at 12 CFR 225.4;

(3) For an ECIP recipient that is a savings and loan holding company, the requirements regarding safe and sound operations of savings and loan holding companies as issued by the Federal Reserve Board at 12 CFR 238.8; and

(4) For an ECIP recipient that is a federally insured credit union, the requirements on compensation and benefits for federally insured credit unions as issued by the NCUA at 12 CFR 701.19(a); 12 CFR 701.21(c)(8); 12 CFR 702.203(b)(10); and 12 CFR 702.204(b)(10).

(b) *Restriction on severance payments.* An ECIP recipient shall not make excessive severance payments to any senior executive officer. Unless informed otherwise by the Department of the Treasury, an ECIP is considered to have satisfied the requirements regarding severance payments in this section if it maintains compliance with the following (or any successor requirement, as applicable):

(1) For an ECIP recipient that is an insured depository institution, a bank holding company or a savings and loan holding company, the limits and prohibitions to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties to the extent applicable to the ECIP recipient, as issued by the FDIC at 12 CFR part 359; and

(2) For an ECIP recipient that is a federally insured credit union, the limits and prohibitions on the ability of federally insured credit unions to enter into contracts to pay and to make golden parachute and indemnification payments to institution-affiliated parties as issued by the NCUA at 12 CFR 750.1.

(c) *Excessive or luxury expenditures.* (1) Ninety days after an ECIP investment date with respect to an ECIP recipient, the board of directors of the ECIP recipient must adopt an excessive or luxury expenditures policy, provide such policy to the Department of the Treasury and the ECIP recipient's appropriate Federal banking agency, and post the text of such policy on its

internet website, if the ECIP recipient maintains an internet website.

(2) If, after adopting an excessive or luxury expenditures policy, the board of directors of the ECIP recipient makes any material amendments to such policy, within ninety days of the adoption of the amended policy the board of directors must provide the amended policy to the Department of the Treasury and the ECIP recipient's appropriate Federal banking agency and post the amended policy on its internet website, if the ECIP recipient maintains an internet website.

(3) The ECIP recipient must maintain, and continue the disclosure of any material amendments to, the excessive or luxury expenditures policy during the ECIP period, unless the Department of the Treasury determines that discontinuation of the policy would not be contrary to the public interest.

(d) *Material changes in policies or procedures.* An ECIP recipient must obtain prior approval from the Department of the Treasury before making any material change to the policies or procedures that it maintains for purposes of compliance with paragraph (a), (b), or (c) of this section. A change to the compensation, severance pay, or excessive or luxury expenditures policies or procedures will be considered material for purposes of this section if the change is likely to have a negative effect on the financial condition of the ECIP recipient, limit the ability of the ECIP recipient to make payments under the terms of an ECIP instrument, or otherwise impair the ECIP recipient's ability to meet its obligations to the Department of the Treasury under the ECIP.

(1) A request to make a material change to compensation, severance pay or excessive luxury expenditures policies or procedures, must be submitted by an ECIP recipient in writing and received by the Department of the Treasury at least thirty days prior to the effective date of the policy change. The request should describe the change, reason for the change, and anticipated financial or other impact of the change on the condition of the ECIP recipient.

(2) The request will be deemed approved thirty days after the ECIP recipient has provided a complete request to the Department of the Treasury, unless, prior to the expiration of the thirty-day period, the Department of the Treasury objects to the proposed change or notifies the ECIP recipient that additional time is required in order to complete review of the proposed change to policy or procedures

§ 35.23 Restrictions on dividends, share buybacks, and other capital distributions.

(a) *Restriction on capital distributions due to nonpayment.* An ECIP recipient shall not make any capital distribution on a non-senior security, unless:

(1) If the ECIP investment is in the form of preferred stock, the ECIP recipient has paid in full the dividends for the last completed dividend period on the preferred stock; or

(2) If the ECIP investment is in a form other than preferred stock (including, subordinated debt), the ECIP recipient has paid in full the principal, interest, and other amounts due and payable under the terms of the ECIP investment, and no amount that has been deferred remains unpaid.

(b) *Limit on amount of capital distributions.* (1) If an ECIP recipient is an insured depository institution, bank holding company, or savings and loan holding company, the ECIP recipient shall obtain the approval of the Department of the Treasury prior to making any capital distribution if the total of capital distributions made during the calendar year, including the proposed capital distribution, exceeds its eligible distributable income; provided, however, that any prior approval of a capital distribution by the Department of the Treasury does not supersede any applicable regulatory requirements of the ECIP recipient's appropriate Federal banking agency, or other actions taken by such agency. For purposes of this paragraph, ''eligible distributable income'' means the sum of the ECIP recipient's reported year-to-date net income as of the end of the most recent calendar quarter, plus net income for the two preceding calendar years, less any dividends or distributions for the year to date as of the end of the most recent calendar quarter and the two preceding calendar years, where each

amount is calculated in accordance with the instructions to the Call Report or applicable reporting form.

(2) If the ECIP recipient is federally insured credit union, the ECIP recipient shall obtain the Department of the Treasury's prior approval to make any capital distributions if the distribution would:

(i) In the case of a dividend, be payable from retained earnings (as defined in 12 CFR 702.2(f)) other than undivided earnings; or

(ii) Cause the ECIP recipient's net worth classification to fall below ''adequately capitalized'' (as defined in 12 CFR 702.102(a)(2)).

(c) *Exception for Subchapter S Corporations and other pass-through entities.* Notwithstanding anything to the contrary in paragraphs (a) and (b) of this section, any ECIP recipient that is an S corporation, as defined in 26 U.S.C. 1361(a), or other pass-through entity may make capital distributions, to the extent reasonably required to cover its owners' tax obligations in respect to the entity's earnings. Such distributions shall be subject to an annual reconciliation, with any surplus or deficiency to be deducted or added to distributions, as applicable, in the following year. Any tax-related distributions permitted under this paragraph (c) must also comply with any applicable limitations or determinations established by an ECIP recipient's Federal regulators.

§ 35.24 Annual certification.

On an annual basis an ECIP recipient shall, in accordance with the terms and conditions of its ECIP investment agreement, submit to the Department of the Treasury a certification executed by two senior executive officers (one of which must be either its principal executive officer or principal financial officer) that the ECIP recipient is in compliance with each of the excessive compensation, severance pay, and excessive or luxury expenditures requirements and restrictions on capital distributions set forth in §§ 35.22 and 35.23.

§ 35.25 Exemptive relief.

The Department of the Treasury may grant exemptions or waivers from some or all of the restrictions on share buybacks and dividend payments under this part if such exemption or waiver is necessary or appropriate to effectuate the goals of the ECIP or to protect the public interest. Such exemptions or waivers may be subject to such terms and conditions as deemed necessary or appropriate by the Department of the Treasury.

Subpart C—State Small Business Credit Initiative Small Business Owners Demographics Data Collection

SOURCE: 87 FR 13633, Mar. 10, 2022, unless otherwise noted.

§ 35.26 Authority, scope, and purpose.

(a) *Authority and scope.* This subpart is issued by the U.S. Department of the Treasury pursuant to Sections 3007 and 3010 of the Small Business Jobs Act of 2010, as amended by the American Rescue Plan Act of 2021 (12 U.S.C. 5706, 5709).

(b) *Purpose.* The U.S. Department of the Treasury is collecting demographics-related data regarding those who own or control businesses that receive a loan, investment, other credit or equity support, or technical assistance under the State Small Business Credit Initiative for purposes of implementation, compliance, and understanding program outcomes.

§ 35.27 Definitions.

In this subpart:

(a) *Controlling influence over a business* means having the power to control, manage, or direct the business. A person is presumed to have a controlling influence over a business if the person is a senior executive officer or senior manager of the business (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer), or any other individual who regularly performs similar functions.

(b) *Jurisdiction* means:

(1) One of the fifty states of the United States;

(2) The District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana

Islands, Guam, American Samoa, and the United States Virgin Islands;

(3) When designated by one of the fifty states of the United States, a political subdivision of that state that the U.S. Department of the Treasury determines has the capacity to participate in the State Small Business Credit Initiative;

(4) Under the circumstances described in 12 U.S.C. 5703(d), a municipality of one of the fifty states of the United States to which the U.S. Department of the Treasury has given a special permission under 12 U.S.C. 5703(d); and

(5) A Tribal government or a group of Tribal governments that jointly apply to be approved by the U.S. Department of Treasury to participate in the State Small Business Credit Initiative as a single participating jurisdiction.

(c) *Minority individual* means a natural person who identifies as American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; or Hispanic or Latino/a; or one or more than one of these groups.

(d) *Minority-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by minority individuals;

(2) If publicly owned, 51 percent or more of the stock is owned by minority individuals;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or

(4) One or more minority individuals have the power to exercise a controlling influence over the business.

(e) *Participating jurisdiction* means a jurisdiction that has been approved by the U.S. Department of the Treasury for participation in the State Small Business Credit Initiative.

(f) *Principal owner* of a business means a natural person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

(g) *Socially and economically disadvantaged individual (SEDI) demographics-related business* means a business owned and controlled by individuals who have had their access to credit on reasonable terms diminished compared to others in comparable economic circumstances, due to their:

(1) Membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

(2) Gender;

(3) Veteran status;

(4) Limited English proficiency;

(5) Disability;

(6) Long-term residence in an environment isolated from the mainstream of American society;

(7) Membership of a federally or state-recognized Indian Tribe;

(8) Long-term residence in a rural community;

(9) Residence in a U.S. territory;

(10) Residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

(11) Membership of an *underserved community*.

(i) *Underserved communities* are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of *equity* in paragraph (g)(11)(ii) of this section; and

(ii) *Equity* is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

(12) For purposes of this paragraph (g), a business is ''owned and controlled'' by applicable individuals:

(i) If privately owned, 51 percent or more is owned by such individuals;

(ii) If publicly owned, 51 percent more or of the stock is owned by such individuals; and

(ii) In the case of a mutual institution, if a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

(h) *Veteran-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by veterans;

(2) If publicly owned, 51 percent or more of the stock is owned by veterans;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or

(4) One or more individuals who are veterans have the power to exercise a controlling influence over the business.

(i) *Women-owned or controlled business* means a business that:

(1) If privately owned, 51 percent or more is owned by females;

(2) If publicly owned, 51 percent or more of the stock is owned by females;

(3) In the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or

(4) One or more individuals who are females have the power to exercise a controlling influence over the business.

§ 35.28 Annual report requirements.

By March 31 of each year beginning March 31, 2023, and ending with the report to be submitted on March 31, 2028, each participating jurisdiction shall submit to the U.S. Department of the Treasury an annual report that includes, with respect to the previous calendar year, the following data for each business that receives a loan, investment, other credit or equity support, or technical assistance as part of the State Small Business Credit Initiative. For each business that receives a loan, investment, or other credit or equity support under the State Small Business Credit Initiative, the reported data shall be based on the ownership and control of the business immediately before the consummation of such loan, investment, or other credit or equity support-related transaction. For each business that receives technical assistance under the State Small Business Credit Initiative, the reported data shall be based on the ownership and control of the business at the time it receives such technical assistance.

(a) *Self-certified SEDI demographics-related business status.* (1) Indicate which one or more of the following categories apply: Self-certified due to membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society; self-certified due to gender; self-certified due to veteran status; self-certified due to limited English proficiency; self-certified due to disability; self-certified due to long-term residence in an environment isolated from the mainstream of American society; self-certified due to membership of a federally or state-recognized Indian Tribe; self-certified due to long-term residence in a rural community; self-certified due to residence in a U.S. territory; self-certified due to residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); self-certified due to membership of an ''underserved community'' as defined in § 35.27(g)(11)(i); none of the preceding categories are applicable; prefer not to respond; or the business did not answer.

(2) The participating jurisdiction must permit each business to identify all of the categories that apply in the definition of SEDI demographics-related business, and the participating jurisdiction must report to Treasury all categories identified by the business.

(b) *Minority-owned or controlled business status.* Indicate whether the business is a minority-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(c) *Women-owned or controlled business status.* Indicate whether the business is a women-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(d) *Veteran-owned or controlled business status.* Indicate whether the business is a veteran-owned or controlled business. The participating jurisdiction must indicate yes; no; prefer not to respond; or that the business did not answer.

(e) *Race of principal owners.* (1) For each principal owner of the business, indicate which one or more of the following race categories (including the Office of Management and Budget's minimum categories and the relevant disaggregated categories) with which the principal owner identifies: American Indian or Alaska Native; Asian; Asian disaggregated categories: Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, Asian (Other); Black or African American; Native Hawaiian or Other Pacific Islander; Native Hawaiian or Other Pacific Islander disaggregated categories: Guamanian or Chamorro, Native Hawaiian, Samoan, Pacific Islander (Other); White; prefer not to respond; or that the business did not answer.

(2) The participating jurisdiction must permit each business to identify all of the Office of Management and Budget's minimum categories and disaggregated categories in paragraph (e)(1) of this section with which each principal owner of the business identifies, and the participating jurisdiction must report to Treasury all categories identified by the business.

(f) *Ethnicity of principal owners.* For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with: Hispanic or Latino/a; not Hispanic or Latino/a; prefer not to respond; or that the business did not answer.

(g) *Middle Eastern or North African Ancestry of principal owners.* For each principal owner of the business, indicate which of the following ancestry categories the principal owner identifies with: Middle Eastern or North African; not Middle Eastern or North African; prefer not to respond; or that the business did not answer.

(h) *Gender of principal owners.* For each principal owner of the business, indicate which of the following gender categories the principal owner identifies with: Female; male; nonbinary; prefer to self-describe, prefer not to respond; or that the business did not answer. If the ''prefer to self-describe'' option is chosen, the participating jurisdiction must provide an option for the business to write in the gender and must report what the business writes in.

(i) *Sexual orientation of principal owners.* For each principal owner of the business, indicate which of the following sexual orientation categories the principal owner identifies with: Gay or lesbian; bisexual; straight, that is, not gay, lesbian, or bisexual; something else; prefer not to respond; or that the business did not answer.

(j) *Veteran status of principal owners.* For each principal owner of the business, indicate which of the following categories the principal owner identifies with: Veteran; non-veteran; prefer not to respond; or that the business did not answer.

§ 35.29 Format.

Participating jurisdictions must submit the information required under § 35.28 using the formats specified from time to time on the U.S. Department of the Treasury's website.

Appendix A to Part 35—Emergency Capital Investment Program Model Excessive or Luxury Expenditures Policy

I. Introduction

A participant in the Emergency Capital Investment Program (ECIP recipient, as defined at 31 CFR 35.21) is required to establish and maintain policies designed to eliminate excessive or luxury expenditures. The term ''excessive or luxury expenditures'' means excessive expenditures on any of the following to the extent such expenditures are not reasonable expenditures for staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the ECIP recipient's business operations: (1) Entertainment or events; (2) office and facility renovations; (3) aviation or other transportation

services; (4) tax gross-ups; and (5) other similar items, activities, or events for which the ECIP recipient may reasonably anticipate incurring expenses, or reimbursing an employee for incurring expenses.

(1) To facilitate compliance with this requirement, the Department of the Treasury is making available a model excessive or luxury expenditures policy. An ECIP recipient may refer to this model policy for guidance in satisfying the requirement at 31 CFR 35.22(c) to adopt and maintain an excessive or luxury expenditures policy. Alternatively, ECIP recipients may use other forms of, or existing policies relating to, excessive or luxury expenditures, provided that such other forms or policies satisfy all the requirements of the regulation at 31 CFR 35.22(c).

(2) An ECIP recipient's luxury or excessive expenditure policy should be posted on the ECIP recipient's website. Any material amendments to an ECIP recipient's excessive or luxury expenditures policy must made in accordance with the provisions set forth in 31 CFR 35.22(d) (Material changes in policies or procedures). If the ECIP recipient makes any material amendments to this policy, then the ECIP recipient must submit a copy of the amended policy to the Department of the Treasury and post the amended policy on the ECIP recipient's website. ECIP recipients should refer to 31 CFR part 35, subpart B for additional information regarding definitions of terms used in the model policy, disclosure, material changes, certification, and other compliance requirements.

II. Model Excessive or Luxury Expenditures Policy

A. Purpose

The purpose of this policy is to establish parameters and internal controls governing the expenditures of [NAME OF ECIP RECIPIENT] (together with its subsidiaries and controlled affiliates, referred to hereafter as the Organization). Expenditures of the Organization should be customary, prudent, consistent with applicable laws and regulations, and reasonably related to the Organization's business objectives and needs. This policy identifies expenditures that are excessive or luxury expenditures, creates processes that are reasonably designed to eliminate such expenditures, and establishes accountability for compliance. Routine operating expenses, capital expenditures, and other reasonable expenses are not prohibited by this policy.

B. Authority

The Organization has authority to provide compensation and benefits that are reasonable. This policy establishes a prohibition on expenditures that are excessive or luxury expenditures as required by the Department of the Treasury's Emergency Capital Investment Program regulations (31 CFR part 35), and as may be required by other statutes and regulations.

C. Responsibility

This policy is the responsibility of the Organization's board of directors (board). The board has approved this policy and will review compliance with this policy no less frequently than annually, and summary data on excessive or luxury expenditures will be reported to the board as part of the compliance review.

D. Scope

This policy applies to all employees, officers, and directors of the Organization with regard to any expenditure of the Organization. In making any expenditure on behalf of the Organization, employees, officers, and directors should consider whether the expenditure is an excessive or luxury expenditure that is prohibited under this policy.

E. Excessive or Luxury Expenditures

''Excessive or luxury expenditures'' means excessive expenditures on any of the following to the extent not reasonable or appropriate expenditures for business development, staff development, reasonable performance incentives, or other similar reasonable measures conducted in the normal course of the Organization's business operations:

(1) *Entertainment or events.* This category includes fees, dues, tickets costs related to social, athletic, artistic and dining clubs, activities, celebrations or other events, and similar expenditures. Expenditures for charitable contributions and charitable events are not prohibited under this policy. Entertainment or events expenditures in an amount less than $___ per instance, and $___ on an annual aggregate basis per individual, are exempt from this policy.

(2) *Office and facility renovations.* This category includes costs and allowances for office renovation, including expenditures related to furniture, art, office personalization, interior finishing, design and decoration, and similar expenditures. Office and facility renovations expenditures in an amount less than $___ per instance, and $___ on an annual aggregate basis per individual, are exempt from this policy.

(3) *Aviation or other transportation services.* (i) This category includes charter fees, tickets, slip or docking fees, vehicle installment payments, reservation and travel agent expenses, and similar expenditures associated with transportation services (*e.g.*, airline, train, rental cars, or vans). Mileage reimbursable according to current Internal Revenue Service mileage rates is exempt from this policy. Transportation services in an amount less than $___ per instance, and $___

on an annual aggregate basis per individual, are exempt from this policy.

(ii) The principal executive officer may establish or delegate to an appropriate executive officer the authority to establish processes for reimbursement of reasonable travel expenditures, which processes must be reviewed by executive management no less frequently than annually.

(4) *Tax gross-ups.* This category includes any reimbursement of taxes owed with respect to any compensation. This category does not apply to tax equalization agreements for employees subject to tax from a non-U.S. jurisdiction.

(5) *Other similar items, activities, or events for which the Organization may reasonably anticipate incurring expenses or reimbursing an employee for incurring expenses.* (i) Expenditures related to other items not listed in the preceding categories are exempt from this policy in an amount less than $___ per instance, and together with all expenditures permitted under this policy, may not exceed $___ on an annual aggregate basis per individual.

(ii) For the avoidance of doubt, reasonable capital investments in technology, equipment, and similar items that expand the long-term capability of an ECIP recipient to provide products and services to its customers and community are not excessive or luxury expenditures.

(iii) The principal executive officer may establish or delegate to an appropriate executive officer the authority to establish processes for the evaluation and approval of expenditures in the preceding categories that are not luxury or excessive expenditures and that are not otherwise exempt from this policy. These processes must be reviewed by executive management no less frequently than annually, as well as any additional threshold expenditure amounts per item, activity, or event, or a threshold expenditure amount per employee receiving the item or participating in the activity or event under this policy. Such approvals must be reported to the board of directors (which may be in an appropriate summary form) no less frequently than annually.

F. Exceptions or Violations

(1) Any exception or violation of this policy must be promptly reported to the Organization's (i) principal executive officer, (ii) officer with primary responsibility for the Organization's compliance function, or (iii) officer designated with primary responsibility for overseeing the administration, monitoring, and compliance with this policy. Exceptions and violations must be reported to the board of directors no less frequently than annually, or more frequently as the nature and severity of violation may warrant. All employees, officers, and directors of the Organization must adhere to this policy and will be held accountable for compliance. Any employee or officer who violates this policy may be subject to disciplinary action up to and including termination of employment.

(2) Any employee or officer that is aware of any circumstance that may indicate a violation of this policy is required to report such circumstance to their supervisor or the Organization's principal compliance officer or compliance group. The Organization prohibits retaliation against any employee or officer for making a good faith report of actual or suspected violations of the Organization's code of conduct, laws, regulations, or other Organization policies, including this policy. A finding of retaliation against any such employee or officer may result in disciplinary action up to and including termination. Failure to promptly report known violations by others may also be deemed a violation of the Organization's code of conduct.

(3) Employees and officers may ask questions, raise concerns, or report instances of non-compliance with this policy and/or any of the existing underlying relevant policies by contacting the following: [COMPLIANCE HELP LINE OR E–MAIL].

G. Certification

On an annual basis, the ECIP recipient will deliver to the Department of the Treasury a certification, executed by two senior executive officers (one of which must be either the ECIP recipient's principal executive officer or principal financial officer) certifying that (i) the Organization is in compliance with this policy and (ii) the approval of any expenditure requiring the prior approval of any senior executive officer, any executive officer of a substantially similar level of responsibility, or the board of directors (or a committee of such board), was properly obtained with respect to each such expenditure.

PART 50—TERRORISM RISK INSURANCE PROGRAM

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