



Audit Report



OIG-22-028

CORONAVIRUS DISEASE 2019 PANDEMIC RELIEF PROGRAMS

Audit of Treasury's Implementation of the Emergency Capital Investment Program

March 8, 2022

Office of Inspector General
Department of the Treasury

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Abbreviations

BHC	Bank Holding Company
Federal Reserve Board	Board of Governors of the Federal Reserve System
CAA, 2021	Consolidated Appropriations Act, 2021
CDFI	Community Development Financial Institution
CDFI Fund	Community Development Financial Institutions Fund
COVID-19	Coronavirus Disease 2019
DAS	Deputy Assistant Secretary
DNP	Do Not Pay
ECIP	Emergency Capital Investment Program
FA	Financial Analyst
FAQ	Frequently Asked Questions
FBR	Federal Banking Regulator
FDIC	Federal Deposit Insurance Corporation
GAO	Government Accountability Office
LPA	Lending Plan Analyst
MDI	Minority Depository Institution
MFI	Median Family Income

MOU	Memorandum of Understanding
NAFCU	National Association of Federally-Insured Credit Unions
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OFA	Office of Financial Agents
OGC	Office of General Counsel
OIG	Office of Inspector General
PII	Personally Identifiable Information
SLHC	Savings and Loan Holding Company
Treasury	Department of the Treasury

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Audit Report

March 8, 2022

Noel A. Poyo,
Deputy Assistant Secretary for Community and Economic
Development

This report presents the results of our audit of the Department of the Treasury's (Treasury) implementation of the Emergency Capital Investment Program (ECIP) authorized by Title V, Subtitle B, "Community Development Investment," under Division N of the *Consolidated Appropriations Act, 2021* (CAA, 2021).¹ ECIP is to provide up to \$9 billion of emergency capital investments to low- and moderate-income community financial institutions that support small and minority-owned businesses and consumers responding to the economic impact of the Coronavirus Disease 2019 (COVID-19). Furthermore, the Treasury Office of Inspector General (OIG) is required to submit a report twice a year to Congress² and Treasury on the oversight provided for the programs established under Subtitle B, including any recommendations for improvement. In accordance with this mandate, we conducted this audit.

Our audit objective was to assess Treasury's progress made to implement ECIP, including funding, staffing, processes, and internal controls established, to ensure the effective and efficient administration of the program. The scope of our audit included, but was not limited to, reviewing the development of application and participation requirements along with program guidance materials, policies, procedures, plans, and activities to implement and administer ECIP. Our audit scope period included pre-investment

¹ P.L. 116-260 (December 27, 2020).

² The committees of Congress named under Subtitle B include the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

activities related to understanding the design and implementation of ECIP from December 27, 2020 through September 23, 2021.

To accomplish our objective, we reviewed applicable laws and regulations; and ECIP guidance, including but not limited to, the *Application Instructions for Emergency Capital Investment Program* containing the *Emergency Capital Investment Program Application Form* (ECIP Application),³ investment term sheets,³ and the *Emergency Capital Investment Program's Frequently Asked Questions* (FAQs). We also reviewed Memoranda of Understanding (MOUs) with Federal Banking Regulators (FBRs)⁴ and the Information Access and Confidentiality Agreement(s) with State Banking Regulators. We interviewed key personnel to assess Treasury's progress to implement and administer investments under ECIP. Although no investment review and approval decisions were made within the scope period of this audit, we gathered information to gain an understanding of the design of the ECIP Application submission, review, and approval/disapproval processes. In addition to interviews, Treasury showed us preliminary application review procedures within the ECIP Application Portal⁵ and explained management's planned activities. Although we gained an understanding of the design of the pre-investment activities related to the program, our audit did not include detailed testing of the design, implementation, and operating effectiveness of processes and internal controls⁶ established over pre-investment and post-investment activities. As such, we did not conclude on the design and operating

³ The investment term sheets include the Senior Preferred Stock Term Sheet, the Subordinated Debt Term Sheet (Mutual Institutions and S Corporations), and the Credit Union Subordinated Debt Term Sheet.

⁴ The FBRs include the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (Federal Reserve Board), and the National Credit Union Administration (NCUA).

⁵ As discussed later in this report, Treasury launched the ECIP Application Portal on March 4, 2021. The portal combines public-facing application submission access with secure access for ECIP management and staff to conduct application reviews and coordinate evaluations with banking regulators.

⁶ The Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (GAO-14-704G; September 2014) sets internal control standards for federal entities. An entity uses this to design, implement, and operate internal controls to achieve its objectives related to operations, reporting, and compliance. A control cannot be effectively implemented if it was not effectively designed. A control cannot be effectively operating if it was not effectively designed and implemented.

effectiveness of the pre- and post-investment internal control. We plan to perform this work as part of a future audit. We conducted our fieldwork from April 2021 to October 2021. Appendix 1 contains a detailed description of our audit objective, scope, and methodology.

Results in Brief

Treasury officials acted swiftly to establish ECIP but did not begin accepting applications and issue rules to set required restrictions on executive compensation, share buybacks, and dividend payments by the 30-day statutory deadline of January 26, 2021. Treasury officials worked steadily to develop the program, but did not launch the ECIP Application Portal until March 4, 2021, to allow for consultation with the FBRs. Furthermore, Treasury has not completed key documentation such as policies and procedures to include a post-investment compliance and monitoring plan to fully implement and administer investments under ECIP.

We acknowledge Treasury's efforts to complete critical components of ECIP and begin accepting applications for the new program on March 4, 2021. In designing the program, Treasury officials (1) created and staffed a new program office, (2) conducted outreach with stakeholders, (3) issued application guidance materials and signed MOUs with FBRs, and (4) developed the ECIP Application Portal to accept applications and coordinate reviews with Federal and State banking regulators. Treasury officials planned to make investment decisions within 120 days of the September 1, 2021 application deadline. On December 14, 2021, Treasury announced that 186 financial institutions were approved for ECIP capital investments totaling \$8.7 billion. That said, we are reporting one finding related to missing the statutory deadline and the need to complete key documentation.

Accordingly, we recommend that the Deputy Assistant Secretary for Community and Economic Development ensures that the Interim Director of ECIP finalizes policies and procedures and key documentation to govern full program implementation and administration of ECIP investments, as well as effective internal control over the program.

In a written response, Treasury management generally agreed with our recommendation and stated that it initially developed procedures regarding ECIP's investment decision-making process, and provided documentation regarding those procedures to the OIG. Management also noted that it recently published forms of transaction documentation and data-collection requirements, which will inform program monitoring and compliance. As Treasury works toward closing the investments, management intends to finalize the remaining documentation regarding the investment process, and will adopt additional procedures for reporting, monitoring, and compliance, so that appropriate controls are in place for post-investment monitoring. Management's planned corrective actions meet the intent of our recommendation. We have summarized management's response in the recommendation section of this report. Management's written response, in its entirety, is included in appendix 2 of this report.

Background

The CAA, 2021 authorized Treasury to establish ECIP to provide up to \$9 billion in capital to low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small and minority-owned businesses and consumers, located in areas that may be disproportionately impacted by the economic effects of the COVID-19 pandemic. Of the \$9 billion total available amount, \$4 billion was to be set aside to make (a) \$2 billion available for financial institutions with less than \$500 million in assets, and (b) \$2 billion available for financial institutions with up to \$2 billion in assets. Generally, Treasury can invest up to \$250 million per eligible financial institution. However, additional limits are imposed on investments in financial institutions with total assets in the following amounts:

- > \$2 billion: up to 7.5 percent of total assets;
- < = \$2 billion and > = \$500 million: up to 15 percent of total assets; or
- < \$500 million: up to 22.5 percent of total assets.

Treasury officials may also take into account target market(s)⁷ when determining final investment amounts. Officials will collectively evaluate the entire pool of potential recipients to determine whether the following objectives are met:

- potential recipients' proposed target markets represent broad geographic coverage throughout the United States, including urban and rural areas;
- potential recipients' capacity to invest in a diversity of Other Targeted Populations;⁸ and
- the distribution of investments under ECIP are consistent with statutory asset-based set-asides for participants.

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

The CAA, 2021 mandated Treasury to begin accepting applications for investments and issue rules setting restriction on executive

⁷ A target market refers to one or more Investment Area(s) and/or Targeted Population(s). A Community Development Financial Institution (CDFI) Investment Area is a geographic unit that meets at least one of the following criteria: (1) a population poverty rate of at least 20 percent; (2) an unemployment rate 1.5 times the national average; (3) a metropolitan area with a median family income (MFI) at or below 80 percent of the greater of either the metropolitan or national metropolitan MFI; (4) a non-metropolitan area with a MFI at or below 80 percent of the greater of either the statewide or national non-metropolitan MFI; (5) wholly located within an Empowerment Zone or Enterprise Community [federally designated geographic areas characterized by high levels of poverty and economic distress where businesses and local governments may be eligible to receive federal grants and tax incentives]; or a county population loss greater than or equal to 10 percent between the two most recent census periods for Metro areas or five percent over last five years for Non-Metro areas. Targeted Population(s) may include Low-Income Targeted Population(s) or Other Targeted Population(s) in the organization's service areas for which there exists a strong basis in evidence that the group lacks access to loans, equity investments, and/or financial services.

⁸ "Other Targeted Population" is based on the characteristics of the borrower, not the borrower's location. This approach to defining "Other Targeted Population" is consistent with the CDFI Fund's definition of this term, which currently includes the following: Black Americans, Hispanics, Native Americans, Native Alaskans residing in Alaska, Native Hawaiians residing in Hawaii, and Other Pacific Islanders residing in Other Pacific Islands. Asian Americans are considered an Other Targeted Population for a CDFI if the CDFI Fund has previously made such a determination for that CDFI.

compensation, share buyback, and dividend payments no later than 30 days after enactment on December 27, 2020. Treasury is required to consult with the appropriate FBRs to determine whether the eligible financial institution may receive an investment. Treasury's authority to make new capital investments under ECIP terminates six months after the date on which the national emergency concerning the COVID-19 outbreak, declared by the President on March 13, 2020 under the *National Emergencies Act*,⁹ terminates.

Eligibility

To be eligible under ECIP, a financial institution must be either a certified community development financial institution¹⁰ (CDFI) or a minority depository institution (MDI)¹¹ that is:

- a bank holding company (BHC);¹²
- a savings and loan holding company (SLHC);¹³

⁹ 50 U.S.C. 1601 et seq.

¹⁰ A CDFI has a primary mission of promoting community development; serves an Investment Area or Targeted Population; provides development services in conjunction with equity investments or loans; maintains accountability to residents of its Investment Area or Targeted Population; and is not an agency or instrumentality of the United States or of any State or political subdivision of a State. CDFIs include banks, loan funds (provide financing and technical assistance), credit unions, and venture capital funds (provide equity and debt-with-equity services).

¹¹ An MDI is an institution that meets any of the following criteria: (A) as defined in section 308 of the *Financial Institutions Reform, Recovery, and Enforcement Act of 1989* (12 U.S.C. 1463 note), a depository institution satisfies this definition if it is (1) a privately owned institution in which 51 percent is owned by one or more socially and economically disadvantaged individuals; (2) a publicly owned institution in which 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; or (3) a mutual institution in which the majority of the board of directors, account holders, and the community that it services is predominantly minority; (B) an institution considered to be an MDI by the OCC, FDIC, Federal Reserve Board, or NCUA; or (C) an institution listed in the FDIC's MDIs list published for the third or fourth quarter of 2020 or NCUA's MDIs list for the fourth quarter of 2020.

¹² A BHC is a corporate entity that controls one or several operating bank companies. To be considered a bank holding company, a firm must: (1) hold at least 25 percent of the voting shares in the bank; (2) control the election of a majority of the directors or trustees; or (3) directly or indirectly influence the management or policies of the bank.

¹³ A SLHC includes any company that directly or indirectly controls either a savings association or any other company that is an SLHC.

-
- a federally insured credit union; or
 - a federally insured depository institution not controlled by an eligible BHC or SLHC;

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

According to Treasury's FAQs, a financial institution relying on CDFI status for eligibility must (1) be certified by Treasury's Community Development Financial Institutions Fund (CDFI Fund) as of the date the financial institution's ECIP Application is submitted, and (2) have submitted its application for CDFI certification no later than March 31, 2021.¹⁴ A financial institution relying on MDI status must have such designation¹⁵ as of the date it submits its ECIP Application. If a financial institution ceases to be a CDFI or an MDI after it submits its ECIP Application but before Treasury acquires preferred stock or subordinated debt, Treasury officials have the discretion to determine that the financial institution is no longer eligible to participate in ECIP.

Dividend and Interest Rates

Under the CAA, 2021, a financial institution approved to participate in ECIP must issue either preferred stock or subordinated debt to Treasury. The statute allowed Treasury to require repayment no later than 10 years from the date of a capital investment. However, ECIP management created a perpetual

¹⁴ The original deadline for submission of the CDFI certification application was December 27, 2020. Treasury extended the deadline to March 31, 2021 as a result of the ECIP Application being extended to September 1, 2021.

¹⁵ Commercial banks and savings associations can establish themselves as MDIs either when they apply for federal deposit insurance or as they process notices of changes in control through the FDIC. For credit unions to self-designate as a MDI, they must use the online NCUA Credit Union Profile (CUOnline Profile), which is a web-based program used by credit unions and state supervisory agencies to submit and certify operational and quarterly financial information to the NCUA, and respond "yes" to both "Minority Depository Institutions Questions" in the CUOnline Profile.

instrument for preferred stock to receive Tier 1 capital treatment¹⁶ and a thirty year maturity date for subordinated debt. In addition, no dividends, interest, or other similar required payments shall have a rate exceeding 2 percent per annum for the first 10 years after a capital investment. Furthermore, no dividends, interest, or other similar payments shall be due within the first 24-month period after a capital investment. After that, the annual required payments of dividend or interest shall be adjusted downward based on lending performance by the financial institution. If the amount of lending over the financial institution's baseline lending¹⁷ has increased by less than 200 percent of the investment amount, the annual dividend or interest rate will not exceed 2 percent per annum. If lending increases between 200 percent and 400 percent compared to the lending baseline, the annual dividend or interest rate shall not exceed 1.25 percent per annum; and if the amount increases by more than 400 percent compared to the baseline, the annual dividend or interest rate shall not exceed 0.5 percent per annum.

Audit Results

Treasury officials acted swiftly to establish ECIP but did not begin accepting applications and issue rules to set required restrictions on executive compensation, share buybacks, and dividend payments by the 30-day statutory deadline of January 26, 2021. As described below, Treasury officials worked steadily to develop the program, but did not launch the ECIP Application Portal until March 4, 2021, to allow for consultation with the FBRs. Furthermore, Treasury has not completed other key documentation, such as policies and procedures including an ECIP participant compliance and monitoring plan to govern the program.

In designing the program, Treasury officials (1) created and staffed a new ECIP program office, (2) conducted outreach with stakeholders, (3) issued application guidance materials and signed MOUs with FBRs, and (4) developed the ECIP Application Portal to

¹⁶ Tier 1 capital includes common stock, preferred stock, and retained earnings. It serves as a measure of a bank's strength from the perspective of a FBR. The Tier 1 capital ratio is the ratio of a bank's core Tier 1 capital (i.e. equity capital and disclosed reserves) to its total risk-weighted assets.

¹⁷ An ECIP recipient's baseline will be calculated based on the total amount of qualified loans originated for the annual period between September 30, 2019 and September 30, 2020. Since the baseline counts loan originations, an ECIP recipient will receive full credit for loans sold.

accept applications and coordinate reviews with FBRs and State banking regulators.

Staffing

To administer and oversee ECIP, Treasury officials created a new office under the Deputy Assistant Secretary (DAS) for the Office of Community and Economic Development, and initially developed a staffing plan with 31 positions (13 permanent positions and 18 detailees from FBRs) in anticipation of receiving approximately 500 ECIP Applications. However, Treasury only received 213 applications between March 4, 2021 and September 1, 2021. Therefore, Treasury officials reassessed their staffing plan and determined that 20 employees (10 full-time staff and 10 detailees¹⁸) and 11 contracted consultants would be sufficient for implementing the program. The staffing plan includes 20 positions comprised of the ECIP Program Director (also referred to as Program Manager), Investment Director, Program Analysts, Supervisory Financial Analysts, Financial Analysts (FA), and Lending Plan Analysts (LPA).

To prepare for their roles, Treasury officials stated that new staff and consultants were provided the opportunity to: (1) attend new analyst orientation; (2) participate in application intake review training (i.e. reviewing and evaluating sample applications and discussing results as a teaching tool); (3) receive training from S&P Global¹⁹ on its financial institutions database; and (4) participate in investment team meetings on procedures development.

Stakeholder Outreach

Starting in January 2021, Treasury officials conducted outreach with CDFIs, MDIs, trade associations, community groups, and civil rights groups to raise awareness, educate, and provide an overview of ECIP along with question and answer sessions. Outreach sessions included meetings with the Community Development Bankers Association, the National Community Reinvestment

¹⁸ Two (2) of the 10 detailees work part-time, which counts as one full time equivalent position.

¹⁹ Formerly known as Standard & Poor's, S&P Global is a public company in the financial information and analytics business that provides financial market research and intelligence, maintaining widely followed market and securities indexes.

Coalition, the National Association for the Advancement of Colored People, the National Association of State Credit Union Supervisors, and Inclusiv,²⁰ among others. In addition, Treasury officials participated in webinars on February 3, 2021 and May 24, 2021 and a Q&A session on August 12, 2021, which were held by FBRs.

Issuance of Guidance Materials and Signed MOUs with the FBRs

Prior to and throughout the application process, Treasury officials issued guidance materials on Treasury's ECIP public website to provide potential applicants with information regarding the ECIP Application and program details. On January 19, 2021, Treasury officials issued a draft²¹ version of the "Application Instructions for Emergency Capital Investment Program," which included a sample application form and an emergency investment lending plan template. On March 4, 2021, Treasury officials published preliminary versions of the *Rate Reduction Incentive Guidelines*,²² and investment term sheets for preferred stock and subordinated debt. Additionally, on March 30, 2021, the first version of the FAQs was published. Treasury officials also signed MOUs with the FBRs on May 3, 2021, outlining the mutually agreed upon roles and expectations of both parties.

By August 20, 2021, Treasury issued revised *Application Instructions for Emergency Capital Investment Program*, and FAQs. Also, Treasury updated the *Rate Reduction Incentive Guidelines* and investment term sheets for preferred stock and subordinated debt that showed a maximum dividend and interest rate of 2 percent per annum for preferred stock and subordinated debt, in accordance with the CAA, 2021. In addition, the updated investment term sheets stated that the payments for the capital investments will not be due or accrue for the first 2 years and the annual required payment of dividend or interest will be adjusted

²⁰ Inclusiv is a certified CDFI intermediary whose mission is to help low- and moderate-income people and communities achieve financial independence through credit unions.

²¹ Treasury officials noted that the document is for reference only, and is being provided so that potential applicants may begin compiling the information that is expected to be required for applications.

²² The Rate Reduction Incentive Guidelines provide the dividend/interest rate reduction criteria based on the financial institution's lending performance.

downward based on the financial institution’s lending performance, as shown in Figure 1.

Figure 1: Dividend/Interest Rate Table

% Increase in Lending Compared to Baseline	<i>Dividend/Interest Rate Table for Senior Preferred Stock and Subordinated Debt for Credit Unions, Mutual Institutions, and Subchapter S Corporations</i>		
	<u>First 8 Quarters</u>	<u>Quarter 9 to 10 Years</u>	<u>After 10 Years*</u>
Increase less than 200% of Capital Investment	0%	2.0% per annum	2.0% fixed
Increase between 200% and 400% of Capital Investment	0%	1.25% per annum	1.25% fixed
Increase greater than 400% of Capital Investment	0%	0.5% per annum	0.5% fixed

Source: Treasury OIG summarization of ECIP term sheets.

*After Year 10, the interest rate is fixed until maturity based on the average annual increase in lending in years 2 through 10 compared to the financial institution’s baseline lending.

ECIP Application Portal

Treasury partnered with Salesforce²³ to develop the ECIP Application Portal, which combined public-facing application submission with secure access for ECIP management and staff to conduct application reviews and coordinate evaluations with banking regulators. The FBR and State modules allow each banking regulator to conduct their respective reviews. While considering the FBR and State banking regulator evaluations, ECIP personnel also assess the applicants by focusing on financial condition, organizational capacity, and responsiveness to community needs. The ECIP Application Portal launched on March 4, 2021. In June 2021, we interviewed ECIP management to gather information and gain an understanding of the design of

²³ Salesforce is a customer relationship management platform that ECIP management and staff use in the application process for ECIP recipients.

the ECIP Application submission, review, and approval/disapproval processes. In addition, Treasury showed us preliminary application submission and review procedures within the ECIP Application Portal and explained management’s planned activities for reviewing and approving/disapproving ECIP Applications.

ECIP Application Submission, Review, and Decision Processes

Treasury officials provided us with the following 11-step process that management plans to follow when receiving and evaluating ECIP Applications:

1. Application Intake and Initial Checks – The ECIP Application Portal is the sole mechanism for an eligible financial institution to apply for an ECIP investment. Each applicant must create an ID.me²⁴ account to gain access and complete an application. After the ECIP Application is submitted, an ECIP Application Coordinator will conduct completeness and eligibility reviews that include screening the application for Personally Identifiable Information (PII),²⁵ verifying the applicant’s CDFI status, and checking if the applicant appears on the Do Not Pay (DNP)²⁶ list. For incomplete applications, step 9 below covers the process to request additional information, while step 10 covers how ECIP management handles applicants determined ineligible.
2. Regulator Reviews – After ECIP Regulator Relationship personnel assign the application to the applicable FBR in the ECIP Application Portal, the FBR has no more than 30 days (except National Credit Union Administration, which has 45 days) to review and complete the “ECIP Applicant Supervisory Consultation Form.”²⁷ State banking regulators’

²⁴ ID.me is a certified commercial identity authentication provider. All ECIP applicants are required to sign up with ID.me before they can access the ECIP Application Portal.

²⁵ PII is information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.

²⁶ DNP, operated by Treasury’s Bureau of the Fiscal Service is available to agencies at no cost to check many data sources at one time to verify a recipient’s eligibility for a Federal payment.

²⁷ The “ECIP Applicant Supervisory Consultation Form” includes questions regarding the applicant’s eligibility to participate in the program, its supervisory ratings, and whether it is subject to enforcement actions related to unsafe and unsound lending practices.

reviews are optional. ECIP management and staff conduct an initial review of applications to identify States with State-chartered banking organizations that submitted ECIP Applications and coordinate with those State banking regulators. Upon being notified, State banking regulators have no more than 30 days to review and provide feedback. The FBR and the State banking regulator reviews may be concurrent.

ECIP Regulator Relationship personnel reviews the FBR and the State banking regulator inputs for completeness and may follow-up with appropriate regulators if additional information is needed. If an applicant is eligible, the process moves to step 3. This process can advance without State Regulator input up through Step 4 below, but not beyond unless: (1) the State regulator has indicated it will not provide input or (2) the 30 day window has expired.

3. Financial Agent Review – The Treasury Office of Financial Agents (OFA)²⁸ assigns ECIP Applications to financial agents. The OFA makes the assignments after it receives confirmation from the financial agents that they do not have a conflict of interest with respect to specific applications. The financial agents submit their reports back to the ECIP team.
4. Financial Analyst (FA) and Lending Plan Analyst (LPA) Review – The ECIP Investment Director assigns a FA and a LPA to the application. The FA is responsible for leading the underwriting analysis based on financial agent reports, the ECIP Application, the FBR’s “ECIP Applicant Supervisory Consultation Form,” and the State banking regulator review forms, when available. The LPA is responsible for reviewing and scoring an applicant’s lending plan. Both the FA and LPA work collaboratively to prepare the Investment Committee Memo. Thereafter, the ECIP Investment Director and/or ECIP Director and additional ECIP staff conduct secondary reviews of the Investment Committee Memo and underwriting analysis and move forward with transmitting the Investment

²⁸ Treasury’s Office of Financial Agents oversees the designation, management, and oversight of financial agents who support a variety of stabilization and stimulus programs. Treasury has the authority to designate financial institutions to provide services on behalf of Treasury.

Committee Memo to the Investment Committee if no issues are noted.

5. Investment Committee Review – The Investment Committee members are comprised of five Treasury staff²⁹ who are not part of the ECIP team. The Investment Committee will review the Investment Committee Memo and express concurrence or non-concurrence with ECIP management’s recommendation regarding an applicant’s investment amount and eligibility status. In the event that the Investment Committee does not concur, additional information will be gathered and discussed at subsequent meeting(s). All decisions of the Investment Committee are recorded in minutes. Applicants where the committee recommends a determination of ineligibility be made are moved to step 7 and are excluded from the pool analysis.
6. Pool Analysis – After the Investment Committee’s approval of the ECIP Application, the ECIP Investment Director, along with the ECIP Program Director and staff, prepares an Investment Amount Memo. The memo is sent to an ECIP Application Coordinator to perform a validation of the Pool Analysis³⁰ Calculation prior to the memo being submitted to the Investment Committee for review and approval. Once approved, the ECIP Program Director, along with the ECIP Investment Director and staff, prepares an Investment Approval Memo for the DAS for the Office of Community and Economic Development or designee. A Program Analyst reconciles the Investment Approval Memo to the amounts approved by the Investment Committee.
7. Preliminary Approval – The ECIP Application Coordinator performs another review of the Investment Approval Memo to ensure all recommendations are accurately reflected prior

²⁹ The members of the Investment Committee are: (1) Director, Office of Financial Markets (chair); (2) Assistant Director, Office of Financial Institutions Policy; (3) Director, CDFI Fund; (4) Director, Federal Programs, Office of Financial Markets; and (5) Senior Adviser, Office of Domestic Finance.

³⁰ Treasury will review the list of potential investment recipients to determine whether the pool of recipients collectively meets the following objectives: (1) potential recipients’ proposed target markets represent broad geographic coverage throughout the US, including urban and rural areas; (2) potential recipients demonstrate the capacity to invest in a diversity of Other Targeted Populations; and (3) the distribution of investments under ECIP are consistent with statutory asset-based set-asides for ECIP participants.

to the DAS' review. The DAS has the sole authority to make eligibility determinations and investment decisions. After the DAS determines an applicant eligible and approves the investment decision, an ECIP team member will prepare and send a Preliminary Approval Letter to the applicant. If the DAS determines an applicant ineligible, an ECIP Application Coordinator will prepare a draft preliminary ineligibility letter and proceed with the ineligibility process as outlined in step 10.

8. Withdrawal – An applicant can withdraw an ECIP Application at any point during the process by submitting a withdrawal request. Once an ECIP Application Coordinator receives the withdrawal request, ECIP management will contact the applicant to confirm withdrawal. ECIP management will notify relevant parties to stop application processing. ECIP management will generate a withdrawal confirmation letter and will verify if the applicant has received a preliminary approval letter. If so, the funding allotted to that specific applicant will be returned back to the investment fund pool.
9. Additional Information – At any point in the application review process, an ECIP Application Coordinator may contact the applicant if additional information is required. The applicant must provide the requested information within 5 business days for it to be included in the application review process as noted in step 1. If the applicant does not complete this action in 5 business days, ECIP management will continue the review process with the original information.
10. Ineligibility – When an applicant is determined ineligible by the DAS, an ECIP Application Coordinator will draft a preliminary ineligibility letter and send it to the Treasury Office of General Counsel (OGC) and the ECIP Director for review and approval. The approved letter is then sent to the applicant. If applicable, the applicant may submit further information within 5 business days for eligibility reassessment.

If the applicant provides further information, ECIP management and the Treasury OGC will review and confirm

eligibility and proceed with the application review process. Subsequently, the DAS has the sole authority to approve/disapprove investment decisions. If assessed as ineligible, then a final ineligibility letter will be drafted and distributed to the applicant.

11. Denial – ECIP management will notify applicants not recommended for investment and provide a second review opportunity. If the applicant chooses not to request a second review, no further action is needed. However, an applicant wanting to be reconsidered must send a second review request. A new ECIP team will be assigned to review the application, if required (see step 4).

Although we gained an understanding of Treasury’s 11-step process, we did not perform detailed tests of the design, implementation, and operating effectiveness as no investment decisions were made within the scope of this audit. Furthermore, documented policies and procedures related to the 11-step plan were not completed. See finding 1 for details of key documentation not finalized at the time of our audit.

Demand for Emergency Capital Investments

Treasury received 204³¹ eligible ECIP Applications from banks, BHCs, SLHCs, and credit unions.³² Applicants requested more than \$12.88 billion in capital investments (see Figure 2 below).

³¹ Treasury received 212 applications but immediately ruled out 8 applications as ineligible as they were not submitted by depository institutions or holding companies.

³² Treasury posted announcement, “Treasury Sees Robust Demand for Emergency Capital Investment” at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/emergency-capital-investment-program>.

Figure 2: ECIP Applications and Requested Investment Amounts

Institution Description	Requested Investment Amount	Number of Eligible Applications
BHC	\$ 7,847,871,850	93
Federally Insured Credit Union	\$3,234,333,045	91
Insured Depository Institution not controlled by a BHC or SLHC	\$1,145,631,000	13
Insured Depository Institution controlled by a BHC or SLHC	\$341,663,000	5
SLHC	\$313,140,000	2
Total	\$12,882,638,895	204

Source: Treasury OIG summarization of data provided by the ECIP management.

Although Treasury progressed in its program design to meet the CAA, 2021 requirements, management missed the statutory deadline to implement ECIP, as well as to complete key documentation as described in finding 1.

Finding 1

Treasury Made Progress Implementing ECIP but Missed the Statutory Deadline

While we found that Treasury officials have been actively engaged in developing the ECIP program and processes to meet the CAA, 2021 requirements, they missed the January 26, 2021 statutory deadline to begin accepting ECIP Applications and issue required rules pertaining to executive compensation, share buybacks, and dividend payments. Furthermore, Treasury has not completed key documentation such as policies and procedures, to include a compliance and monitoring plan to fully implement and administer investments under ECIP.

Under the CAA, 2021, Treasury officials were to begin accepting applications for investments and issue rules setting required restrictions on executive compensation, share buybacks, and dividend payments by January 26, 2021. However, the ECIP Application Portal was not opened until March 4, 2021 and the Interim Final Rule for Emergency Capital Investment Program—

Restrictions on Executive Compensation, Share Buybacks, and Dividends was issued on March 9, 2021. Furthermore, in April 2021, Treasury officials extended the ECIP Application initial deadline submission³³ from May 7, 2021 to July 6, 2021. On July 1, 2021, Treasury officials announced that the deadline to submit applications was extended again, to “14 days following the publication of forthcoming guidance.” On August 11, 2021, Treasury officials issued additional guidance including underwriting criteria, and announced a new application deadline of September 1, 2021. Treasury officials planned to make investment decisions within 120 days of the September 1, 2021 application deadline. On December 14, 2021, Treasury announced that 186 financial institutions were approved for ECIP capital investments totaling \$8.7 billion.

When we inquired about the delays in implementing ECIP, management provided several reasons. To begin, a new office had to be established and staffed to manage the complex and labor-intensive program requirements under the CAA, 2021. Treasury officials had to conduct outreach to educate and raise awareness of ECIP with CDFIs, MDIs, trade associations, community groups, and civil rights groups. In addition, the ECIP Application deadline was extended and program guidance was updated, in part, to respond to stakeholders’ requests for extension and to provide Treasury officials and the FBRs the opportunity to respond to concerns. Furthermore, Treasury officials needed to work with the FBRs to enable the preferred stock under the program to receive Tier 1 capital treatment, which the banking regulators needed to implement through notice-and-comment rulemaking.³⁴

As of September 2021, Treasury officials had not yet completed documentation to guide the overall implementation and administration of ECIP. While Treasury officials provided an 11-step process to review and approve or disapprove ECIP Applications, as noted above, policies and procedures documenting the process were not provided for our review. Treasury was still drafting policies and procedures for post-investment compliance monitoring,

³³ On March 4, 2021, Treasury published ECIP Application instructions and set the submission deadline as May 7, 2021.

³⁴ 12 CFR parts 3, 5, 217, and 324, *Regulatory Capital Rule: Emergency Capital Investment Program*; the Office of the Comptroller of the Currency, Federal Reserve Board, and FDIC issued the Interim Final Rule on March 22, 2021.

and as such, they were not within the scope of this audit. Furthermore, Treasury officials have not finalized the Interim Final Rule for *Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends*.

According to the Government Accountability Office’s (GAO) *Standards for Internal Control in the Federal Government*³⁵ Principle 10, management should design control activities to achieve objectives and respond to risks. Attribute 10.02, *Response to Objectives and Risk*, provides suggested guidance that “management designs control activities in response to the entity’s objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management’s directives to achieve the entity’s objectives and address related risks.” Furthermore, Principle 12 requires that management should implement control activities through policies. Attribute 12.03, *Documentation of Responsibilities through Policies*, suggests that “...Each unit, with guidance from management, determines the policies necessary to operate the process based on the objectives and related risks for the operational process. Each unit also documents policies in the appropriate level of detail to allow management to effectively monitor the control activity.” In addition, Attribute 12.04 suggest that “...Management communicates to personnel the policies and procedures so that personnel can implement the control activities for their assigned responsibilities.”

Treasury’s extended timeline for ECIP development has resulted in delayed emergency support for recipient financial institutions and communities. Although Treasury officials made investment decisions within 120 days of the September 1, 2021 application deadline, investments have not yet occurred. Treasury estimates that closing and funding for approved investments will begin early in calendar year 2022. Therefore, it is important to promptly finalize internal control documentation that includes well-defined policies and procedures to guide investment reviews, and determinations, and to monitor ECIP participants’ compliance with program terms and conditions. Without documented policies and procedures and other key documentation, there is potential for lack of continuity in administering ECIP, which could hamper Treasury’s

³⁵ GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (September 2014).

ability to support small and minority-owned businesses and consumers disproportionately impacted by the economic impacts of COVID-19.

Recommendation

We recommend the Deputy Assistant Secretary ensures the Interim Director of ECIP finalizes policies and procedures and key documentation to govern full program implementation and ongoing administration of ECIP investments, as well as effective internal control over the program.

Management Response

Treasury management generally agreed with our recommendation and responded that it initially developed procedures regarding ECIP's investment decision-making process, and provided documentation regarding those procedures to the OIG. Management also noted that it recently published forms of transaction documentation and data-collection requirements, which will inform program monitoring and compliance. As Treasury works toward closing the investments, management intends to finalize the remaining documentation regarding the investment process, and will adopt additional procedures for reporting, monitoring, and compliance, so that appropriate controls are in place for post-investment monitoring. Management's written response, in its entirety, is included in appendix 2 of this report.

OIG Comment

Management's planned corrective actions meet the intent of our recommendation.

* * * * *

We appreciate the courtesies and cooperation provided by your staff. If you wish to discuss the report, you may contact me at (202) 577-6609, or Julie Wong, Audit Manager at (202) 439-6354. Major contributors to this report are listed in appendix 3. A distribution list for this report is provided as appendix 4.

/s/

Cecilia K. Howland
Audit Director, State and Local Fiscal Recovery, RESTORE, and
CDFI Programs

Appendix 1: Objective, Scope, and Methodology

Our objective was to assess the Department of the Treasury's (Treasury) progress made to implement the Emergency Capital Investment Program (ECIP), including funding, staffing, processes, and internal controls established to ensure the effective and efficient administration of the program.

The scope of our audit included, but was not limited to, the development of application and participation requirements along with program guidance materials, policies, procedures, plans, and activities to implement and administer ECIP. Our audit scope period included ECIP's activities related to understanding the pre-investment design and implementation of ECIP, from December 27, 2020, through September 23, 2021. Our audit scope did not include detailed testing of design, implementation, and operating effectiveness of ECIP implementation activities, and as such, testing of ECIP Applications was not part of this audit. Due to the Coronavirus Disease 2019 pandemic, fieldwork was conducted remotely from April 2021 to October 2021.

To accomplish this audit objective, we performed the following procedures during audit fieldwork.

- Reviewed applicable laws and regulations:
 - P.L. 116-260, Title V, Subtitle B in Division N of Consolidated Appropriations Act 2021 (CAA, 2021), December 27, 2020;
 - 31 CFR Part 35, Interim Final Rule *Emergency Capital Investment Program—Restrictions on Executive Compensation, Share Buybacks, and Dividends*, effective date: March 9, 2021, comment due date: April 8, 2021;
 - 12 CFR Parts 3, 5, 217, and 324, Interim Final Rule, *Regulatory Capital Rule: Emergency Capital Investment Program*, effective date: March 22, 2021, comment due date: May 21, 2021;
 - 12 CFR Part 3, *Capital Adequacy Standards*, October 11, 2013;
 - 12 CFR Part 709.5, *Payout Priorities in Involuntary Liquidation*, February 23, 2021;

- Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* (GAO-14-704G; September 2014); and
 - GAO, *Assessing Data Reliability*, December 2019.
- Reviewed GAO's *Standards for Internal Control in the Federal Government* to identify the components of internal control and principles that related to the context of the audit objective. Specifically, evaluated the control environment, risk assessment, and control activities; and assessed policies, procedures, and guidance against the following principles: (1) management should establish an organizational structure, assign responsibility, and delegate authority to achieve the objectives; (2) management should commit to recruiting, developing, and retaining competent personnel; (3) management should identify, analyze, and respond to risks related to achieving the defined objectives; (4) management should design control activities to achieve objectives and respond to risks; and (5) management should implement control activities through policies.
 - Reviewed GAO's *Assessing Data Reliability* guidance, which states that a data reliability determination does not involve attesting to the overall reliability of the data or database. For this audit, the audit team only determined the reliability of the specific data sources needed to support the findings, conclusions, or recommendations in the context of the audit objectives. In this regard, we compared the information in the Salesforce ECIP Application Portal to the information reported on the ECIP public website and the information obtained from interviews with Treasury officials, to gather consistent information relevant to understanding the design of the ECIP Application submission, review, and approval/disapproval processes. We determined that the data sources were sufficiently reliable for the purpose of answering our audit objective.
 - Reviewed Treasury's ECIP guidance to include:
 - *Application Instructions for Emergency Capital Investment Program* containing the *Emergency Capital Investment Program Application Form* (ECIP Application),

- (January 19, 2021, March 4, 2021, August 11, 2021, and August 20, 2021 versions);
 - “ECIP Application Portal: Create an ID.me Account,” March 2021;
 - *Emergency Capital Investment Program’s Frequently Asked Questions*, (March 30, 2021, August 11, 2021, and August 20, 2021 versions);
 - *Rate Reduction Incentive Guidelines*, (March 4, 2021 and August 11, 2021 versions);
 - *Application and Lending Plan Evaluation Form*, August 11, 2021;
 - *Senior Preferred Stock Term Sheet*, (March 4, 2021 and August 12, 2021 versions);
 - *Credit Union Subordinated Debt Term Sheet*, (March 4, 2021 and August 12, 2021 versions); and
 - *Subordinated Debt Term Sheet (Mutual Institutions and S Corporations)*, (March 9, 2021 and August 12, 2021 versions).
- Reviewed Treasury’s ECIP website page, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/emergency-capital-investment-program>
- Reviewed National Credit Union Administration (NCUA) and the National Association of Federally-Insured Credit Unions (NAFCU) website pages:
 - NCUA’s website page for the ECIP webinar, <https://www.ncua.gov/newsroom/press-release/2021/federal-financial-regulators-hold-webinar-emergency-capital-investment-program>
 - NAFCU’s website page for ECIP information, <https://www.nafcu.org/newsroom/fed-treasury-offer-ecip-updates-during-ask-fed-webinar>
- Reviewed the Memoranda of Understanding with Federal Banking Regulators – the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, (Federal Reserve Board) and the National Credit Union Administration, dated May 3, 2021.

- Interviewed key ECIP personnel to gain an understanding of the design of the ECIP Application submission, review, and approval/disapproval processes. No investment review and approval/disapproval decisions were made within the scope of this audit, and as such, we did not test and assess their design, implementation, and operating effectiveness. We plan to perform this work in a future audit.
- Interviewed key ECIP personnel:
 - Interim Director, ECIP;
 - Deputy Assistant General Counsel;
 - Office of General Counsel detailee from the Federal Reserve Board; and
 - Program Analyst.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix 2: Management Response



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

February 18, 2022

Deborah L. Harker
Assistant Inspector General for Audit
Department of the Treasury – Office of Inspector General
1500 Pennsylvania Avenue
Washington, DC 20220

Dear Ms. Harker:

I write regarding the Office of Inspector General's (OIG) draft report entitled *Audit of Treasury's Implementation of the Emergency Capital Investment Program* (Draft Report). Treasury appreciates OIG's efforts to promote the successful implementation of Treasury's pandemic relief programs.

Established under the Consolidated Appropriations Act, 2021, the Emergency Capital Investment Program (ECIP) will enable Treasury to make approximately \$8.75 billion of capital investments in low- and moderate-income community financial institutions, which support small and minority-owned businesses and consumers. In December 2021, Treasury announced the results of its application review process, which included consultation with federal and state banking regulators. Treasury is now moving expeditiously to close investments in the approved institutions within the next two calendar quarters.

Treasury is committed to rigorous monitoring, compliance, and oversight over all of its pandemic-related economic recovery programs, so Treasury generally agrees with the recommendation in the Draft Report, which calls for Treasury to finalize policies and procedures and key documentation to govern the program implementation and administration of ECIP investments, as well as effective internal controls. As Treasury has worked to implement the ECIP, we initially developed procedures regarding Treasury's investment decision-making process, and we provided documentation regarding those procedures to OIG. Treasury also recently published forms of transaction documentation and data-collection requirements, which will inform program monitoring and compliance.¹ As we now begin working toward closing the investments, we intend to finalize the remaining documentation regarding the investment process, and we will adopt additional procedures for reporting, monitoring, and compliance, so that appropriate controls are in place for post-investment monitoring. We look forward to sharing additional documentation with your office as it becomes available.

We appreciate the opportunity to comment on the Draft Report, and we look forward to continuing to work with you as we deliver critical and urgent support to the American people

¹ These documents can be found at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/emergency-capital-investment-program>.

during the pandemic while also giving them confidence in the oversight and management of the funds.

Sincerely,

Noel A. Poyo

Noel Poyo
Deputy Assistant Secretary
Community and Economic Development

Appendix 3: Major Contributors to This Report

Julie Wong, Audit Manager
Alexis Satterwhite, Auditor-in-Charge
Clare Granville, Auditor
Tanisha Dunn, Auditor
Kristin Prestel, Auditor
Anita Smith, Referencer

Appendix 4: Report Distribution

Department of the Treasury

Secretary

Deputy Secretary

Deputy Assistant Secretary for Community and Economic
Development

Office of Strategic Planning and Performance Management

Office of the Deputy Chief Financial Officer, Risk and Control
Group

Emergency Capital Investment Program

Interim Director

Deputy Assistant General Counsel

Office of Management and Budget

OIG Budget Examiner

U.S. Senate

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Committee on Banking, Housing, and Urban Affairs

U.S. House of Representatives

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