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Consolidated Appropriations Act, 2021 (P.L. 116-260): Emergency Capital Investment Program

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The Coronavirus Disease 2019 (COVID-19) pandemic has had devastating economic effects, including a significant increase in unemployment. Certain studies indicate that low- and moderate-income communities and minorities have borne this economic hardship to a disproportionately high degree, such as by being more likely to experience job loss and difficulty paying for necessities. Division N, Title V, Section 522, of Consolidated Appropriations Act, 2021 (P.L. 116-260), establishes the Emergency Capital Investment Program (ECIP) through which the Treasury Department can make capital investments in certain depositories (i.e., banks, savings associations, and credit unions). The purpose of the program is to increase the availability of credit, grants, and forbearances to groups disproportionately affected by the pandemic. The program shares certain similarities with previous Treasury capital investment programs.

Emergency Capital Investment Program

Section 522 allows Treasury to make investments in eligible institutions to support their efforts to "provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities … that may be disproportionately impacted by the economic effects of the COVID-19 pandemic." Total investments cannot exceed $9 billion; $4 billion is set aside for institutions with less than $2 billion in assets, of which $2 billion is set aside for institutions with less than $500 million. Eligible institutions include depositories that are either (1) minority depository institutions (i.e., 51% or more owned by individuals who are minorities) or (2) a Community Development Financial Institution (CDFI). CDFIs are entities, some of which are not depositories, certified to receive grants and other assistance from the CDFI Fund established by the Riegle Community Development and Regulatory Improvement Act of 1994 (P.L. 103-325) because their business plans include a focus on fostering economic development in target neighborhoods or groups.

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Under ECIP, eligible institutions must submit applications to participate, including information about how the investments will be used meet the needs of communities disproportionately affected by the pandemic. The Treasury will purchase capital (e.g., preferred stock or a similar financial instrument) issued by approved institutions. If an institution does not repay the investment by the end of a 10-year period, the Treasury can reset the terms.

No dividend will be due within the first two years of the stock issuance. Then, the dividend rate will be based on how much the institution's lending to certain groups has grown relative to the size of the investment in a way that provides incentives for lending to those groups. Institutions that have increased lending to minority, rural, and urban low-income and underserved communities and to low- and moderate-income borrowers by more than 400% of the investment amount will pay a 0.5% annual rate. Institutions with lending growth to those groups of between 200% and 400% of the investment will pay 1.25%. Institutions that do not achieve those growth rates will pay 2%.

The most Treasury can invest in one bank is limited to $250 million, and the size of the capital investment is limited to a percentage of a bank total assets, ranging from 7.5% of total assets for institutions with more than $2 billion in assets to 22.5% for institutions with less than $500 million.

The Treasury has discretion to set terms and conditions and implement regulations to ensure that program goals are met, provide incentives for repayment, protect against conflicts of interest, and protect the interest of the federal government, among other goals. The Treasury faces certain restrictions on the sale of the instruments to third parties. The authority to make investments under the ECIP expires six months after the termination date for the national emergency declared by the President on March 13, 2020, under the National Emergencies Act (P.L. 94-412).

Previous Capital Investment Programs

Troubled Asset Relief Program

Though the cause of the economic contractions are different, the magnitude of the current recession draws comparisons to the recession caused by the 2007-2009 financial crisis. That crisis and its economic fallout elicited major government interventions, including programs in which the Treasury made capital investments in banks.

The Treasury established the Troubled Asset Relief Program (see CRS Report R41427, *Troubled Asset Relief Program (TARP): Implementation and Status*) pursuant to the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), which included five bank investment programs. One program, the Capital Purchase Program (CPP), made nearly $205 billion of investments in 707 financial institutions that were deemed "viable"—that is, solvent and not in immediate danger of failing—with the goal of bolstering their capital positions, boosting confidence in the banking system, and supporting lending to consumers and businesses. Another program, the Community Development Capital Initiative (CDCI), made capital investments in viable depositories that were CDFIs on more favorable terms than those of the CPP. The CDCI made $570 million of investments in 84 institutions. As of December 2020, the Treasury had received repayments, dividends, and sales worth $226 billion from CPP investments and $590 million from CDCI investments.

Small Business Lending Fund

To support employment and small businesses after the 2007-2009 recession, Congress passed the Small Business Jobs Act of 2010 (SBJA; P.L. 111-240). Section 4103 of the SBJA established another capital investment program called the Small Business Lending Fund (SBLF; see CRS Report R42045, *The Small*

Business Lending Fund). The act authorized the Treasury to invest up to $30 billion through the SBLF in small banks and Community Development Loan Funds (CDLFs), a type of nondepository CDFI. Ultimately, the Treasury invested over $4.0 billion in 332 institutions: $3.9 billion in 281 community banks and $104 million in 51 CDLFs.

The SBJA required that participating banks pay a 5% dividend for the first two years of SBLF investment and reduced that dividend in subsequent years if the bank had increased its small business lending by certain amounts. For example, if the bank increased its business lending by 2.5% to 5%, it would pay a 4% dividend. The dividend could be set as low as 1% if the increase in small business lending was greater than 10%. This feature of setting a dividend rate based on how much a bank lent to a particular market segment is similar to the dividend feature in the ECIP.

Author Information

David W. Perkins
Specialist in Macroeconomic Policy

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