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### § 34.803 Conditions.

At a minimum, each grant agreement under subparts D, E, F, G, and H of this part must contain the following conditions:

(a) The recipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds. The recipient must track program income.

(c) Prior to disbursing funds to a subrecipient, the recipient must execute a legally binding written agreement with the entity receiving the subaward. The written agreement will extend all the applicable program requirements to the subrecipient.

(d) The recipient must use the funds only for the purposes identified in the agreement.

(e) The recipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement.

(f) Trust Fund amounts may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(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

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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; Division N, Title V, Subtitle B, Pub. L. 116-260, 134 Stat. 1182; 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: 86 FR 26819, May 17, 2021, unless otherwise noted.

#### § 35.1 Purpose.

This subpart 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 subpart 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.

As used in this subpart:

*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.

*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. 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, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government 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 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.

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*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 child care; 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; 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 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 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, 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 does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

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

*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.

*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) 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.

*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 with respect to any single eligible worker. 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 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 workers' 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.

*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).

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

*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.

*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 by the Bureau of Indian Affairs on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

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*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)).

*Unserved and underserved households or businesses* means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

### § 35.4 Reservation of authority, reporting.

(a) *Reservation of authority.* Nothing in this subpart 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 subpart, 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 covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all 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 appro-

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priate, 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 section § 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, and any funds not expended to cover such obligations 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 (e) 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, including for one or more of the following purposes:

(1) *COVID-19 response and prevention.* Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID-19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;

(ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public health and safety staff.* 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.

(3) *Hiring State and local government staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to unemployed workers.* Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work.

(5) *Contributions to State unemployment insurance trust funds.* Contributions to an unemployment trust fund up to the level required to restore the unemployment trust fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and May 17, 2021.

(6) *Small businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency.

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(8) *Assistance to households.* Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency.

(9) *Aid to impacted industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency.

(10) *Expenses to improve efficacy of public health or economic relief programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19.

(12) *Disproportionately impacted populations and communities.* A program, service, or other assistance that is provided in a qualified census tract, that is provided to households and populations living in a qualified census tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and

to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students; and

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(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, 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 it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of

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such eligible worker’s residing State’s average annual wage for all occupations or their residing county’s average annual wage, whichever is higher.

(d) *Providing government services.* For the provision of government services to the extent of a reduction in the recipient’s general revenue, calculated according to paragraphs (d)(1) and (2) of this section.

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient’s general revenue equals:

$$\text{Max} \{ [ \text{Base Year Revenue} * (1 + \text{Growth Adjustment})^{(\frac{n_t}{12})} ] - \text{Actual General Revenue}_t; 0 \}$$

Where:

*Base Year Revenue* is the recipient’s general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency;

*Growth Adjustment* is equal to the greater of 4.1 percent (or 0.041) and the recipient’s average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

*n* equals the number of months elapsed from the end of the base year to the calculation date.

*Actual General Revenue* is a recipient’s actual general revenue collected during 12-month period ending on each calculation date;

Subscript *t* denotes the specific calculation date.

(e) *To make necessary investments in infrastructure.* A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

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

(ii) 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 meeting the standards set forth in paragraph (e)(2)(i) of this section:

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

(B) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient 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;



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(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).

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### § 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, Treasury 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.* Treasury 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) *Notice.* If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury 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 Treasury a written request that includes:

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(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 Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, 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.

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

(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.

### § 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 the date that is 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 at least 30 days prior to the date referenced in paragraph (a) 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 subpart 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 Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of 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. 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 paragraph (b).

(c) *Units of general local government.* Each State or Territory that receives a payment from Treasury pursuant to

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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

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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

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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

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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

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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

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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.

APPENDIX A TO PART 35—EMERGENCY  
CAPITAL INVESTMENT PROGRAM  
MODEL EXCESSIVE OR LUXURY EX-  
PENDITURES 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 be 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 ex-

penditures 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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### **Subpart L—Cap on Annual Liability**

- 50.110 Cap on annual liability.
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