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## 31 C.F.R. § 35.23

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### Restrictions on dividends, share buybacks, and other capital distributions.

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(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.

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