Community Development Bankers Association
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February 28, 2022

Via Electronic Submission

The Honorable Janet Yellen
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

RE: Emergency Capital Investment Program (ECIP) Draft ISR Instructions

Dear Secretary Yellen:

On behalf of the members of the Community Development Bankers Association (CDBA), we write to submit comments of ECIP participants that are federally certified or designated Community Development Financial Institutions (CDFI) and Minority Depository Institution (MDI) banks on the Instructions for the Initial Supplemental Report for Insured Depository Institutions, Bank Holding Companies, and Savings and Loan Holding Companies (hereafter called "Draft ISR Instructions") issued by the agency on February 15, 2022.

CDBA is the national trade association for banks and thrifts that are CDFIs. Many are also Minority Depositary Institutions (MDIs). Our members have a primary mission of promoting community development and target at least 60% of their total lending and activities to Low- and Moderate-Income (LMI) communities and customers that are underserved by traditional financial service providers. Our members collectively represent the majority of CDFI and MDI banks, thrifts, and bank holding companies selected to participate in ECIP.

Like the United States Department of the Treasury (Treasury), CDBA and its members are firmly committed to making ECIP a success. We commend Treasury for the speed of its efforts to roll out the program. ECIP is the largest initiative ever created to benefit the communities served by CDFI and MDI banks. It promises to provide much needed long-term support that will grow the capacity and impact of the CDFI and MDI banking sectors. We also commend Treasury personnel for their accessibility and willingness to participate in multiple webinars to explain the program and answer participants' questions.

In addition to this letter on the Draft ISR Instructions, CDBA is preparing a comment letter on the legal documents associated with pending ECIP investments. There are several key issues that currently stand as barriers to many of our members moving forward with closing their approved ECIP investments. As we wish to see the ECIP program succeed with all available dollars deployed into the CDFI and MDI banking sector, we stand ready to work with Treasury to address these issues.

GENERAL ISSUES AND CONCERNS

Quarterly Supplemental Report (QSR): **We urge the agency to issue the QSR as soon as possible for public comment.** The QSR is the form that all Recipients will use to report Qualified Lending on a quarterly basis over the full lifetime of participation in the ECIP program. This report will determine whether the amount of Qualified Lending sufficiently surpasses the baseline to merit an interest rate reduction. Given its significance, many of our members have told us they will not move to closing without an opportunity to review and comment on this form. Treasury officials have stated they would provide the QSR forms and instructions for notice and comment, but the timeline is unknown. Collecting more complete and accurate data on Qualified Lending and the Deep Impact Lending subset of Qualified Lending that counts for double credit, will require an investment in internal technology (i.e. modifications to core systems' data fields and reporting, modification to internal processes, procedures, and forms used in lending and portfolio monitoring, training staff, hiring additional staff for data entry and review). All of these changes are feasible, but will require an increase in money, time, and people.

<u>Methodology Narratives</u>: **We urge Treasury to issue written clarification on the purpose and required completeness of the methodology narratives required for both Schedule A and Schedule B.** The Draft ISR Instructions defines the Schedules as follows:

> *"Schedule A–Baseline Qualified Lending Calculation is used to calculate the baseline amount of Qualified Lending, subject to a floor and ceiling. Schedule B– Disaggregated Data on Qualified Lending and Deep Impact Lending is used to present further detail on the composition of the Applicant's Qualified Lending."*

The Draft ISR Instructions further state that the disaggregated data of Schedule B *"will not provide useful data points"* in relation to the baseline calculation for Qualified Lending for Schedule A. Many of our members have asked questions about what methodology is acceptable and whether Treasury can approve a specific methodology or provide guidance on a relevant safe harbor for methodological calculations before a bank moves forward on baseline data reporting. There is also concern that participants will be required to use the same methodology that they used to establish their baseline over the course of their future participation in the program. In conversation with Treasury staff, CDBA has been informed that the primary purpose of the baseline methodology is to allow for future program evaluation by Treasury staff, the Inspector General, and Congress. Treasury staff has also informed CDBA that Treasury understood the baseline methodology would likely change and improve over time, and that the methodology is at the discretion of each bank. **We urge you to clearly communicate this purpose to participants to assuage concerns over how the data will be used by Treasury.**

We anticipate that ECIP participants will improve their data collection processes and methodology in the future, which will be a positive outcome of ECIP. We note that at present many of the data points requested by Treasury are not uniformly or consistently available for all borrowers. **CDBA therefore recommends that Treasury amend its dividend and interest rate reduction guidelines to incent ECIP participants to invest in impact measurement and management systems that meet and go beyond ECIP requirements (i.e. job creation, credit score improvements, low-income people served).**

Completing Schedule A and Schedule B will be burdensome. **We urge Treasury to provide examples and/or models on how to complete the ISR as Treasury officials suggested on the February 23, 2022 webinar hosted by CDBA.** Participants need to better understand Treasury's expectations for how comprehensive their loan review for Schedule A and Schedule B needs to be. Our members are generally comfortable with the "Place" based communities metrics, but are concerned about the lack of data they currently have in their data systems on the "People", "Businesses", and "Projects or Borrowers" creating "Direct Benefits" categories. As noted, in some of these categories the needed data points have not been typically collected by our members.

<u>Schedule A – Baseline Qualified Lending Calculation</u>: Schedule A will be used to determine interest rate reductions in subsequent years of participation in the ECIP program based on Qualified Lending and Deep Impact Lending above this baseline, as reported in QSRs. Because Schedule A is more streamlined than Schedule B – given that each loan counts toward the baseline calculation only once – it is less burdensome than Schedule B. At this juncture, we expect our members to primarily qualify loans on a geographic basis and that only loans

not qualifying based on the geographic criteria will be reported based on the People, Business, or Direct Benefit criterion. For example if 40% of a bank's loans are in Persistent Poverty Counties and an additional 40% are located in majority/minority census tracts, the bank will only have to report the People, Business, or Direct Benefit data points in Schedule A for the remaining 20% of loans. While this will significantly reduce the data collection challenges, the work to evaluate the remaining loans to calculate the baseline for Schedule A will still be quite burdensome, especially for those banks whose Qualified Lending is not as easy to identify by geography.

<u>Schedule B – Disaggregated Data on Qualified Lending and Deep Impact Lending</u>: Completing Schedule B accurately will involve a loan-by-loan review and data collection to address gaps (e.g. borrower race and income) to make sure the transactions are reported and counted as many times as applicable in the various Categories of Target Communities. This task will be especially burdensome for our members that have large volumes of small dollar loans. Some members estimate this review could take months to complete. As Treasury pushes for expedited closings, it should be cognizant of the significant and highly manual task of completing Schedule B. **We urge Treasury to weigh the importance of receiving Schedule B prior to closing against expediting the closing schedule.**

<u>Baseline for Mergers & Acquisitions</u>: **CDBA recommends Treasury design a streamlined methodology for baseline adjustments in the case of acquisitions.** Given banking industry trends, it is highly likely that some ECIP participants will acquire other banks. The guidance suggests that baseline adjustments will need to occur. Typical industry practice is to purge borrower records five years after a loan has repaid; thus, making it impossible to recreate the historic (10/1/2019-9/30/2020) baseline of an institution acquired in the future. As an alternative, we recommend a proxy baseline estimate method. For example, the acquired institution's baseline should be derived by multiplying its total lending during the historic baseline period (10/1/2019-9/30/2020) by the portion of the total lending that was Qualified Lending and Deep Impact Lending in the full calendar year prior to the acquisition. This proxy assumes that the portion of Qualified Lending and Deep Impact Lending of the acquired institution remains constant over time. This method allows for the baseline to be adjusted in the absence of data.

<u>Demographic Data</u>: **CDBA <u>strongly</u> urges the Treasury to work with all of the banking regulatory agencies to ensure adequate guidance is provided to examiners about the ECIP exemption under the Equal Credit Opportunity Act (ECOA) (aka Reg B).** Treasury asks ECIP participants to report demographic data on customers (i.e. race, ethnicity) that is generally prohibited under ECOA (except for HMDA qualified and some federally guaranteed lending). The ECOA exemption should allow this data collection. However, if the regulatory authorities are not properly trained on the exemption, it could result in ECIP participants being cited for Reg B violations. One of the main objectives of ECIP was to deliver capital to the historically underserved. Without good data, it will be difficult for ECIP participants and Treasury to know if they are accomplishing this objective.

In addition, we urge Treasury to explore proxy measures that may be used to estimate a community's demographic composition, including government or proprietary data sources.

<u>Missing Data Sources</u>: **CDBA urges Treasury to make available data sources that meet its geographic criteria for Qualified Lending and Deep Impact Lending as soon as possible.** Many of the key ISR terms require reference to data sources published in the ECIP website. Yet, to date, these terms and data sources are not yet listed on the ECIP webpage. These terms include Metropolitan Areas, Minority Communities, Persistent Poverty Counties, Rural Communities, Underserved Communities, and Urban Low-Income Communities. While many of

the Federal data sources are available through other government or proprietary websites, to ensure ECIP participants are using the correct information, it would be helpful for Treasury to post the sources and/or data.

DEFINITIONS & CLARIFICATIONS

Loan Participations: **CDBA urges Treasury to clarify the eligibility of loan participations as Qualified Lending and Deep Impact Lending.** The ISR instructions imply that the only type of loan participation classified as Qualified Lending or Deep Impact Lending is a transaction in which a loan is purchased from a non-profit non-depository CDFI loan fund, and only if it was originated within one year. CDBA believes this definition is far too narrow. We believe that: (1) loan purchases from a CDFI loan fund; (2) loan participations originated and/or sourced by one or more CDFI loan funds directly or through a collaborative participation structure; and (3) loan participations in transactions that otherwise qualify as Qualified Lending or Deep Impact Lending should all be counted. In all cases, an ECIP participant should receive credit for the full amount of its credit exposure in each transaction.

Line of Credit: **CDBA urges Treasury to clarify the circumstances in which lines of credit (LOC) can be counted as** Qualified Lending or Deep Impact Lending. The ISR instructions state "open-ended extensions of credit if the credit was originated, and funds were drawn, during the baseline year" are eligible. This definition raises additional points of clarification:

- The inclusion of credit cards as "open-ended extensions of credit";
- Whether an LOC should be reported as a baseline activity if it has not been drawn during the baseline year;
- If there is a minimum amount that needs to be drawn (e.g. > $1, which is often a test transaction to make sure the account is properly logged on a bank's core system);
- What amount should be reported: LOC limit or amount drawn; and
- If the LOC origination amount should be treated the same way as the CDFI Fund requests data for BEA applications (i.e. the origination amount is the aggregate amount the borrower drew during the period, but no more than the approved credit maximum).

Public Welfare Investments: **CDBA requests that Treasury clarify whether and how ECIP banks will be permitted by the regulatory agencies in Public Welfare Investments.** These transactions are eligible for national bankers under 12 CFR § 24.6. All of the financial institutions that have been approved for ECIP investments are small. Generally, federal bank regulations only allow very large banks to engage in activities outlined in 12 CFR § 24.6.

Affordable Housing: **CDBA urges Treasury to expand its definition of Affordable Housing under ECIP.** Currently only projects that received LIHTC or HOME/HUD funding are considered Deep Impact Lending. We recommend Treasury revise its definition to include any housing restricted to households earning below 50% of area median income (AMI) for a period not less than 10 years. The 50% threshold meets the HUD's definition of "very low-income" which should be considered Deep Impact Lending. Further, inflation and rising construction costs have significantly reduced the number 30% AMI units available to finance within many affordable housing loan programs. Broadening the definition in this category would drive more lending dollars to the production of much needed affordable housing.

Borrower Income: **CDBA urges Treasury to provide clarification as to how borrower income should be collected and reported.** For example, individual income, rather than household income, is often collected for small dollar consumer loans. In the case of home mortgage or small business lending, it is common to have co-applicants. In some cases, our members may have collected income data from a borrower, but the manner in which Treasury defines income may not match what the bank has collected. In such cases, it may require ECIP participants to recollect data, thus adding significantly to the time and burden to complete the ISR.

Community Service Facilities: **CDBA recommends that Treasury work with the CDFI Fund to develop a common definition for a community service facility loan.** ECIP participants will need clarity on how to ascertain whether a community service borrower is "primarily serving" a Low Income Target Population or an Other Target Population. CDBA also urges Treasury to adopt proxy measures used to determine direct benefits for low-income Target Populations as by the CDFI Fund (i.e. students qualifying for free and reduced lunch, patients qualifying for Medicaid, Medicare).

Guaranteed Loans: **CDBA recommends that Treasury amend the draft ISR guidance as it pertains to government-guaranteed lending.** The Term Sheet allows both the guaranteed and nonguaranteed portion of government-guaranteed loans to be Qualified Lending. By contrast, the draft ISR guidance excludes even the nonguaranteed portions of government-guaranteed lending. CDBA urges that the ISR guidance be amended to align with the Term Sheet. If that is not feasible, at a minimum, the nonguaranteed portion of loans should be considered as Qualified Lending as the bank has direct credit exposure.

Definition Confusion: **CDBA recommends that Treasury modify its labels for certain terms that conflict with regulatory definitions.** Specifically, the definition of Low- and Moderate-Income (LMI) borrower differs between ECIP and the Community Reinvestment Act (CRA). This situation is likely to create confusion within banks and with regulatory agencies and Treasury. Under CRA, an LMI borrower is one that makes an income at or below 80% of median family income. Under ECIP, an LMI borrower is one that makes at or below 120% of median family income and a Low Income (LI) borrower is one that makes an income at or below 80% of median family income. Treasury should devise alternative nomenclature for these terms – preferably aligning with the CRA definitions. Treasury has precedence for this in the Bank Enterprise Award (BEA) Program. When BEA was enacted as part of the Riegle Community Development and Financial Improvement Act of 1994, it initially utilized several terms with the same names as terms in other banking statutes, but with different definitions. To avoid confusion, Treasury simply assigned alternative names that differed from those in the statute.

Secondary Market Activities: **CDBA recommends that Treasury clarify any limits or requirements for reporting loans that are sold to the secondary market or secondary market aggregators.** While the ISR instructions permit reporting of loans sold to the secondary market, questions have arisen such as whether a loan can be sold immediately at origination or if it is required to remain in portfolio for a period of time.

PPP Loans: **CDBA recommends that Treasury provide clarification on reporting of PPP loans in the Baseline Report and calculation of the "Floor."** Specifically, the application's Lending Plan, PPP loans were required to be reported. It is unclear if the bank's Lending and Investment Plan will need to be updated to exclude PPP loans in order to complete line 14A on Appendix A "Baseline Calculation." Treasury should also clarify how the exclusion of PPP loans will effect calculation of the ECIP "Floor."

Specialty Lending: **CDBA recommends that Treasury clarify whether the following types of activities entities can be Qualified Lending or Deep Impact Lending.** Specifically:

- Lending to nonprofit, non-depository CDFIs;
- Placing deposits or secondary capital with CDFI credit unions;
- Lending to capitalize or support a nonprofit affiliate of the bank; and
- Lending to a wholly-owned, non-depository subsidiary.

OTHER MATTERS

ID.me Access: **CDBA recommends that Treasury enable ID.me to allow any party authorized by a bank, including third party consultants, to access the system on behalf of the bank.**

Community Level Changes: **CDBA recommends Treasury clarify how future changes in economic or demographic indicators for counties or census tracts may affect the eligibility for interest rate reductions.** For example, 2020 census updates may affect the eligibility of geographic areas. It is unclear what will happen in the event that the economic conditions of a Persistent Poverty County improve and it no longer qualifies as such, but that county is part of the primary market of an ECIP participant.

In closing, CDBA stands ready to work with Treasury to ensure ECIP's success. Our members are eagerly preparing to leverage ECIP capital for the benefit of millions of underserved individuals and businesses in the nation's most distressed communities. We appreciate the hard work and thoughtful consideration of Treasury in launching ECIP. We believe ECIP represents an unprecedented opportunity to expand high-impact, market-based solutions within COVID-affected communities. We look forward to working with you to resolve these important issues.

If you have any questions, please contact Jeannine Jacokes, CDBA Chief Executive Officer, at (202) 689-8935 ext. 222 or jacokesj@pcgloanfund.org.

Sincerely,

Jeannine Jacokes
Chief Executive Officer
Community Development Bankers Association