

August 29, 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 QSR Instructions

Dear Secretary Yellen:

On behalf of the members of the Community Development Bankers Association (CDBA), we write to submit comment on the Instructions for the Quarterly Supplemental Report for Insured Depository Institutions, Bank Holding Companies, and Savings and Loan Holding Companies (hereafter called “Draft QSR Instructions”) issued by the agency on June 30, 2022. We submit our comments on behalf of and in consultation with ECIP participants that are federally certified or designated Community Development Financial Institutions (CDFI) and/or Minority Depository Institution (MDI) banks.

CDBA is the national trade association for banks and thrifts that are CDFIs. Many are also Minority Depository 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. Of the 92 banks and bank holding companies participating in ECIP, 63 (68%) are CDBA members. We have also actively sought the input of non-member ECIP banks to ensure we put forth a set of recommendations that will make the program effective in meeting its public policy goals and manageable for participants.

Like the U.S. Treasury Department (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 commend Treasury personnel for their accessibility and willingness to participate in multiple webinars to explain the program and answer participants’ questions. We stand ready to work with you to craft solutions to the recommendations outlined in this letter.

We consider ECIP a long-term partnership between the sector and Treasury to promote the economic vitality of distressed communities and underserved customers. The effectiveness of the policy decisions over the 10+ years of ECIP will have a profound impact on program participants, the people and communities they serve, Congress, and the American people. As we share your desire to see the ECIP program succeed, we stand ready to work with Treasury to address these issues.

## **PRIORITY ISSUES OF CONCERN AND CONSIDERATION**

### **1. CUSTOMER DATA COLLECTION**

CDBA and its members are firmly committed to improving the economic outcomes for the people and communities they serve. This commitment includes ensuring that all Americans – particularly low-income and minority communities – have fair access to capital. For many of our members, closing the racial equity gap is a core of their mission and central to their ECIP lending plans. Yet, we are concerned that several elements of the proposed QSR have the potential to undermine the effectiveness of banks’ efforts to achieve racial equity outcomes.

During legislative action on the 2021 Consolidated Appropriations Act (Codified as 12 USC 4703a)<sup>1</sup>, CDBA was the lead advocacy organization that worked with Congress to ensure that ECIP participants who wished to collect customer demographic data would have the ability to do so. Previously, such data collection was prohibited under the Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 et seq.). For many institutions, such a prohibition has become a barrier to monitoring and improving performance in reaching minority customers.

Here is the statutory language that permits ECIP participants to request demographic data from loan applicants:

*“(k) Collection of Data.—Notwithstanding the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.)—*

*“(1) any low- and moderate-income community financial institution **may** [emphasis added] collect data described in section 701(a)(1) of that Act (15 U.S.C. 1691(a)(1)) from borrowers and applicants for credit for the sole purpose and exclusive use of monitoring compliance under the plan required under subsection (d)(4); and*

*“(2) a low- and moderate-income community financial institution that collects the data described in paragraph (1) shall not be subject to adverse action related to that collection by the Bureau of Consumer Financial Protection or any other Federal agency.*

**The statutory language as codified is clear and precise that Congress intended reporting to be optional.** The statutory language says “may” – rather than “shall” – and gives discretion to the financial institutions to decide whether or not to collect the data. CDBA strongly encourages its members to collect such demographic data, but believes it should remain optional. We disagree with the Department that its reporting requirements specified in the Public Law as Sec. 525 of the Consolidated Appropriations Act, 2021<sup>2</sup> override the explicit language of the law as codified in 12 USC 4703a.<sup>3</sup> This provision reads:

*SEC. 525. STUDY AND REPORT WITH RESPECT TO IMPACT OF PROGRAMS ON LOW- AND MODERATE-INCOME AND MINORITY COMMUNITIES.*

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<sup>1</sup> 12 USC 4703a “Capital investments for neighborhoods disproportionately impacted by the COVID-19 pandemic”, subsection (k) “Collection of Data”: <https://uscode.house.gov>, accessed 8/25/2022

<sup>2</sup> 2021 Consolidated Appropriations Act, Section 525 “Study and Report with Respect to Impact of Programs on Low-and Moderate-Income and Minority Communities,” subsections (a) – (c): <https://www.congress.gov/bill/116th-congress/house-bill/133/text>, accessed 8/25/2022

<sup>3</sup> Where possible, this letter refers to United States Code as implementing Public Law. In the case of Section 525 of the Consolidated Appropriations Act, 2021, we find no evidence that the Section has been implemented in the U.S. Code (As accessed through <https://us.code.house.gov>, 8/25/2022)

*(a) Study.—The Secretary of the Treasury shall conduct a study of the impact of the programs established under this subtitle or any amendment made by this subtitle on low- and moderate-income and minority communities.*

*(b) Report.—Not later than 18 months after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study conducted pursuant to subsection (a), which shall include, to the extent possible, the results of the study disaggregated by ethnic group.*

*(c) Information Provided to the Secretary.—Eligible institutions that participate in any of the programs described in subsection (a) shall provide the Secretary of the Treasury with such information as the Secretary may require to carry out the study required by this section.*

The statutory language for reporting specifies that the Department must report on lending to “minority communities” – not customers or individuals. Within the context of the statute, “communities” is a geographic designation. Thus, the reporting requirement should be based on the geographic communities intended. We note that the Department recognized the geographic nature of the requirement under Schedule B (Columns K through X) of the QSR. **We recommend that Schedule D – which populates Schedule B – be amended to include disaggregated data on the racial and ethnic composition of the census tracts in which loans are originated, as readily available within the designated US Census Bureau data sources and datasets provided by Treasury.** We note the Treasury’s CDFI Fund uses such a methodology for designation of Majority-Minority Communities under the Equitable Recovery Program (ERP). **Consistent with the statute, we recommend reporting on the racial and ethnic composition of customers under Schedule B (Columns E and F; I and J if participant is not a quarterly HMDA reporter<sup>4</sup>), C1 (Columns I through V, W through AJ if the participant is not a quarterly HMDA reporter), and C2 (Columns E through R) be optional.**

CDBA recommends amending the QSR instructions to clarify that collection of such data is optional (except as required under HMDA and the forthcoming Section 1071 rule). **Furthermore, Schedule B and C should be amended with additional columns to allow participants to disclose: (1) that they do not collect race or ethnicity data; and (2) the number and dollar amount of loan transactions for which bank customers opted not to disclose their race or ethnicity.** Without these data fields being added to Schedule B and C, it will likely compromise the quality and accuracy of data reported to Treasury. ECIP participants will be forced to leave the forms incomplete, use proxies to estimate, or inaccurately report no lending to minorities.

## **2. CUSTOMER DISCLOSURES**

ECIP participants should not be penalized if borrowers opt not to disclose demographic information. The Schedules should allow participants to report the number and dollar amount of loans made to non-disclosing customers. By omitting fields to capture non-disclosing customers, the forms create a bias which suggests that if

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<sup>4</sup> Effective January 1, 2020, Regulation C requires some financial institutions to report data on a quarterly basis as well as on an annual basis. The quarterly reporting requirement applies to a financial institution that reported at least 60,000 originated covered loans and applications (combined) for the preceding calendar year. Therefore, it is likely that smaller institutions and/or institutions who do not focus on home mortgage lending may do so only annually and not quarterly. See FFIEC’s *Guide to HMDA Reporting* for more details here: <https://www.ffiec.gov/hmda/pdf/2021Guide.pdf>

a borrower has not disclosed their information they must be a non-minority. Similar to HMDA lending, CDBA recommends that Treasury adopt the CFPB's Section 1071 stance that:

*"[it is the] right of an applicant under Section 1071(c) to refuse to provide certain information to the lender's specific inquiries regarding women-owned and minority-owned business status in 1071(b), as well as the race, sex, and ethnicity of principal owners, but not to the lender's specific inquiry regarding small business status in 1071(b)."*

We are aware that some HMDA lenders opt to have loan officers make a race or ethnicity determination based on visual or surname when a borrower declines to report. As we expressed to the CFPB in our January 6, 2022 letter re: the Section 1071 Small Business Lending Data Collection Proposed Rule:

*"Identifying ethnicity based on 'visual observation and/or surname' is tantamount to guessing . . . it is extremely difficult and ineffective . . . 'collecting demographic information based on visual observation makes staff uncomfortable' and guessing is 'likely to introduce both error and bias to the process.'<sup>5</sup>*

CDBA recommends that demographic reporting be based on customers' self-identification only. ECIP participants should not be required to make a race or ethnicity determination based on visual or surname when a borrower declines to report. Furthermore, under no circumstances should ECIP participants be responsible for verifying a borrower's self-identification. CDBA encourages Treasury to understand that the self-selection bias in choosing to not self-report race data may skew toward certain Target Populations due to their and/or their communities' lived experiences and long history of racial discrimination.

### **3. DATA COLLECTION TIMELINES**

To the extent that Treasury diverges from ECIP's statutory language and requires demographic data reporting by participants, the Department must provide a realistic timeframe for implementation. The bank regulatory agencies must provide explicit guidance to examiners that is shared with ECIP participants – or alternatively issue specific guidance, standards and definitions for reporting. To leave it to the ECIP participants to "figure out" themselves will likely result in inconsistent reporting that will compromise the integrity of the data Treasury must report to Congress. Lenders will need time to modify their internal systems, processes, technology infrastructure and train staff. It is unrealistic to expect ECIP participants to be ready to implement such systems immediately when the QSR is finalized in early 2023 – or recreate demographic data on lending that has already occurred. Collecting customer demographic data is a highly sensitive matter particularly in low-income and minority communities. Any such system must be implemented with care and sensitivity. CDBA recommends that Treasury provide banks a grace period to begin collecting data and phase in improvements in data collection over time.

### **4. REPORTING ALIGNMENT WITH SECTION 1071**

The CFPB has stated it anticipates issuing a final rule for "Section 1071 Small Business Lending Data Collection" before March 2023. Unfortunately, the draft QSR does not acknowledge this anticipated set of reporting requirements although it does align with HMDA reporting in Schedule C1 (Columns W through AJ, "Mortgage Lending to Other Targeted Populations"). We strongly urge that any ECIP small business reporting under the QSR fully align with the CFPB's Section 1071 requirements. Implementation of Section 1071 will require significant changes in internal processes, amending data systems, training staff, and revamping compliance

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<sup>5</sup> CDBA, letter to the Consumer Financial Protection Bureau, January 6, 2022, [www.cdbanks.org/advocacy](http://www.cdbanks.org/advocacy)

policies for every institution. We strongly urge the Department to refrain from adopting alternative reporting requirements or definitions. Likewise, we recommend that ECIP participants follow the implementation schedule that will be set forth for Section 1071 by the CFPB and bank regulatory agencies. Treasury should not adopt an accelerated schedule for ECIP participants.

## 5. RACE & ETHNICITY REPORTING

CDBA urges Treasury to provide clarification on reporting of “Minority” Lending Activity. The current definition of Minority provided by Treasury in the ECIP Instructions Glossary does not differentiate between race and ethnicity, specifies that most of the categories must identify as American<sup>6</sup>, and does not clarify that a “Minority” is self-identified.<sup>7</sup> CDBA recommends that Treasury adopt the methodology used by the US Census Bureau for reporting race and ethnicity data. The US Census Bureau collects racial data in accordance with guidelines provided by the U.S. Office of Management and Budget (OMB), and these data are based on self-identification standards.<sup>8</sup> OMB considers Hispanic origin to be a question of ethnicity that is a separate and distinct concept from race, thereby presenting race and ethnicity as separate questions because Hispanics and Latinos may be of any race, thus, the term “Hispanic” is not additive to racial categories.<sup>9</sup> OMB requires federal agencies to use a minimum of two ethnicities in collecting and reporting data: “Hispanic or Latino” and “Not Hispanic or Latino.” OMB defines “Hispanic or Latino” as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.<sup>10</sup> The OMB standards have one category for ethnicity—Hispanic or Latino—and five minimum categories for data on race: White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander. Therefore CDBA recommends that Treasury should keep its current format in C1 and C2 as a non-Hispanic ethnicity section and add to Schedules C1 and C2 separate race columns for Hispanic ethnicity and add White race to the Hispanic ethnicity section.

In addition, the ECIP “Minority” definition also excludes certain minority groups and raises questions around how participants should report biracial, multiracial, and individuals of Middle Eastern and North African (MENA) descent (for both Hispanic and non-Hispanic ethnicity sections). CDBA recommends that Treasury count biracial or multiracial borrowers in all the categories with which they identify – for US Census data, people who identify with more than one race may choose to provide multiple races in response to the race question.<sup>11</sup> Alternatively, Treasury could create separate race categories for biracial and multiracial people. In addition, CDBA recommends that Treasury create an additional race category for individuals of Middle Eastern or North African (MENA) descent, which are currently considered of white race under OMB and US Census – this is widely recognized as problematic for people of MENA descent who may not identify or be perceived as white.<sup>12</sup>

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<sup>6</sup> This could be interpreted to mean U.S. citizen only.

<sup>7</sup> According to the ECIP Reporting QSR Instructions, “Minority” means any Black American, Native American, Hispanic American, Asian American, Native Alaskan, Native Hawaiian, or Pacific Islander.

<https://home.treasury.gov/system/files/136/ECIP-Reporting-QSR-Instructions-Banks-HoldCos-6302022.pdf>

<sup>8</sup> United States Census Bureau. *About the Topic of Race*. Last Revised March 1, 2022.

<https://www.census.gov/topics/population/race/about.html>

<sup>9</sup> U.S. Census Bureau. *Hispanic or Latino Origin*.

<https://www.census.gov/quickfacts/fact/note/US/RHI725221#:~:text=Hispanics%20or%20Latino%20refers%20to,%E2%80%A2Cuban>

<sup>10</sup> U.S. Census Bureau. *About the Hispanic Population and its Origin*. Last Revised April 15, 2022.

<sup>11</sup> United States Census Bureau. *About the Topic of Race*. Last Revised March 1, 2022.

<https://www.census.gov/topics/population/race/about.html>

<sup>12</sup> Maghbouleh, Neda et al. Middle Eastern and North African Americans may not be perceived, nor perceive themselves, to be White. *Proceedings of the National Academy of Sciences*. February 7, 2022.

<https://www.pnas.org/doi/full/10.1073/pnas.2117940119>

Together these modifications will create a more accurate and complete picture of ECIP participants' activities by providing more inclusive options for how borrowers self-identify their race or ethnicity, thereby enabling more borrowers to provide this information.

## 6. REGULATORY AGENCY GUIDANCE ON DATA COLLECTION & OUTREACH

Treasury needs to facilitate the creation of an environment where it is safe for ECIP participants to collect customer demographic data without fear of regulatory agency reprisal. To achieve this, each of the respective bank regulatory agencies (i.e. Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System) needs to issue formal written guidance to examination teams conducting fair lending and ECOA examinations. Such guidance should be shared with ECIP participants such that they understand what they are or are not allowed to do. While the ECIP statute provides an exemption under ECOA, our members have reported widespread lack of knowledge by regulatory agency staff of such exemption. No guidance has been promulgated to field personnel to suggest that any institution collecting ECOA prohibited data will not be cited for a fair lending or Regulation B violation. While we understand that Treasury has raised this issue with the regulatory agencies, the agencies have not yet provided to examiners with needed guidance. **Regulator action is needed to ensure ECIP participants can collect this type of data with confidence, and Treasury must continue to work energetically to ensure this guidance is issued.**

In 12 USC 4703a (g)<sup>13</sup> ECIP participants are required to engage in outreach to “members of minority communities.” Like the demographic data collection discussed above, the bank regulatory agencies need to provide guidance to their examination staff. Specifically, under the agencies' current interpretation of Fair Lending laws, targeted outreach based on race and/or ethnicity could also trigger fair lending concerns of Disparate Treatment or Disparate Impact. For ECIP participants to fully fulfill the goals of the program, the regulatory agencies must issue guidance to examination staff and the ECIP banks. Without guidance, it places ECIP participants at hazard of being cited for a fair lending or Regulation B violation. Alternatively, we ask that Treasury work with the CFPB and the regulatory agencies to issue a blanket waiver under ECOA's Special Purpose Credit Program (SPCP) that will cover all lending activities undertaken by ECIP participants.

## 7. RATE REDUCTION

CDBA strongly embraces the goal of ensuring all Americans have equal and fair access to credit and financial services – particularly racial and ethnic groups historically underserved by the financial services sector. To that end, CDFI and MDI banks have a solid record of effectively reaching underserved people and places. CDBA has and will continue to encourage ECIP banks to utilize ECIP's ECOA exemption to collect customer demographic data as a tool to continuously improve performance in reaching underserved demographic groups. CDBA strongly recommends that Treasury amend its rate reduction guidelines to incentivize collection of data on race and ethnicity. ECIP participants that collect race and ethnicity data for a particular category of lending not otherwise mandated by HMDA or Section 1071, should qualify for a rate reduction. CDBA made a similar recommendation in its prior 02/28/2022 Initial Supplementary Report (ISR) comment letter on impact data:

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<sup>13</sup> 12 USC 4703a “Capital investments for neighborhoods disproportionately impacted by the COVID-19 pandemic”, subsection (g) “Outreach to minority communities”: <https://uscode.house.gov/>

*“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).”*

CDBA believes incenting collection of race, ethnicity and impact data is well-aligned with Treasury’s desired approach of structuring ECIP as a program with “all carrots and no sticks.”

## **8. DISPOSITION TO NONPROFIT AFFILIATE**

In implementing 12 USC 4703a (g) of the U.S. code, CDBA strongly recommends that Treasury further incent collection of data on race, ethnicity, and impact by requiring it of participants seeking Treasury to “transfer or sell the interest of the Secretary in the capital investment for no consideration or for a de minimus amount to a mission aligned nonprofit affiliate” of the ECIP participant. **CDBA further urges Treasury to provide clarity on lending to capitalize or support a nonprofit affiliate of the bank and any restrictions therein, including, but not limited to maximum loan amounts and the definition of a nonprofit affiliate.**

## **9. LOAN PARTICIPATIONS & LOAN PURCHASES**

CDBA is deeply concerned about the restrictive definition of loan participations considered Qualified Lending and Deep Impact Lending. **CDBA strongly urges Treasury to change this definition to reflect common industry practices – rather than discourage collaboration.** Currently, the only type of loan participation classified as Qualified Lending or Deep Impact Lending is a transaction in which a loan or loan participation 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 recommend greater flexibility because the one year standard may run counter to the needs of borrowers. Many CDFI bank customers are most need in of technical assistance, servicing and oversight by the CDFI bank in the first few years of receiving a loan. CDBA also strongly recommends that all loan participations in transactions that otherwise qualify as Qualified Lending or Deep Impact Lending should be counted as “Qualifying.” In all cases, an ECIP participant should receive credit for the full amount of its credit exposure in each transaction.

Further, Treasury should encourage – not discourage – ECIP participants to work with each other and others lender in their communities. Maximizing access to capital in underserved communities should be the main priority of ECIP. The current policy serves only to discourage collaborative efforts that are now commonplace. It will also create unintended outcomes. For example, an ECIP bank that purchases a participation in a Qualified Lending or Deep Impact Lending project will not credit; only the lead leader will get credit. This will discourage ECIP banks from working with other ECIP banks. ECIP banks will be forced to find a non-ECIP bank partner with less flexible underwriting to purchase loans it originates, forcing impact lending outside of the participating banks. If a suitable match cannot be found, the ECIP bank will not be able to serve the customer. Alternatively, Treasury’s policy will create incentives for two ECIP lenders to originate separate loans for a single project – which increases costs for the borrower.

Today banks are strongly discouraged by bank regulatory agencies from purchasing loans and loan participations originated by nonregulated CDFIs due to uncertainty or lack of knowledge about their underwriting standards. Rather than disqualifying all other types loan participations and purchases, CDBA recommends Treasury work with the bank regulatory agencies to ensure (1) loan purchases from CDFI loan funds fully qualify; and (2) loan participations originated and/or sourced by one or more CDFI loan funds directly or through a collaborative participation structure will be allowed.

## **GENERAL ISSUES OF CONCERN**

### **1. EQUITY INVESTMENTS**

**CDBA strongly recommends that Treasury amend its treatment of equity investments that are Qualified or Deep Impact Activities to be consistent with the Community Reinvestment Act (CRA).** As proposed, only those activities originated in a given QSR period count toward the Rate Reduction. The CRA rules recognize that equity investment made in prior periods that remain outstanding are eligible for CRA consideration. Consistent with CRA treatment, we recommend the dollar amount of prior-period investments that remain outstanding should be the book value of the investment as of the reporting period end date. For investments made during the current reporting period, the dollar amount should be the origination amount. The dollar amount for legally binding unfunded investment commitments should be the amount tracked and recorded by the bank's financial reporting system.

### **2. ESTIMATED BURDEN & FREQUENCY OF REPORTING**

Because rate reduction is calculated on an annual basis, CDBA strongly encourages all ECIP reporting be required on an annual basis or semiannually -- but not a quarterly basis. Quarterly reporting is an unnecessary and excessive cost and time burden to banks. Reducing the frequency of reporting would significantly reduce the burden to ECIP participants.

CDBA understands that quarterly reports may be helpful to Treasury for ongoing monitoring of the program progress. However, there should be a final annual report that is used for the rate calculation that allows for adjustments from the quarterly reporting. The quarterly report should be to the best of the banks' ability and the annual attestation would say it is complete. Financial reporting to regulators allows for the same process of amendments to the data and the same should be allowed for this impact reporting. For example, amended Call Reports are submitted in the same manner as original submissions and may be submitted at any time to correct reporting errors. Adopting this change would also adjust the attestation statement for the quarterly versus the annual reports.

### **3. TIMING OF FIRST REPORT & REPORTING CYCLE**

ECIP's loan level quarterly reporting cycle is more extensive than any other reporting requirement that regulated institutions do under any other regulatory requirement. Creating the internal data systems to comply with the requirement is enormous and will require investment in technology systems and hiring and training data specialists. None of these tasks can be done overnight particularly given antiquated core systems and historically low unemployment rates that make it difficult to find talent with the appropriate skills and expertise. We recommend that the first QSR not be due until 90 days after the final QSR is published. Furthermore, each quarterly QSR should be due no sooner than 30 days after the reporting deadline for quarterly call reports.

Further, we strongly urge the Treasury to reconsider its intention to only consider lending that occurs after April 1, 2023 for rate reduction. This is a misalignment which is distinct from our belief that more time should be granted to participants for reporting. Since ECIP investments closed, ECIP participants have been active in trying to meet the needs of their underserved communities since the closing dates of their investment. Treasury should consider how to capture that activity to align the rate reduction incentive with the entire period that ECIP capital is leveraged, regardless of when reporting begins.

### **4. M&A TIMELINE AND LOGISTICS**



We are concerned about the aggressive timeline following non-ECIP bank M&A activity that do not allow enough time for data management systems of collecting and reporting on ECIP data to be established. As core integration is a cumbersome activity, it could impair the ability of some banks to have the quality data needed from a newly acquired institution to calculate the ISR for the adjusted baseline. Likewise, completing a QSR that includes the Lending Activity of the acquired institution in the first full quarter after it is acquired is also concerning. Given the rate of industry consolidation, we anticipate that this will be an on-going issue throughout the life of ECIP. We urge Treasury to develop guidance that address the unique challenges of post-merger and acquisition. We urge Treasury to allow ECIP participants to request an extension on reporting in such circumstances for ensuring that the agency gets the best and more accurate data possible.

## **5. BASELINE ADJUSTMENTS – ADDITIONAL CONSIDERATIONS**

The previous section outlines challenges around M&A, including baseline adjustment. CDBA encourages Treasury to identify any other causes for baseline adjustment – especially community changes or participant actions. From a Target Communities perspective, Treasury did not address how future changes in economic or demographic indicators for counties or census tracts may affect the eligibility for interest rate reductions. 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.

Likewise, as it pertains to participant actions, we recommend Treasury create guidance on the buying/opening and selling of branches and we encourage Treasury to specify under which circumstances these activities would impact the baseline. We ask that Treasury clarify if there is a threshold that would warrant a baseline adjustment (e.g., a percentage increase/decrease in lending activity), given that participants are likely to engage in several such activities over the course of ECIP, which may result in significant changes to the size and lending strategy of the participant.

## **6. SCHEDULE D REPORTING CLARIFICATION**

CDBA recommends that Treasury modify the Schedule D template to clarify which geographic code is needed on a loan-level basis. The current “5 digit FIPS code” is not clear. CDBA recommends Treasury ask for the census tract FIPS code, which is an 11-digit number that uniquely identifies each census tract in the United States. It is a concatenation of - reading from left to right - the 2-digit state code, the 3-digit county code, and the 6-digit tract code.<sup>14</sup> This will readily allow for county-level ECIP data aggregation and analysis.

## **7. NATIVE AMERICAN COMMUNITIES CLARIFICATION**

CDBA recommends that ECIP provide further guidance on lending to Native American communities by adopting the “Native Land Areas” definition proposed in the joint-agency CRA NPR, published June, 2022. CDBA members

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<sup>14</sup> Form 477 Census Tract Information. Federal Communications Commission. <https://www.fcc.gov/general/form-477-census-tract-information#:~:text=A%20census%20tract%20FIPS%20code,the%206%2Ddigit%20tract%20code>.

felt this definition was both sufficiently precise and encompassing, and it is an appropriate area to have consistent alignment.<sup>15</sup>

## 8. MULTI-BORROWER LOANS

CDBA recommends that Treasury create a “Majority owned by Minorities” category in Schedule C2 for cases where a business is owned by multiple Minority groups with no majority owner. Please consider the following examples:

1. A loan with two borrowers where 50% of the business is owned by a Black borrower and 50% of the business is owned by a Native borrower.
2. A loan with three borrower where 33% of the business is owned by a Black borrower, 33% is owned by a Native borrower, and 33% is owned by a Hispanic white borrower.<sup>16</sup>

Similarly, CDBA recommends that Treasury address cases where there are multiple borrower incomes – whether that means following a methodology analogous to “Majority LMI Borrowers” or another alternative. Please consider the following examples:

1. A loan with two borrowers where 50% of the business is owned by a borrower whose income is 90% of AMI and 50% of the business is owned by a borrower whose income is over 120% of AMI.
2. A loan with three borrowers where 33% of the business is owned by a borrower whose income is 60% of AMI, 33% of the business is owned by a borrower whose income is over 90% of AMI, and 33% of the business is owned by a borrower whose income is over 120% AMI.

In addition, CDBA encourages Treasury to address recognize that business lending is not the only area where multiple borrowers exist in a single transaction. Treasury should establish parameters for reporting demographic and income data on non-business loans to multiple individuals who qualify for varying Qualified and Deep Impact Lending criteria. CDBA recommends that such a loan should qualify under each of the criteria each borrower meets.<sup>17</sup>

## 9. PUBLIC WELFARE INVESTMENTS

**CDBA requests that Treasury clarify whether and how ECIP banks will be permitted by the regulatory agencies to make Public Welfare Investments.** These transactions are eligible for national banks under 12 CFR § 24.6. Most of the financial institutions that have been approved for ECIP investments are small, local, or regional banks. Outside of some investment types such as SBICs, federal bank regulations allow only very large banks to

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<sup>15</sup> FDIC, OCC and Federal Reserve, “Joint notice of proposed rulemaking; request for comment,” *Section III. Community Development - H. Activities in Native Land Areas*, June 3, 2022

<sup>16</sup> The comment letter submitted August 29 by Kenneth Schoeni from Banesco USA raises questions about various cases with multiple business owners. Please refer to this letter for more details.

<sup>17</sup> Nathanael Baugus in his email to Treasury described the following two examples, recommending that both should count as Qualified Lending (OTP) and Deep Impact Lending (Low Income): Example 1: Loan 123 has two borrowers who are together buying real property for shared personal use. Borrower 1 is an OTP borrower with an income of 130% AMI while Borrower 2 is a non-OTP borrower with an income of 40% of AMI. Example 2: Loan 456 has three borrowers. Borrower 3 lives in a Persistent Poverty County (PPC), Borrower 4 does not live in a PPC but resides in an Urban Low-Income Community, and Borrower 5 lives in neither a PPC nor an Urban Low-Income Community.

engage in activities outlined in 12 CFR § 24.6. Those that are allowed are not currently widely undertaken. Current ECIP guidance is silent on this matter.

## 10. HOUSEHOLD VERSUS INDIVIDUAL INCOME

Responsibly priced consumer “personal” loans are an important resource for CDFI bank customers, both to avoid predatory products and as entry points to the financial mainstream. CDFI banks offer a wide variety of these loans, often as mission-focused payday loan alternatives, credit building tools or innovations to help consumers meet an increasingly wide range of personal goals. Banks’ underwriting criteria vary, but are unlikely to require consideration of more than one individual’s income (if income is considered). CDBA urges Treasury to acknowledge the common consumer lending practice where banks collect only individual income data (or no income data), as opposed to business and mortgage lending. In business and mortgage lending, household income data is more likely to be collected, and percentage of AMI (which requires household income) is readily computable. CDFI banks are concerned that the limited data collected in the course of underwriting many types of consumer loans means those loans will unjustifiably be excluded from Qualified and Deep Impact Lending. ECIP should encourage consumer lending, and Treasury should provide guidance on how to identify LMI borrowers for consumer lending.

## 11. DEFINITIONS AND CLARIFICATIONS

CDBA urges Treasury to provide definitions and/or clarifications on the following terms. Current ECIP guidance is silent on these matters. Failure to provide definitions or guidance will compromise the integrity of the data that will be submitted to Treasury. Without guidance, each ECIP participant will be forced to develop their own methodologies. This will likely result in a lack of consistency in reporting across the program.

- **Community Service Facilities:** CDBA recommends that Treasury provide 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). Current ECIP guidance is silent on this matter.
- **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.
- **Lines of Credit:** CDBA urges Treasury to clarify if credit cards can be considered open lines of credit and if there as a minimum amount that needs to be drawn.
- **Specialty Lending:** CDBA recommends that Treasury clarify whether the following types of activities entities can be considered as Qualified Lending or Deep Impact Lending. Specifically:
  - Lending to for profit and nonprofit non-depository CDFIs;

- Placing deposits or secondary capital with CDFI or Low-Income credit unions (these definitions do not perfectly overlap);
- Lending to capitalize or support a nonprofit affiliate of the bank; and
- Lending to a wholly-owned, non-depository subsidiary.

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](mailto:jacokesj@pcgloanfund.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannine Jacokes". The signature is written in a cursive, flowing style.

Jeannine Jacokes  
Chief Executive Officer  
Community Development Bankers Association