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September 13, 2024

Via Electronic Submission: ecip@treasury.gov

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

Re: Proposed Disposition Guidelines for Emergency Capital Investment Program

Dear Secretary Yellen:

On behalf of the members of the Community Development Bankers Association (CDBA), we respectfully submit the following comments on the Proposed Disposition Guidelines for the Emergency Capital Investment Program (ECIP) released by the US Treasury (UST) Department on August 13, 2024.

CDBA is the national trade association for banks and thrifts that are UST-designated Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), and mission focused banks. We were the lead advocacy organization that worked with Congress to enact ECIP as part of section 522 of the Consolidated Appropriations Act of 2021. Our members represent the large majority of all CDFI and MDI banks, thrifts, and bank holding companies that are bank participants in ECIP.

We are grateful for the strong support of UST for the CDFI and MDI sectors and our partnership in operationalizing ECIP. We appreciate the agency's receptiveness to comments in designing the application, evaluation criteria, reporting, and developing policies to incent increases in Qualified Activities and Deep Impact Activities. We also believe the ECIP staff have been highly professional, accessible and willing to work with program participants to optimize the desired outcomes of the program. We fully appreciate the hard work and diligence of all of the ECIP program staff.

ECIP IS PRODUCING STRONG EARLY RESULTS

UST's thoughtfully designed rate reduction system is central to its early successes. UST clearly articulated its priorities of maximizing Deep Impact and Qualified Lending by aligning and incenting increases in those outcomes with the rate reductions. The agency sought industry input in the system design and the rules were published prior to the investments. As such, the system was fair because participants knew the rules ahead of expected performance. The system was forward-looking and provided tangible benefits to incent performance. As we have seen since, this rate reduction system has been a success, as measured in UST's goal of increasing certain types of lending. Per the 2023 ECIP Annual Report (covering May 2022 through December 2023):

- "Since receiving their ECIP investments, participants have steadily *increased* the amount and percentage of their Qualified Lending and Deep Impact Lending. The percentage of ECIP participants' total originations that was Qualified Lending *increased* from 72% in Q3 2022 to 76%

in Q4 2023. The percentage of ECIP participants' total originations that was Deep Impact Lending to the most underserved borrowers *increased* from 33% in Q3 2022 to 39% in Q4 2023.

- ECIP participants significantly *increased* their total lending and qualified lending above their pre-ECIP baseline, even as interest rates rose. ECIP participants reported $33.0 billion in total originations in the baseline year ending September 30, 2020. In the year between July 1, 2022 and June 30, 2023, ECIP participants reported $38.7 billion in total originations. During the same periods, Qualified Lending *increased* from $24.8 billion to $28.1 billion. Since July 1, 2023, participants have *continued to report total originations and Qualified Lending at or above their pre-ECIP baselines*, *even though interest rates were significantly higher in this time period than in the baseline year*." [Emphasis Added].

Yet, less than three years into the program, we're just beginning to see how ECIP is transforming participants' lending and business models and creating opportunities in the communities they serve. Thus, as explained below, we believe the policy unfairly judges many participants before they've had a chance to fully execute their strategies.

ANALYSIS OF PROPOSED DISPOSITION GUIDELINES

The Proposed Disposition Guidelines stand in stark contrast to UST's thoughtfully designed rate reduction system. We are gravely concerned about key elements of the Guidelines and we strongly urge the agency to give strong consideration to our comments as you finalize the guidelines. We fully support the agency's desire to promote strong performance and continuous improvement in reaching underserved markets. We also fully appreciate and support your desire to finalize the guidelines before the end of this calendar year.

Below, we summarize our recommendations, discuss issues with the Proposed Disposition Guidelines, and suggest solutions.

SUMMARY OF RECOMMENDATIONS

- <u>Comprehensive Policy</u>: UST's final ECIP Disposition Guidelines should be comprehensive and outline the process, options, and timing of disposition for <u>all</u> participants in a manner that is consistent with the ECIP statute and Congressional intent, regardless of whether they qualify for early disposition or not. See additional recommendations below.
- <u>Timely Disclosure of Performance Standards</u>: UST's performance thresholds must be clearly articulated <u>before</u> the start of the evaluation period. We strongly recommend UST amend the performance period and give all participants at least 10 years from the date of finalization of the Disposition Guidelines to meet any thresholds and utilize the early redemption options.
- <u>All ECIP Participants Execute Disposition Agreement</u>: All participants should have an equal opportunity to enter into a disposition agreement with UST prior to the end of the Biden Administration. No ECIP participant should be subjected to the uncertainty created by a major transition in UST leadership. Such agreement should guarantee that if a participant fulfills the terms of the agreement, they can activate the disposition option of their choice.
- <u>Realistic & Holistic Performance Thresholds</u>: We recommend UST adopt a holistic and realistic set of performance threshold <u>options</u> and timelines to qualify for early disposition:
    - The Deep Impact Lending threshold should be reduced to not greater than 40% of the ratio of Deep Impact to Total Origination. Participants should be required to maintain

such levels of performance for not more than two (2) years. Performance levels should be evaluated with a simple annual average rather than for a series of consecutive years.
    - The Qualified Lending threshold should be reduced to not greater than 70% of the ratio of Qualified and Deep Impact Lending to Total Origination. Participants should be required to maintain such levels of performance for not more than four (4) years. Performance levels should evaluated with a simple annual average rather than for a series of consecutive years.
    - A Rate Reduction Threshold should be added as a new option to qualify for early disposition that is aligned with the Rate Reduction Incentives. Specifically, if a participant achieves a 0.5% rate reduction, it can qualify for the early disposition incentives if it maintains such levels of performance for two (2) years. Likewise, if a participant achieves a 1.25% rate reduction, it can qualify for the early disposition incentives if it maintains such levels of performance for four (4) years.
    - For institutions with $1 billion or more in assets that don't meet other thresholds, we recommend they qualify for early disposition if they rank in the top quartile of all participants by the total dollar amount of Deep Impact or Qualified Lending, or a combination of both, over four (4) years.
- <u>Capital Treatment</u>: Retaining the current capital treatment is imperative for financial institutions to remain healthy. UST must demonstrate leadership in working with the bank regulatory agencies to ensure disposition guidance is written that clearly articulates the regulatory treatment for different disposition options. Individual participants cannot be left to address this issue on their own.
- <u>Mission Aligned Nonprofit Affiliates</u>:
    - UST should place no restrictions on the formation of Mission Aligned Nonprofit Affiliates (MANAs) beyond those of the bank regulatory agencies. If there are any restrictions, we strongly urge the agency to be fair, explicit and transparent in its requirements.
    - UST should work with the regulatory agencies to clarify how participants can evaluate the opportunity for disposition to a MANA with a full understanding of potential opportunities and obligations under the Bank Holding Company Act.
- <u>Pricing Model Transparency</u>: We urge UST to clarify how the agency and the "independent third party" will calculate the sales price. The pricing model should be made public and/or an illustrative example of how the sales price will be calculated should be provided, and explain how the interest rate or other market factors will influence pricing.
- <u>Reporting</u>: UST should clarify reporting requirements under the various scenarios for participants that choose early disposition.

Below is a discussion of the elements of the Proposed Disposition Guidelines that are problematic, along with the rationale for the proposed recommendations.

1. REFLECTING STATUTE & CONGRESSIONAL INTENT

Congress intended for ECIP to capitalize mission focused financial institutions that will keenly focus on underserved communities over the long haul. Therefore, UST has a responsibility to adopt a long-term policy that protects this group of institutions from adverse changes in the Federal policy environment. If shifts in public policy over the next decade or beyond (whether by Congress or any Administration) are hostile toward ECIP or its participants, it could jeopardize their mission focus and institutional viability. All participants deserve certainty with respect to UST's disposition policy.

Congress took great care in drafting a very clear set of ECIP disposition options that recognized past CDFI industry challenges in exiting the Great Recession era's Troubled Asset Relief Program (TARP) and Community Development Capital Initiative (CDCI) Program. CDBA and its members worked closely with the Congressional sponsors of ECIP to ensure section 522 of the Consolidated Appropriations Act of 2021 was crafted in a manner that addressed the painful lessons learned from TARP and CDCI. The statute was written to deliberately give ECIP participants choices about to how to exit the program; highlighting the intent that ECIP was different from TARP and CDCI. ECIP was designed to provide incentives for financially sound institutions to pursue beneficial community outcomes (i.e. figurative carrots, as opposed to sticks). Congress did not condition ECIP participants' ability to select from among the disposition options, nor did it grant the Secretary of the UST authority to deny any of the options. With respect to disposition, the authorizing statute places restrictions or obligations on the Secretary, not on the program participants. Specifically, under 12 USC 4703a(e)(4)(A), the statute states:

> *"(4) SALE OF INTEREST.—*
>
> *"(A) IN GENERAL.—With respect to a capital investment made into a low- and moderate-income community financial institution under this section, the Secretary—*
>
> *"(i) prior to any sale of such capital investment to a third party, shall provide the low- and moderate-income community financial institution a right of first refusal to buy back the investment under terms that do not exceed a value as determined by an independent third party;*
>
> *"(ii) shall not sell more than 25 percent of the outstanding equity interests of any institution to a single third party without the consent of such institution, which may not be unreasonably withheld; and*
>
> *"(iii) with the permission of the institution, may transfer or sell the interest of the Secretary in the capital investment for no consideration or for a de minimis amount to a mission aligned nonprofit affiliate of an applicant that is an insured community development financial institution."*

Subsection (e)(5) of the statute further states: *"The Secretary may establish repayment incentives that will apply to capital investments under the Program in a manner that the Secretary determines to be consistent with the purposes of the Program*." We note that this authority is limited to establishing repayment incentives only. It does not confer authority to limit access to the disposition options themselves.

The Proposed Disposition Guidelines appear to significantly narrow the participants' options if they do not meet the thresholds within the 10 year performance period. If this is UST's intent, we believe they may exceed the agency's authority by withholding options authorized by Congress.

First, only those participants that meet the Deep Impact thresholds will be allowed to execute a disposition agreement with UST. The remainder are left in limbo during a significant leadership transition at the agency.

Second, while the Proposed Disposition Guidelines outline a policy and process for early disposition, the policy is conspicuously vague on the options for participants that do not achieve the thresholds within the first 10 years of the program. As such, the policy is substantially incomplete and leaves a large number of participants with no guidance on disposition.

Third, on page 3 of the Proposed Disposition Guidelines, it states *"After the ECIP period, any ECIP participant may request that Treasury sell the ECIP investment in that institution to either a third party or the ECIP participant itself at the applicable sales price below."* The omission of the option of transferring the instrument to a mission aligned non-profit affiliate strongly suggests that participants not meeting the thresholds in the 10 year period will not be allowed this option.

In order for participants to fully assess their options and any potential changes they need to make to their business strategies, it is critical that they understand UST's entire approach to disposition. In the absence of a policy covering all participants, it infers that only those that meet the early deposition requirements can access all options. A final policy should clearly articulate the process, options, and timing of disposition for <u>all</u> participants that does not limit the options authorized by Congress.

RECOMMENDATION: UST's final ECIP Disposition Guidelines should be comprehensive and outline the process, options, and timing of disposition for <u>all</u> participants in a manner that is consistent with the statute and Congressional intent. At the end of the 10 year performance period, all participants should be eligible to select from among all three options authorized by Congress. In the case of a participant that opts to transfer the instrument to a Mission Aligned Nonprofit Affiliate (MANA), the pricing should be the same as early redemption pricing. In the case of a participant that opts to redeem or have the instrument sold to a third party, the pricing should be the same as early redemption pricing.

2. NEED TO REMEDY LACK OF TIMELY DISCLOSURE OF EVALUATION STANDARDS

A fundamental flaw with the proposed Deep Impact and Qualified Lending thresholds is that the standards were not established or communicated <u>prior</u> to the performance period being evaluated and/or execution of the Standard Securities Purchase Agreement or Standard Certificate of Designation (hereafter "disposition agreement." Adoption of the proposed backward looking performance threshold is unfair because participants did not know how UST would evaluate their performance in relation to disposition. If participants had known the disposition rules ahead of time they would have aligned their lending strategies toward meeting the thresholds – the evidence is demonstrated by the success of the forward-looking rate reduction system. *This situation is analogous to a group of students being told they were taking a math test, only to be informed after grading, that they were being evaluated only on the quality of their penmanship.* Participants fully believed they were pursuing UST's desired outcomes (increasing Qualified and Deep Impact Lending) as clearly articulated in the rate reduction system. If UST intended to evaluate performance on the basis of static thresholds, rather than increases, it should have been communicated early – not after the fact.

Participants are nearly three (3) years into the program performance period and only now learning of the final evaluation standards being proposed. This leaves too many participants with insufficient time to change course and adjust their strategies to meet the thresholds within the remaining seven (7) years of the performance period. This is particularly the case with the Qualified Lending threshold, which requires fully six (6) years of "average consecutive" performance – far too high a bar for many to meet. Likewise, the Deep Impact lending threshold is too high for any bank except those located in acute historically distressed geographies.

We do not believe excessive thresholds incent better performance. To the contrary, an unrealistically high bar will discourage desired behavior and may incent unintended, undesirable outcomes – such as encouraging activities that may raise safety and soundness concerns. Any performance thresholds set by

UST should aim to build the capacity of ECIP participants and generate the desired social impacts, without favoring one outcome over another.

A revised disposition policy should be forward-looking. Standards must be clearly communicated prior to implementation, and incent performance aligned with the existing program objectives. To incent the performance desired and give participants sufficient time to adjust their strategies, we recommend UST amend the 10 year performance period to begin when the Disposition Guidelines are finalized. If a participant has met or exceeded a threshold in the past two (2) years, they should be given credit toward meeting UST's performance timelines.

We believe UST has the authority to remedy its lack of timely disclosure of evaluation standards. We note that UST is required by statute to hold the ECIP investments for at least 10 years. UST is not, however, required to dispose of its holdings after 10 years. Thus, UST has the full authority to extend the performance period and early redemption incentives.

RECOMMENDATIONS: All performance standards or thresholds must be clearly articulated <u>before</u> the start of the evaluation period. We strongly recommend UST amend the performance period and grant all participants at least 10 years from the date of finalization of the Disposition Guidelines to meet any thresholds and utilize the early redemption options.

3. FAIR & EQUAL TREATMENT OF PROGRAM PARTICIPANTS IS CRITICAL

We are alarmed that the proposed guidelines will <u>only</u> allow those entities that meet the 60% Deep Impact threshold today to enter into an early disposition agreement based on the past two (2) consecutive historic years. Based on our analysis of publicly available data from 2022 and 2023[1], we estimate only 42 (24%) of the 175 program participants meet the 60% Deep Impact threshold (of these, 30 are banks). As interest rates have remained high and suppressed loan demand (a serious challenge prominently noted in UST's 2023 ECIP Annual Report, and cited above), we are concerned that this rate will fall lower in 2024 based on anecdotal information from participants.

ECIP was designed as a long-term investment program; yet, the Proposed Disposition Guidelines do not reflect this. Administration officials repeatedly and publicly stated that ECIP was designed with "all carrots and no sticks." Officials made these statements because many financial institutions were initially hesitant to work with UST due to past negative experiences with the disposition in the TARP and CDCI Program. The Administration promised that this program would be different.

The guidelines, as written, are solely punitive for most participants who don't meet the 60% Deep Impact threshold based on past data. If UST allows only a small subset of participants to enter into a disposition agreement prior to the end of the current Administration (thus leaving most of the rest behind), its proposed policy contradicts the strong representations made by agency officials.

As the disposition guidelines are not in regulation, a future Administration is not obliged to maintain the Biden Administration's disposition guidelines. In fact, over the 10 year performance period, there will be multiple transitions in UST's leadership that create an uncertain operating environment for participants.

[1] The 2022 and 2023 ECIP annual reports are the source of data used for the analysis. We do not have access to the 2024 data for all participants, which may change the portion of participants that meet the Deep Impact threshold.

The remaining majority of participants will be vulnerable to the uncertain policies of future UST policy makers.

The ECIP authorizing statute authorized the program to:

> *"[s]upport the efforts of low- and moderate-income community financial institutions to, among other things, provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities, including persistent poverty counties, that may be disproportionately impacted by the economic effects of the COVID–19 pandemic, by providing direct and indirect capital investments in low- and moderate-income community financial institutions consistent with this section."* (12 USC §4703a(b)(2))

We note that Congress did not identify or define "Deep Impact" as a category of activity within ECIP – nor did Congress indicate that some subset of eligible activities within low-income and underserved communities were higher priority than others. As we noted above, 12 USC 4703(e)(4)(A) outlines the disposition options that Congress intended be available to participants. While the Secretary may have authority to determine pricing, the statute does not give the Secretary authority to condition an ECIP participants' ability to select from among the disposition options or deny any of the options on the basis of a failure to engage in a specific subset of eligible activities.

In summary, we strongly believe it is far too early for UST to pass harsh judgement on ECIP participants by leaving the large majority of institutions out of the opportunity to enter into a disposition agreement. The thresholds should be structured to incent performance -- not to punish those failing to achieve an unstated goal within an unreasonable time period.

RECOMMENDATION: <u>All</u> participants should have an equal opportunity to enter into a disposition agreement with UST prior to the end of the Biden Administration. No ECIP participant should be subjected to the uncertainty created by a major transition in UST leadership. Such agreement should guarantee that if a participant fulfills the terms of the agreement, they can activate the disposition option of their choice.

4. PERFORMANCE THRESHOLDS: A HOLISTIC APPROACH IS NEEDED

We are deeply troubled by the performance thresholds of the Proposed Disposition Guidelines. Specifically, we believe the proposed 60% Deep Impact and 85% Qualified Lending thresholds are unrealistically high and define success too narrowly. Given the diversity of participants and markets they serve, a one-size-fits-all performance standard is inappropriate. Participants need a holistic approach with <u>options</u> that fit different institutions and market context.

ECIP participants are very early in the tenure of the program. The Proposed Disposition Guidelines fail to recognize that participants need to build capacity before they can fully maximize Deep Impact and Qualified Lending as a percentage of total originations. Building organizational capacity takes time. To successfully implement ECIP and meet UST's standards, all participants needed to invest in systems, hire staff, and adjust their operations. In fact, most participants are still in the process of building organizational capacity to fully deploy ECIP. This feat was particularly difficult given historically low employment (which creates challenges in hiring new staff), high interest rates (which suppresses loan demand), and tight liquidity (with deposit pricing reaching levels not seen for decades).

In the face of strong economic headwinds and the need to build capacity, ECIP participants are demonstrating extraordinary success in expanding lending in accordance with UST's priorities. Per UST's 2023 annual ECIP report, within the first 18 months of the program (May 2022 through December 2023), ECIP participants:

- Originated a total of $58.3 billion in loans, of which more than one third was to the most underserved borrowers.
- Originated loans aligning with UST's priorities with fully 75% of originations Qualified Lending and one-third Deep Impact Lending.
- Reported 24,540 originations totaling $4.5 billion of lending to small businesses with annual revenues of $1 million or less. Of this lending, 7,395 originations totaling $1.2 billion were to the smallest and hardest-to-serve businesses with annual revenues of $100,000 or less.
- Reported 2,623 originations totaling $1.4 billion of lending to minority-owned businesses and 2,266 originations totaling $1.2 billion of lending to Hispanic owned businesses.
- Invested $1.2 billion in 434 Affordable Housing projects, including $345 million for Deeply Affordable Housing projects.
- Provided 8,984 mortgage loans totaling $2.6 billion to Other Targeted Populations.

Many ECIP participants have significantly increased both Deep Impact and Qualified Lending since the program's launch. As noted above, ECIP participants' total originations of Qualified Lending increased from 72% in Q3 2022 to 76% in Q4 2023 (annual increase of 5.5%). Likewise, ECIP participants' total Deep Impact Lending to the most underserved borrowers increased from 33% in Q3 2022 to 39% in Q4 2023 (annual increase of 18%).

Importantly, much of the overall dollar volume and increases in both types of lending are attributable to entities not meeting either of the proposed disposition thresholds today. Banks not meeting the Deep Impact disposition threshold accounted for 60% of all bank-originated Deep Impact lending. In fact, as measured by total dollar amount of Deep Impact lending, only one of the top 10 performing ECIP banks met the 60% threshold. Collectively, these 10 banks account for 44% of all bank-originated Deep Impact lending reported over 2022-2023. We believe UST should give consideration to participants who have worked hard to increase lending and/or are providing significant new credit to markets that match UST's priorities.

We strongly believe the Proposed Disposition Guidelines define success too narrowly. A holistic approach is needed that provides options that fit different institutions and market context.

First, the Deep Impact and Qualified Lending Thresholds should be adjusted to more realistic levels.

Second, alternative performance thresholds should be added to recognize those that have: (1) made noteworthy strides in increasing Deep Impact and Qualified Lending as measured by the rate reductions; and (2) originated significant volumes of Deep Impact and Qualified Lending.

Third, the performance timelines for each threshold should be amended to allow participants a more realistic time period to maintain "average" lending levels to qualify for early disposition.

Below are examples of ECIP institutions doing exactly the type of lending Congress intended by, but not meeting the 60% Deep Impact standard. All have spent considerable time, money and effort to build capacity to maximize deployment. The Proposed Disposition Guidelines leave them behind. Examples:

- Ponce Bank is a CDFI and MDI bank headquartered in the Bronx, NY, one of the country's lowest income, persistent poverty urban counties. Prior to ECIP, the Bank would lend about $60 million per quarter. Two days after receipt of the ECIP funds, the Bank was able to close a $25 million affordable housing construction loan that would not have been possible as the loan amount would have exceeded the Bank's loan-to-one-borrower limitations. Since then, the Bank has accelerated its lending, reaching $970 million in calendar year 2023 and qualifying for a 0.50% ECIP dividend rate. Today, the Bank has financed $1.2 billion in construction projects, of which the overwhelming majority support affordable housing. As of this writing, the Bank reached 87% in Qualified Lending, but only 57% in Deep Impact lending. The proposed rule leaves banks like Ponce with an uncertain future despite its success in carrying out the intent of the program.
- ECIP empowered BankPlus, based in Belzoni, MS, to expand its footprint into the New Orleans market – a city with significant poverty and few CDFIs. With less than two years in New Orleans, BankPlus is growing relationships within the community that are expected to blossom during the 10 year ECIP performance period. For example, BankPlus since made a $6 million commercial real estate loan and purchased Low Income Housing Tax Credits for St. Claude Gardens II, a 39-unit affordable housing development aimed at fostering resilient, inclusive and sustainable housing opportunities in the Lower 9th Ward of New Orleans LA.
- First SouthWest Bank, of Durango, CO, leveraged ECIP capital in an innovative public-private partnership to support cooperative land ownership among residents of a local mobile home park. In 2022, residents of Durango's Westside Mobile Home Park learned their park was for sale – generating concern about displacement. The park's residents were approximately 100 Hispanic families who had lived in the area for generations, and had been disproportionately affected by southwest Colorado's post-pandemic housing crisis. First Southwest Bank collaborated with community, state and federal partners to finance a land purchase by a newly formed residents' cooperative. ECIP was essential to ensure project financing was affordable for this low-income community.
- Beneficial State Bank, based in Oakland, CA, provides thousands of responsible consumer loans, often refinancing higher cost or predatory debt, saving each borrower an average of $10,000 per year. ECIP powered Beneficial's origination of 11,893 ECIP reportable loans over the past eight (8) quarters, of which 58% by number (7,148 loans) qualified as Deep Impact.
- Upon receipt of ECIP, Southern Bancorp, based in Little Rock, AR, launched a new mortgage lending platform, hired a team of 25+ lenders, and designed a set of loan products tailored to minority customers in five states seeking to become first time homeowners. Working with their MANA, Southern Bancorp Community Partners, the bank offers mortgage financing with down payment assistance. This year, the bank has originated $30 million in mortgages, of which 93% is Qualified Lending and 75% is Deep Impact lending. The outcome of this initiative is hard working families can buy a home. You can hear the journey of how one family is becoming homeowners under this program at https://vimeo.com/953322642.
- Sunrise Banks, a CDFI bank in St. Paul, MN, excels in promoting financial wellness through fintech partnerships. In 2023, the bank issued 302,763 responsible, low cost consumer loans (99.8% of total originations) totaling $343.6 million (54.8% of total dollar amount). That year, ECIP enabled Sunrise to acquire a long-time fintech partner, expanding its consumer lending with its BeneMoney product. BeneMoney is a low-cost, no-credit-check small dollar loan,

originated through employers and repaid via payroll deductions. In 2023, 76% of BeneMoney loans were classified as Deep Impact lending. Under ECIP, Sunrise began collecting borrower demographic data and requires its fintech and small-dollar lending partners to do the same. However, the backward-looking QSR data and the UST's dollar-based Deep Impact lending threshold will likely be impossible for SunRise to qualify for early disposition. Despite it success as a national financial wellness lender, Sunrise makes substantial real estate and small business loans in local Minneapolis St. Paul low-income communities. While many of those loans are Qualified lending, the dollar volume of those loans outweighs the portfolio of Deep Impact consumer loans, making it impossible to meet Deep Impact threshold.

- Genesis Bank, based in Benoit, MS, launched a new affordable housing program in 2020 by offering individual 26-year fixed rate manufactured home loans. This product enables Low-Income consumers to achieve homeownership while at the same time providing the ultimate budget control for the borrower, similar to that afforded wealthier individuals buying brick homes with fixed rate mortgages. This product is exclusive to Genesis Bank -- it is not offered by any other bank. As of March 2022, Genesis had made $6 million of these heavily rural, affordable home loans to 60 families. Overall, with the help of ECIP, Genesis has made more than 250 new long term fixed rate affordable home loans totaling $34 million – nearly 6 times its baseline level.
- Legacy Bank, a CDFI bank based in Springfield, MO, has emerged as a leading affordable housing lender in the Midwest. Operating from 10 branches in MO, OK and TX, their LIHTC lending reaches into 38 states in urban and rural markets. Legacy originated $700 million in Deep Impact and Qualified lending in 2023, which is 465% of their baseline of $151 million. Since receiving ECIP, the bank has originated over $1.4 billion in Deep Impact and Qualified lending. An example of this work is Generation Village in Willard, MO. The local community had seen a need for increased housing developments across a variety of demographics, ranging from youth in the foster care system to seniors in their late stages of life. To address this, Legacy worked with local leaders to finance Missouri's first intergenerational community to provide a safe housing environment for many stages of life. The LIHTC project includes the creation of 12 homes for low-income foster families, 32 homes for low-income seniors, and 8 homes for youth aging out of the foster care system. Construction is underway, with an expected opening date in early 2025.
- Guaranty Bank & Trust Company, headquartered in Belzoni, MS, used ECIP Capital, New Market Tax Credits, and the USDA B&I Loan Program to launch a transformative project in distressed Greenwood MS. The financing package helped launch Saylor Wheels, LLC, a new manufacturing facility specializing in steel wheel assembly for the RV and trailer industries that will employ over 100 local workers in a community that is 70% Black and has high unemployment. The project provides a powerful example of how ECIP Capital and related federal programs can drive sustainable economic development in underserved communities.

The proposed narrow focus on the Deep Impact threshold may incent unintended consequences. Over time, this may undermine the purposes of ECIP and the vitality of communities. Examples:

- Banesco USA, an MDI bank serving Hispanic communities in Florida and Puerto Rico, plans to become a certified CDFI after participating in ECIP. Despite strong Deep Impact and Qualified Lending ratios (41.8% and 79.5%, respectively), the proposed disposition rule is forcing the bank to reconsider expansion plans. Banesco has aimed to expand into new areas to serve several urban Hispanic communities, but these new areas may not meet the Deep Impact criteria. Since

the guidelines only reward lenders meeting the 60% Deep Impact threshold, Banesco worries it might have to delay its expansion, countering ECIP's goal of increasing Qualified Lending.

- Optus Bank, a CDFI and MDI in Columbia, SC, has increased its total originations by 1,100% over its baseline lending, and both Deep Impact and Qualified Lending exponentially. However, to meet the 60% Deep Impact threshold, the bank would need to reduce total originations (the denominator of the threshold) and focus solely on Deep Impact loans – a step that would compromise some customer relationships, limit credit access for some borrowers, and decrease revenue. The Proposed Disposition Guidelines would force painful choices, by deprioritizing Qualified in favor of Deep Impact lending.
- Planters Bank, based in Indianola, MS, led a group of five ECIP banks to provide a $10 million line of credit to a regional hospital in the Mississippi Delta facing a severe cash flow crisis after COVID subsidies ended. By late 2022, with just 90 days of cash, the hospital seemed on the brink of closure. Despite a plan to regain profitability by obtaining a Critical Care Access designation, approval would take months. Without this timely loan, the hospital would have closed, causing the loss of 380 full time jobs, as well as critical access to care for Medically Underserved members of the community. Although the loan greatly benefited the community, as a public hospital, it cannot be classified as a Qualified or Deep Impact loan. Yet it must be reported under Total Originations (denominator) of both ratios. This demonstrates how the threshold system could discourage such lending, contrary to UST's likely intentions.

As noted, we believe the final ECIP Disposition Guidelines should take a more holistic approach than the current draft. In addition to the factors cited above, we believe the proposed narrowly defined thresholds fail to: (a) balance financial stability with impact performance; (b) consider the different market context of participants, leading to a structural bias favoring specific geographies and small institutions; and (c) consider mitigating and external challenges largely outside of the control of participants but which influence short term performance.

a. Double Bottom-Line: Balancing Financial Stability with Impact Performance

The Proposed Disposition thresholds and timeline overlook a key aspect of mission-driven financial institutions, which is balancing social impact with financial performance. Setting unrealistic standards for participants ignores the principal of cross-subsidization that these institutions employ whereby some component of "non-mission" lending is needed to manage the risk and often lower margins associated with some high impact "mission" lending. Unrealistic thresholds may have the unintended consequences of undermining long term financial sustainability as some Deep Impact and Qualified Lending activities do have a higher risk profile and lower margins**.**

Per the 2022 and 2023 ECIP Annual report data, 35% and 73% are the average per participant percentage of Deep Impact and Qualified Lending, respectively. By contrast, to be a certified CDFI, only 60% of total lending must serve an eligible Target Market. Thus, most ECIP participants are reaching deeper into underserved markets than their non-ECIP CDFI peers. It is also important to note that many MDI-only participants that were not previously able to be certified CDFIs have increased their Deep Impact and Qualified Lending to the level they now feel comfortable pursuing CDFI certification -- a program outcome that UST can take pride in.

b. ECIP Participants Operate Within Different Market Contexts

Geographic Bias: UST's evaluation needs to recognize the different context and markets that participants serve. We are very proud of ECIP participants that have achieved the 60% Deep Impact threshold. These participants should be recognized and granted expeditious early disposition.

We are equally proud of participants that have significantly increased and delivered significant new levels of credit in the form of Deep Impact and Qualified Lending. We note, however, that a disproportionate share of the participants that have achieved the 60% Deep Impact thresholds serve geographies with acute historic economic distress whereby a large majority of lending will automatically be Deep Impact eligible. In fact, per UST's annual ECIP report, 57% of the Deep Impact lending reported over 2022-2023 was in geographies with acute historic economic distress. Given the very early stage of ECIP, participants that achieved the high levels of Deep Impact performance as a percentage of total originations achieved these levels because of their historic commitment to these communities -- not solely as a result of ECIP's incentives. An examination of baseline lending data submitted as part of the ECIP applications and the first Quarterly Supplemental Reports will confirm this fact.

UST ought to recognize the geographic bias of the proposed thresholds and adopt alternative thresholds that recognize other types of strong performance.

Small Institution Bias: The Deep Impact threshold has a strong bias favoring smaller banks. Of the 93 ECIP banks, only 30 achieved the 60% threshold. This subset of banks have an average asset size of $452 MM whereby the 63 banks not meeting the threshold have an average asset size of $912 MM. Among the 10 banks that generated the largest dollar volume of Deep Impact lending ($299 million and above) over 2022-2023, eight (8) (80%) were over $900 million in assets. These eight (8) banks alone accounted for $4.3 billion, or 32% of all bank originated Deep Impact lending. Only two (2) of those eight (8) banks (serving the highly distressed Texas border region and an equally distressed area of rural Mississippi) met the Deep Impact threshold.

UST should recognize that the proposed threshold system makes it much harder for larger banks to meet a fixed threshold because they need to originate a much larger volume of loans in the numerator of the ratio compared to smaller institutions. In many cases, larger ECIP banks have originated Deep Impact and Qualified Loans that are significantly above their baseline. Yet, they cannot meet the thresholds. Given the bias of the thresholds and rate reduction favoring small institutions, UST needs to level the playing field for large institutions over $1 billion in total assets. The larger the institution, the less likely they will be able to realistically reach the thresholds or the rate reduction because their base level of originations is large and moving the numerator with new Deep Impact or Qualified Lending is proportionately greater. We urge UST to add a performance threshold for larger participants that have delivered a large volume of originations and demonstrated a significant increases in Qualified and/or Deep Impact lending.

c. Mitigating Circumstances & External Challenges

Demographic Data Not Fully Reflected in Reporting: We are early in the life of the ECIP Program. We note that many participants were only recently able to report demographic data needed to qualify for some categories of Deep Impact lending. As you are aware, collection of this data is ordinarily prohibited by regulatory agencies under the Equal Credit Opportunity Act (ECOA) -- a special provision was required in the authorizing statute to allow for this data to be collected. The requirement for all participants to report customer demographic data only began with the July 1, 2024 Quarterly Supplemental Report (1st reports will be filed 9/30/2024). As noted in the 2023 ECIP annual report, only 60% of participants had

begun reporting some non-mortgage lending to Other Targeted Populations. While ECIP participants are now permitted to collect the data, most needed to develop internal collection systems from scratch, modify their core systems to collect this data, train employees, and ensure their efforts did not violate fair lending regulations. Complicating matters is the fact that only one of the banking regulatory agencies responded favorably to UST's recommendation for examiners to develop internal guidance explaining that ECIP participants are allowed to collect data otherwise prohibited under ECIP. Thus, participants have had to work with extra diligence to prepare for additional fair lending scrutiny -- an area of considerable risk and management concern.

COVID Stimulus and Census Data Anomalies: We believe that the lower relative performance of some participants on Deep Impact or Qualified Lending is partially due to COVID-related anomalies in the census data – which is outside of the control of the institutions. Specifically, a well documented nationwide temporary reduction in poverty rates occurred as a result of COVID stimulus programs in 2020. The 2020 US Census was conducted between April and December 2020 during the same period of time millions of low-income households became recipients of temporary stimulus support. As documented by the Center of Budget and Policy Priorities:

> *"In 2020 and 2021, strengthened by pandemic relief measures, economic security programs reduced poverty by all-time highs of 63 percent and 67 percent, respectively. Put another way, in 2021 the number of people below the poverty line was 67 percent smaller after counting economic security programs than before counting them."* [2]

> *"In 2020 and 2021, economic security programs reduced the poverty rate by 16.1 and 16.0 percentage points, respectively, surpassing the prior record of 13.0 percentage points in 2009. In addition, economic security programs kept record numbers of people above the poverty line in 2020 and 2021: 53 million in each year, far exceeding the previous high of 40 million in 2009."* [3]

As the vast majority of stimulus programs have ended, experts see poverty rates returning to historic levels. Yet, the data used to qualify census tracts under ECIP uses the 2020 census results. Today, many CDFIs across the nation seeking to submit recertification applications struggle to maintain certification based on geography. ECIP participants seeking to report Qualified or Deep Impact lending face this same predicament. While Census Bureau officials will eventually develop interim periodic estimates with the American Community Survey, the data typically lags several years. A longer performance period will allow the data anomalies to return to historic levels.

We believe a 40% Deep Impact ratio is more appropriate than 60%; a 40% threshold is a challenging and commendable commitment for any bank, and also levels the playing field between different types of geographies. A 40% rate will still remain a challenge for many banks given the interest rate environment and challenges with the current census data, which under estimates poverty in many communities. Further, we believe a 70% Qualified lending ratio is more appropriate than 85% as it is a full 10 percentage point increase over the performance levels required for CDFI certification (60%). Given the COVID Stimulus-related Census data anomalies discussed above, meeting these thresholds will still be very challenging.

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[2] Center on Budget and Policy Priorities, "Expiration of Pandemic Relief Led to Record Increases in Poverty and Child Poverty in 2022," June 10, 2024, www.cbpp.org/research/poverty-and-inequality/expiration-of-pandemic-relief-led-to-record-increases-in-poverty.

[3] ibid

The proposed guidelines require either four (4) consecutive years of Deep Impact and six (6) consecutive years of Qualified Lending to qualify for early disposition. Yet, markets fluctuate and lending opportunities change over time, which may result in lender missing a threshold in a specific year. We believe a more flexible timeline will better reflect lenders operational realities . Since the current remainder of the ECIP performance period is only seven (7) years, there are few opportunities to reset if one year is missed. The word "consecutive" should be eliminated and replaced with a simple average across the time window. In lieu of the proposed timeline, we recommend that if an applicant meets the Deep Impact threshold for two (2) years they can qualify for early disposition. Likewise, if an applicant on average meets the Qualified Lending threshold for four (4) years they can qualify for early disposition.

RECOMMENDATION: We recommend UST adopt a holistic and realistic set of performance threshold options and timelines to qualify for early disposition. We strongly urge that UST adopt the following options to qualify for early disposition.

- **Deep Impact Lending threshold should be reduced to not greater than 40% of the ratio of Deep Impact to Total Origination. Participants should be required to maintain such levels of performance for not more than two (2) additional years. Performance levels should be evaluated with a simple annual average rather than for a series of consecutive years;**
- **Qualified Lending threshold should be reduced to not greater than 70% of the ratio of Qualified and Deep Impact Lending to Total Origination. Participants should be required to maintain such levels of performance for not more than four (4) additional years. Performance levels should evaluated with a simple annual average rather than for a series of consecutive years;**
- **A new Rate Reduction Threshold should be added as a new option to qualify for early disposition that is aligned with the Rate Reduction Incentives. Specifically, if a participant qualifies for a 0.5% rate reduction, it can qualify for the early disposition incentives if it maintains such levels of performance for two (2) additional years. Likewise, if a participant qualifies for a 1.25% rate reduction, it can qualify for the early disposition incentives if it maintains such levels of performance for four (4) additional years; or**
- **In the case of institutions with $1 billion in total assets or greater that cannot meet the other thresholds, we recommend that participants qualify for early disposition if they are in the top quartile of all participants by the total dollar amount of Deep Impact, Qualified Lending, or any combination for four (4) out of five (5) years.**

5. MISSION ALIGINED NONPROFIT AFFILIATES (MANAs)

a. Newly Formed Entities

Many CDFI banks have MANAs that complement the work of each bank. The nonprofits may provide training, technical assistance, or financial education to customers or prospective customers, make loans to customers that cannot meet regulatory standards, or engage in real estate development or other important community building activities. We are concerned about the sentence on page two of the proposed guidelines that states "Newly formed entities are ***not categorically excluded*** from this definition" [Emphasis added].

The phrase *"not categorically excluded"* implies that the agency intends to impose some restrictions on newly formed nonprofit affiliates. We oppose placing restrictions on the formation of non-profit affiliates. As Congress placed no limitation on the tenure of affiliated nonprofits for the purpose of transferring ECIP holdings, the agency should not either. Each ECIP participant should have the flexibility to determine whether utilizing a nonprofit affiliate -- or not -- fits their strategy. If the agency intends to impose restrictions, those should be clearly articulated in the guidelines. Furthermore, page two of the guidance states that *"Treasury will consider activities and the governing documents … of the entity"* in determining whether or not a nonprofit meets the mission-aligned definition. We strongly urge the agency to provide explicit guidance on those standards.

RECOMMENDATION: UST should place no restrictions on the formation of non-profit affiliates beyond those of the bank regulatory agencies. Yet, if there are any restrictions, we strongly urge the agency to be fair, explicit and transparent in its requirements as part of a final policy.

b. MANAs and Application of the Bank Holding Company Act (BHCA)

We are concerned that the MANA definition raises questions about the applicability of the BHCA. Many participants already have relationships with nonprofits that have been designed with the BHCA definition of "affiliate" in mind. These banks, as well as participants interested in similar relationships, require more clarity about the regulatory treatment of ECIP eligible nonprofits as affiliates under the BHCA.

RECOMMENDATION: UST should work with the regulatory agencies to provide clarity on how participants can evaluate the opportunity for disposition to an affiliated nonprofit with a full understanding of potential opportunities and obligations under the BHCA.

6. REGULATORY CAPITAL TREATMENT

We are concerned that the proposed guidelines leave significant ambiguity about the capital treatment of ECIP holdings post-disposition. Page four of the guidance states:

> *"Treasury will consult with the federal banking regulators or the National Credit Union Administration (NCUA), as applicable, regarding the structure of potential dispositions and will* ***<u>generally attempt, to the extent feasible</u>, to structure transactions in a manner intended to maintain the regulatory capital treatment of the ECIP investments****." [Emphasis added]*

The guidance casts doubt whether preferred securities of C Corporations will continue to be treated as Tier 1 equity capital. If the Tier 1 status is lost, it will mean most (if not all) C Corp ECIP banks will immediately be undercapitalized. Undercapitalization would put the banks at risk of regulatory sanctions, with severe consequences not only for the banks but also their local and even regional economies. This would represent the extreme opposite of any desired outcome for the program. Participants that are C Corps need assurance that the preferred stock (whether redeemed by the banks, transferred to a third party, or owned by a MANA) will continue to count as additional Tier 1 capital under the capital regulations at Part 324.20-22 for non-member banks, and will not be deducted under Part 324.22(c) as an investment by the institution in its own stock.

We acknowledge that the bank regulatory agencies have jurisdiction in determining the policy around what constitutes Tier 1 capital. Yet, in order for an ECIP participant to make an informed decision about

the most appropriate disposition option given its circumstances, it is critical to have clear information about the capital treatment implications of the options outlined by UST.

RECOMMENDATION: Retaining the current capital treatment is imperative for maintaining healthy financial institutions. UST must demonstrate leadership in working with the bank regulatory to ensure disposition guidance is drafted and clearly articulates the regulatory treatment for different disposition options. Individual banks cannot be left to address this issue on their own.

7. **SALES PRICE DETERMINATION**

We request clarification on how the sales price will be determined in the case of a sale to a nonaffiliated third party or repurchase by the ECIP participant. This information is critically important to all participants. While we hoped to provide written comments on the sales price, the methodology outlined on page five of the Proposed Disposition Policy is too general to interpret. We note the ECIP statute and ECIP Agreements state that valuation will *"not exceed a value as determined by an independent third party."* (12 USC §4703a(e)(4)). Furthermore, the Proposed Disposition Policy states:

> *"For any other sale, including a repurchase by the issuer, the purchase price will be payable in cash in an amount equal to the present value of the expected payments on the investment, as determined by Treasury. As of March 2024, Treasury estimates that this would result in a purchase price of between 7% and 28% of the outstanding principal amount of the subordinated debt or of the aggregate liquidation preference of the preferred stock. The purchase price will be calculated by Treasury as of the date of the closing of the sale and will depend on factors at that time, including the projected interest or dividend rate, then-prevailing interest rates, and the remaining time to maturity of the subordinated debt, if applicable."*

To prepare to repurchase UST's holdings, each financial institution will need to know the price of each disposition option to make an informed decision about the best disposition option for their institution.

RECOMMENDATION: We urge UST to clarify how the agency and the "independent third party" will calculate the sales price. The pricing model should be made public and/or an illustrative example of how the sales price will be calculated should be provided, and include the specific ways the interest rate or other market factors will influence pricing.

8. **REPORTING REQUIREMENTS**

We request clarification of the on-going reporting requirements for participants if they qualify and choose early disposition. The Proposed Disposition Guidelines do not address whether Quarterly Supplemental Reports will still be required under the different early disposition scenarios. The Standard Securities Purchase Agreement and Standard Certificate of Designation specify that all participants are required to report for 10 years. Yet, it is unclear from those documents, and the Proposed Disposition Guidelines, what happens once UST is no longer the holder of the ECIP instruments. While participants may infer that if a participant redeems the instrument from UST, then the reporting requirements are no longer in effect, we urge UST to clarify the reporting obligations. Likewise, we ask UST to clarify any changes in reporting that may occur in the event the instruments are transferred to a MANA or third party.

RECOMMENDATION: UST should clarify reporting requirements under the various scenarios for participants that choose early disposition.

On behalf of the members of CDBA, I thank UST for taking our recommendations into consideration.

As the lead trade association in working with Congress to enact ECIP, we are firmly committed to the success of the program. We believe the program has the potential to improve the economic health of communities and the people served by ECIP participants. We look forward to continuing to work in partnership with the agency to make ECIP a continued success. We are pleased to discuss these recommendations with UST officials. If you have any questions, feel free to contact me at 202-207-8728, or at jacokesj@pcgloanfund.org, or Brian Blake at blakeb@pcgloanfund.org.

Sincerely,

Jeannine Jacokes
Chief Executive Officer