Community Development Bankers Association
1201 15th Street NW, Suite 200 • Washington, D.C. 20005 • (202) 689-8935 • (202) 689-8938 (fax)

April 26, 2023

Via Electronic Submission

Ms. David Meyer
Program Manager
Emergency Capital Investment Program
United States Department of the Treasury
1500 Pennsylvania Avenue
Washington, DC 20220

RE: Emergency Capital Investment Program Initial Supplemental Report and Quarterly Supplemental Report (OMB Control Number 1505–0275)

Dear Mr. Meyer,

On behalf of the members of the Community Development Bankers Association (CDBA), we write to submit comments on the Instructions for the Initial Supplemental Report and Quarterly Supplemental Report issued by the agency on March 27, 2023. 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 of banks and thrifts with a primary mission of promoting community development. Today there are 189 CDFI-certified banks and thrifts and 154 certified bank holding companies. Many of our members are also 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, 64 (70%) are CDBA members.

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 also wish to thank Treasury staff for their consideration of the comments CDBA and its members have submitted over the course of ECIP's implementation.

DEMOGRAPHIC DATA

CDBA and its members are firmly committed to improving 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 the core of their mission and central to their ECIP lending. In this light, we appreciate the updates Treasury has made to the demographic reporting documents and guidance. We also hope that additional changes will still be made to ensure banks can effectively pursue racial equity outcomes.

CUSTOMER DISCLOSURES

CDBA strongly agrees with Treasury that "self-identification is the best method of collecting demographic data," and we appreciate the explicit statement that "Participants are not expected to require their customers to provide demographic data."

However, we urge Treasury to ensure that ECIP participants are not penalized if *borrowers* opt not to disclose demographic information. We believe the absence of reporting fields that allow lenders to report the number and dollar amount of loans made to non-disclosing customers is an implicit penalty. The absence of clarifying fields allows for inferences that a lender is not meeting the needs of minority individuals, when in fact an individual borrower's preference may have been for anonymity. By omitting fields to capture non-disclosing customers, the reporting forms suggest a non-disclosing-borrower must be a non-minority.

CDBA recommends that Treasury amend the reporting forms to allow ECIP participants to disclose the number and dollar amount of loan transactions for which bank customers opted not to disclose their race or ethnicity. One way to accomplish this is to allow loans that cannot be established as being made to a Minority individual or Minority owned business should be reported as loans to borrowers who are "Not Known to Be Minorities" rather than "Not Minorities". The absence of these data fields overlooks the privacy concerns and individual preferences of borrowers, and compromises the accuracy of data reported to Treasury.

TIMELINES

INDEPENDENT AUDITOR ATTESTATION, PROCESSES AND CONTROLS

Independent audit firms have informed ECIP participants that their firms cannot undertake reviews and provide the attestations required under Section 4(d)(ii) of the Securities Purchase Agreement until there is formal, published guidance on how to conduct that work. These firms have stated that without written guidance, they cannot determine whether the processes and controls used by banks are "satisfactory."

If ECIP participants cannot contract with independent auditors to complete these reviews and secure attestations, it will severely impact compliance. At this point, even if Treasury has guidance ready to issue, there is insufficient time for auditors to review, understand, and incorporate the guidance into operations before the deadline.

We strongly urge Treasury to 1) *provide the guidance required by independent audit firms in order to conduct the required reviews and provide attestations as soon as possible, and 2) provide a grace period, extending at least three months from the release of the guidance, to accommodate institutions that are currently unable to meet the requirement due to these circumstances.*

REPORTING TIMELINE AND GRACE PERIOD

We request that Treasury provide clarification on the requirements to report individual demographic data. Specifically, while ECIP participants appreciate Treasury's statement that "Treasury will not consider the QSR to be inaccurate or incomplete solely on the basis of a lack of demographic data," we request *a clear, unequivocal affirmation that this guidance constitutes a grace period for lenders to stand up collection and reporting systems. We further request that Treasury clarify precisely what data will be adequate up to, including, and after the quarter ending on June 30, 2024*. We also request clarification on *what will satisfy the requirement to submit narratives on plans to implement data collection systems and progress on implementing those plans*.

DATA COLLECTION

ECIP only requires participants to initiate the collection of demographic data, and not to retroactively collect demographic data for loans already made. While this is sensible, it creates a problem for lenders in that historical loans lacking demographic data may appear as though they were not directed to minorities, when in fact they may have been. CDBA recommends that *for records dating from before the collection of demographic data, loans should be labeled as "demographic data not collected" and that such data be reported separately and not contribute towards calculating the proportion of minority borrowers served.*

In addition to explaining plans for implementing demographic data collection systems in the QSRs leading up to June, 2024, we request that geographic data be allowed to assess minority borrowers as is permitted by the CDFI Fund until the June, 2024 deadline. Permitting geographic data will allow lenders to estimate proportion of minority borrowers as they have historically, without omitting minority-lending estimates and falsely appearing as if they are not lending to minorities, at least until more advanced systems are in place.

REGULATORY AGENCY GUIDANCE ON DATA COLLECTION & OUTREACH

It is important for Treasury to facilitate an environment where it is safe for ECIP participants to collect customer demographic data *without fear of regulatory agency reprisal*. While the ECIP statute provides an exemption under ECOA, our members report widespread lack of knowledge by regulatory agency staff of such exemption. We have no knowledge of guidance being promulgated to field personnel to suggest that any institution collecting otherwise-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, we have no evidence that the agencies have provided examiners with consistent, needed guidance.

To correct this situation, *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.* We urge Treasury to continue to work with the Agencies to issue consistent guidance as soon as possible.

Such guidance must be shared with ECIP participants such that they understand what they are, or are not, allowed to do. *Regulator action is needed to ensure ECIP participants can collect this type of data with confidence, and we urge Treasury to continue to work energetically to ensure this guidance is issued.*

LOAN PARTICIPATIONS & LOAN PURCHASES

We commend Treasury for clearly stating in the QSR Instructions that loan purchases from ECIP Participants qualify as both Qualified and as Deep Impact Lending.

However, we believe further clarification is required. The following two (2) statements, both from Page 9, appear to conflict with each other and potentially confuse related language when referring to the reporting of Qualified Lending and Deep Impact Lending. Specifically, the following language from "Loan Purchases and Participations" clearly states that purchases and participations in loans originated by ECIP Participants *should be reported as Qualified Lending*:

> **Loan Purchases and Participations.** Report the purchase price for purchases of loans or participations in loans during the reporting period that are: (a) acquired by the Participant during the reporting period; (b) made by non-depository CDFI loan funds; and (c) originated within one year of purchase by the institution. Report the Participant's pro-rata share of the total loan amount of a purchase of a participation in a loan that is: (a) originated by another ECIP Participant during the reporting period; and (b) purchased by the Participant during the reporting period. For the purposes of the Quarterly Supplemental Report, a "participation" means a loan origination or financing structure in which the ECIP Participant has assumed at least some credit risk of the loan on the day of origination. Purchases of loans other than from non-depository CDFI loan funds, including purchases of loans from other ECIP Participants, must not be included in Lending Activity.

However, language immediately following suggests that Treasury *intends the opposite:*

> **Loan Purchases and Participations.** Report the purchase price for purchases of loans or participations in loans during the reporting period that are: (a) acquired by the Participant during the reporting period; (b) made by non-depository CDFI loan funds; and (c) originated within one year of purchase by the institution. Report the Participant's pro-rata share of the total loan amount of a purchase of a participation in a loan that is: (a) originated by another ECIP Participant during the reporting period; and (b) purchased by the Participant during the reporting period. For the purposes of the Quarterly Supplemental Report, a "participation" means a loan origination or financing structure in which the ECIP Participant has assumed at least some credit risk of the loan on the day of origination. Purchases of loans other than from non-depository CDFI loan funds, including purchases of loans from other ECIP Participants, must not be included in Lending Activity.

Later, on Page 12, the following quote clearly states that loan purchases from ECIP Participants *will qualify (in certain circumstances) for Deep Impact Lending*, which tracks with the language establishing a baseline for such purchases so they may qualify *at least* as Qualified Lending:

> In each Schedule, purchases of loans or participations in loans may only be included as Deep Impact Lending if:
>
> - the loan is originated by a **non-profit** non-depository CDFI loan funds **AND** made to a Target Community listed under Deep Impact Lending in the table below (e.g., Persistent Poverty Counties); or
> - the loan is originated by another ECIP Participant and made to a Target Community listed under Deep Impact Lending in the table below.

This important update will encourage ECIP participants to work with each other. However, w*hatever Treasury intends, the two <u>affirmative</u> statements are difficult to reconcile with the <u>negative</u> statement. This needs to be resolved to state clearly the circumstances under which lenders should report purchases and participations in loans originated by ECIP Participants either as Qualified Lending or as Deep Impact Lending.*

Further clarifications are also necessary to explain the eligibility period for loan purchases. Specifically, on Page 8, "Components of Lending Activity" provides that lending activity shall include purchases made "during the reporting period:"

Components of Lending Activity. For purposes of the Quarterly Supplemental Report, Lending Activity includes:

i. all new extensions of credit that would be reportable during the reporting period in the Call Report or equivalent regulatory report;
ii. loans originated and sold during the reporting period, even if not reportable in the Call Report or equivalent regulatory report due to such sale;
iii. purchases of loans or participations in loans that are: (a) acquired by the Participant during the reporting period; (b) made by non-depository CDFI loan funds; and (c) originated within one year of purchase by the institution;
iv. the pro-rata share of the Participant's purchase of a participation in a loan that is: (a) originated by another ECIP Participant during the reporting period; and (b) purchased by the Participant during the reporting period;
v. open-ended extensions of credit if the credit was originated during the reporting period; and
vi. direct and indirect investments during the reporting period in real estate ventures and equity investments without readily determinable fair values.

However, later, on Page 9, Treasury requires lenders to "Report the purchase price of loans or participations in loans during the reporting period that were made "on the day of origination:"

> **Loan Purchases and Participations.** Report the purchase price for purchases of loans or participations in loans during the reporting period that are: (a) acquired by the Participant during the reporting period; (b) made by non-depository CDFI loan funds; and (c) originated within one year of purchase by the institution. Report the Participant's pro-rata share of the total loan amount of a purchase of a participation in a loan that is: (a) originated by another ECIP Participant during the reporting period; and (b) purchased by the Participant during the reporting period. For the purposes of the Quarterly Supplemental Report, a "participation" means a loan origination or financing structure in which the ECIP Participant has assumed at least some credit risk of the loan on the day of origination. Purchases of loans other than from non-depository CDFI loan funds, including purchases of loans from other ECIP Participants, must not be included in Lending Activity.

We request that Treasury *clarify whether these provisions mean an ECIP recipient must purchase the loan on the day of origination for it to qualify as lending activity, or whether it can be purchased any time during the reporting period.* If the former is intended (day of origination only), we strongly urge Treasury to change the policy to the latter (during the reporting period). Restricting qualifying purchase to those made "on the day of origination" does not reflect industry best-practices and will discourage, rather than promote collaboration.

<u>BASELINE ADJUSTMENTS</u>

TIMELINE AND LOGISTICS

CDBA acknowledges and thanks Treasury for issuing instructions for ISR reporting for institutions that have completed M&A activity. However, given the well-documented challenges facing depository institutions leading up to, during, and following M&A activity, the aggressive timeline to submit a consolidated ISR is concerning. As the instructions state, "if the Participant's acquisition of another institution closed on April 15, 2025, submit an Initial Supplemental Report for the Acquired Institution covering the annual period ending on March 31, 2025." *We strongly urge Treasury to allow ECIP participants to request an extension on reporting in such circumstances to ensuring that the Agency gets the best and more accurate data possible.*

We also encourage Treasury to identify any other causes for baseline adjustment – especially community changes or participant actions. We believe Treasury has yet to 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, 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 that Treasury issue 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.

CONCLUSION

In closing, CDBA's members appreciate the hard work and thoughtful consideration of Treasury in launching ECIP. We look forward to continuing to work with Treasury to ensure the program's success.

If you have any questions, please contact Brian Blake, CDBA Chief Public Policy Officer, at (202) 689-8935 ext. 225 or blakeb@pcgloanfund.org.

Sincerely,

Brian Blake
Chief Public Policy Officer