/ inclusiv /

April 26, 2023

Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

OMB Control Number: 1505-0275

Re: Emergency Capital Investment Program Quarterly Supplemental Report

Dear Department of the Treasury:

Thank you for the opportunity to comment on the proposed reporting requirements for the Emergency Capital Investment Program (ECIP). ECIP is a transformative investment in Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs) and it is critical that Treasury structure ECIP reporting requirements to accurately capture the impact of the program and ensure accountability. It is equally critical that reporting requirements are not duplicative and unduly onerous for the often-small institutions that received ECIP awards and do not burden the people these CDFIs and MDIs serve with intrusive data collection.

Inclusiv is a nonprofit national network of community development credit unions committed to promoting financial inclusion and equity through credit unions. The Inclusiv network represents more than 460 credit unions serving more than 17 million people in predominantly low-income urban, rural, and reservation-based communities across 47 states, Washington DC and Puerto Rico. Inclusiv channels capital and builds capacity of credit unions that are dedicated to serving low-income and underserved people and communities. These credit unions provide their members with the full range of fair and responsible financial products and services and the support needed to help people achieve financial well-being. We design, implement, and track numerous initiatives aimed at enabling credit union members to use their credit unions to build wealth and assets.

More than 70% of credit unions participating in ECIP are Inclusiv members, and Inclusiv's staff has provided extensive technical assistance on the program. We appreciate Treasury's engagement with Inclusiv and our members as the program has been rolled out and look forward to continuing this critical work together. We recommend Treasury adopt the changes outlined below to ensure that the small CDFIs and MDIs whose work is critical to ECIP achieving its goals are able to successfully report on their activities and remain in good standing in the program.

Treasury Should Streamline Reporting Requirements and Ensure Consistency Across Treasury Programs

Align ECIP Reporting Timelines with National Credit Union Administration and CDFI Fund Reporting Timelines

The proposed quarterly reporting schedule for ECIP is unduly burdensome and out of line with existing CDFI Fund reporting requirements. We recommend that Treasury adopt an annual reporting schedule, mirroring the CDFI Fund schedule for Annual Certification Reports and Transaction-Level Reports. Should Treasury decide to maintain the proposed quarterly reporting schedule, it should, at a minimum, ensure reporting deadlines are set in such a way to support regulated depositories, like credit unions, in meeting those deadlines.

The CDFI Fund's new certification standards will require CDFIs to submit both Annual Certification Reports and detailed Transaction-Level Reports 180 days after the end of each fiscal year. It is critical to note that the data sources for transaction-level analysis for credit unions are distinctly different than the single source specifically designed for quarterly call reports. While call reports are based on outstanding portfolios tracked in great detail by core data processing systems that are specifically designed to meet regulatory reporting requirements, comprehensive transaction data is not retained on core systems and must be gathered from one or more separate Loan Origination Systems (LOS), which adds to the burden of data collection, storage and security. The proposed ECIP reporting schedule would overburden credit unions during their critical regulatory reporting cycle and would not permit sufficient time to gather the full set of transaction-level data points needed to satisfy both ECIP and CDFI reporting requirements. The deadlines for the annual report should be extended to June 30 to align with the CDFI Fund ACR and TLR deadlines.

According to the ECIP program documents, the Quarterly Supplemental Reports (QSRs) will be due concurrently with call reports. Treasury should move this due date to provide sufficient time for ECIP institutions to prepare the QSRs. The current timeframe will present undue challenges to credit union reporters because call reports are needed to prepare the QSRs but both reports are due at the same time. This is unduly burdensome, especially as the analysis required for the proposed QSR is different from the quarterly call reports and will require additional time and resources in order to complete. Treasury should extend the quarterly deadlines to 60 days after the quarter end.

Align ECIP Reference Tables with CDFI Fund Tables

Sufficient time to access and review the datasets is a critical component of the public comment process. Treasury had not yet released the reference datasets for use in preparing the QSR until April 21, less than one week before the deadline for comments. Without timely access to the datasets, it is impossible to provide specific comments, but, as noted in Inclusiv's previous comment letter, the previously published reference data sets contained numerous inconsistencies and conflicts with those used by the CDFI Fund for certification and grant compliance. The following two recommendations will reduce the reporting burden on ECIP recipients by eliminating the need to run multiple analyses of the same transaction data using conflicting reference datasets:

- First, any updates to the datasets should be consistent across the Treasury programs. It is unreasonable to require ECIP recipients to analyze the same set of loan data using multiple overlapping and often conflicting reference tables. Such costly and inefficient requirements impose undue burdens on ECIP institutions, create moving targets that make this program difficult to manage, and undermine Treasury's goal of reliably measuring the impact of these programs.

- Second, since datasets based on Census FIPS codes and ACS data will inevitably change over time, Treasury must give ample and timely notice to program participants and allow sufficient transition time for participants to manage these changes and update their strategies, outreach plans and reporting systems. As an example, the CDFI Fund typically allows a one-year transition period whenever they issue a new map of CDFI Investment Areas.

Treasury Must Ensure ECIP Data Collection Does Not Deter People of Color from Borrowing from CDFIs and MDIs

CDFI and MDI credit unions play a critical role in reaching people and communities that mainstream financial institutions fail to serve and are a vital source of capital in many historically redlined neighborhoods. The commitment of these credit unions to economic and racial justice is reflected in the members they serve. We support Treasury's efforts to measure ECIP's impact by race and ethnicity to be sure the program is reaching communities of color effectively. However, Treasury's proposed approach to impact data collection poses significant challenges for regulated depository institutions and imposes additional burdens on the people that ECIP is designed to serve. For example, 95% of loans issued by CDFI credit unions are consumer loans that do not permit the collection of borrower race and ethnicity data due to both the provisions of the Equal Credit Opportunity Act (ECOA) and the competitive realities of the marketplace. Borrowers served by mainstream financial institutions are not asked to fill out an intrusive survey just to obtain a simple consumer loan, and borrowers from CDFI credit unions should not be required to do so either – especially when efficient, scalable and non-intrusive alternatives are readily available to evaluate race and ethnicity. Indeed, the greatest challenge for CDFI credit unions is to make responsible and affordable consumer credit as readily available as the high-cost loans that use convenience to disguise predatory fees and abusive terms.

ECIP's authorizing legislation does not require ECIP participants to collect borrower race and ethnicity data. Instead, it reads, "…any low- and moderate-income community financial institution may collect data…"[1] And also specifies that ECIP recipients will not be subject to adverse action from the Consumer Financial Protection Bureau (CFPB) or other Federal agencies as a result of collecting this data. Although the statutory exemption is necessary, it is does not address the operational and member relationship challenges of collecting this data and may have unintended, disparate impacts on the very communities ECIP aims to serve.

Although the statute states institutions *may* collect race and other data for the purposes of monitoring compliance with these initiatives, the current QSR requires the collection of this data from individual borrowers without apparent support in the statute. This requirement appears to disallow the use of even well-tested alternate data sources, like Bayesian Improved Surname Geocoding (BISG), that use

[1] 12 USC § 4703a(k), emphasis added

surnames and addresses to determine race and ethnicity, even though such automated coding systems have been used for CDFI certification, HMDA compliance and, as noted in the following section, were already used by many ECIP recipients for their ISR analyses.

Many people of color are wary of race and ethnicity data collection, both by private institutions and by the federal government, given the United States' long history of racial and ethnic discrimination and financial exclusion. Borrowers served by CDFIs and MDIs are more likely than the average American to have been targeted for predatory loans or pushed out of the mainstream financial system by fees or negative ChexSystem reports. CDFIs and MDIs exist to serve these members, but they also have to meet them where they are with respect to their comfort with sharing race and ethnicity data. It is critical that Treasury allow the use of BISG and similar methodologies for financial institutions. These methods are respectful of borrowers' time and privacy, and are accepted in fair lending and other civil rights litigation, so should be more than sufficient for Treasury's program evaluation purposes.

Implementation Support
We appreciate the grace period Treasury has provided ECIP recipients for collecting and reporting on demographic data. Allowing reporters to omit race and ethnicity data in reports until June 30, 2024 is a critical acknowledgement of the time and work that will be required for credit unions, whose loan portfolios are primarily made up of consumer loans that are subject to ECOA prohibitions on collection race and ethnicity data, to comply with Treasury's race and ethnicity reporting requirements. We also appreciate Treasury clarifying the HMDA and CDFI Fund compliant data collection methodologies are acceptable.

Treasury Must Ensure that QSR Reporting Methodologies are Consistent with Those Allowed for the ISR
Treasury's intention to exclude data-based methodologies for determining race, ethnicity and income status will creating a damaging mis-match between ISRs and QSRs by forcing recipients to use dramatically different classification methodologies for two reports that are supposed to be comparable. This mismatch will result in an undercount of loans issued to borrowers of color and those who qualify as low-income (LI) or low-to-moderate income (LMI). In addition to the many issues with the collection of data on race and ethnicity noted above, the QSR instructions assume that ECIP recipients collect detailed family income and family size information for every loan they issue. In practice, a great number of small, affordable consumer loans are underwritten with minimal need to collect information on borrower income, much less full family income. Fully collateralized share-secured loans and similar types of loans offer convenient source of safe and affordable credit to low-income borrowers who might otherwise be forced to rely on high-cost and predatory payday lenders. If Treasury does not permit ECIP recipients to continue to use the same methodologies used in the ISR, these low-income borrowers would not be counted and ECIP recipients would likely show a decline in their lending to LI, LMI and borrowers of color.

Treating Participations between ECIP participants as Lending Activity Will Support Affordable Access to Credit for Borrowers
Treasury's updates to the definition of Lending Activity to include participations between ECIP recipients

will allow participating credit unions to collaborate on loans they may not be able to make alone due to ALM and balance sheet management considerations. This flexibility will allow them to serve their members better and will reduce costs for borrowers as the need to take out multiple loans from separate financial institutions, each with their own closing costs, will be avoided.

The Time Commitment of Preparing Proposed ECIP Reports Is Overly Burdensome for Small Depository Institutions

Treasury's current estimate of the time required to complete QSRs sums to more than three weeks of full-time work annually for each ECIP reporter. CDFI and MDI credit unions are not-for-profits that are often staffed on a shoestring budget. Requiring weeks of staff time for reporting is deeply burdensome, especially for smaller institutions that do not have dedicated staff specializing in federal program management. Some ECIP participants have already paid tens, or even hundreds, of thousands of dollars to external consultants for ECIP-related analysis. This is unsustainable over the 30-year ECIP period and unfairly penalizes small institutions.

To address this issue, Treasury should reduce the frequency of reporting to annual reports.

Thank you for the opportunity to comment. We look forward to continuing to work with Treasury on this transformational program. Please contact Alexis Iwaniszliw, Senior Vice President, Policy and Communications (aiwanisziw@inclusiv.org), with any questions about these comments.

Sincerely,

Cathie Mahon
President/CEO