/ inclusiv /

August 29, 2022

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

Docket No.: TREAS-DO-2022-0013
Via regulations.gov

Re: Emergency Capital Investment Program Initial Supplemental Report and 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 while not overburdening the often-small institutions that received ECIP with duplicative and unduly onerous reporting requirements.

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 478 credit unions serving more than 18 million people in predominantly low-income urban, rural, and reservation-based communities across 47 states, DC and Puerto Rico. More than 46% of our members are governed by and predominantly serve people of color; and 62% are also CDFI certified. Inclusiv channels capital and builds capacity of these institutions dedicated to serving low-income and underserved consumers with fair and responsible financial products and services and the supports to help consumers succeed with those services. We design, implement, and track numerous initiatives aimed at enabling 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 Recertification Reports and Transaction-Level Reports. Should Treasury decide to adopt 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.

According to the ECIP program documents, the Quarterly Supplemental Reports (QSRs) are due within 30 days after the end of each fiscal quarter. Treasury should move back 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. Should Treasury decide to maintain a quarterly reporting schedule, QSR due dates should be aligned with CDFI Fund reporting timelines.

The CDFI Fund requires CDFIs to submit their Annual Recertification Reports 90 days after the end of each fiscal year and their detailed Transaction-Level Reports 180 days after the completion 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, original 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 QSR 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 TLR deadline.

Align ECIP Reference Tables with CDFI Fund Tables

ECIP's Reference Tables conflict with CDFI Fund Investment Area tables, leading to duplicative work to report on both. For example:

- The "Area Median Income Dataset" uses MSA codes that are not part of the geocoding used for CDFI Program and ERP Reporting. It would be preferable for the AMI Dataset to provide data for all 5-digit county FIPS codes.
- The "Underserved Communities Dataset" is exactly the same as the CDFI Fund's "CDFI Investment Areas ACS 2011-2015" workbook. The original name should be retained to avoid needless confusion among CDFIs that might believe this is a separate dataset than the one they use for their Investment Area coding.
- The "Urban Low Income Communities Dataset," on the other hand, is based on the CDFI Fund's New Markets Tax Credit (NMTC) program. Oddly, the census tract values for percent of median

MFI do not agree with the same values that appear in column N of the "Underserved Communities Dataset" (i.e., the Investment Area Workbook), even though both are based on ACS 2011-2015 data. To avoid confusion, QSRs should be based on data that applies to all CDFIs, specifically, CDFI Investment Areas.

- ECIP's Reference Tables should be updated in line with the CDFI Fund's update to the list of qualified Investment Area census tracts. The CDFI Fund's single workbook includes information for each census tract on Metro/Non-Metro status, Percent of Benchmarked MFI, and Underserved Communities (which are simply Investment Areas).

Any updates to the datasets should be consistent across the Treasury programs. Analysis of the same loans against different datasets create undue burdens to the 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. Any changes to the datasets should be made in consultation with the participating institutions. Treasury must give ample and timely notice to program participants and allow sufficient transition time for participants to manage this change and update their strategy and outreach plans. As an example, the CDFI Fund is planning a one-year transition period for their recent data changes.

Further, Treasury should confer with the participants in advance of the changes to the datasets and provide sufficient time for them to comment on the proposed changes, and coordinate with other relevant Treasury agencies so participants are not duplicating efforts with different outcomes.

Regulated Depository Institutions Face Challenges in Collecting Data on Race and Ethnicity for Consumer Loans

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. These institutions' commitment to economic and racial justice is reflected in the members they serve. We appreciate Treasury's interest in measuring ECIP's impact by race and ethnicity to be sure the program is reaching communities of color effectively. Treasury's proposed approach to impact data collection, however, poses significant challenges for regulated depository institutions, like CDFI credit unions, which have loan portfolios made up primarily of consumer loans and which have historically been barred from collecting borrower race and ethnicity data related to these loans by the Equal Credit Opportunity Act (ECOA).

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 statute itself provides a workable framework for CDFIs to collect data on race and ethnicity,

[1] 12 USC § 4703a(k)

Treasury's interpretation of the statute and implementation work to date pose significant regulatory risks and operational challenges for credit unions participating in ECIP.

Although the statute states institutions *may* collect race and other data for the purposes of monitoring compliance with these initiatives, the current draft QSR requires the collection of this data from individual borrowers without apparent support in the statute. Treasury's creation of this mandate without sufficient alternatives, transition time, or sufficient consultation with federal regulators like the NCUA, will set ECIP participants up to fail. CDFI credit unions are deeply invested in advancing racial equity but are also concerned about being penalized for collecting data on race and ethnicity by NCUA examiners who may not be fully up to date on the exception to ECOA granted by ECIP, will have to build systems to support this data collection, and work in contexts where asking borrowers to identify their race and ethnicity during loan decisioning may not be welcome and could damage a credit union's ability to serve communities of color in the future by eroding trust between the credit union and its members.

Regulatory Coordination

Treasury should ensure it provides training to the prudential regulators of CDFI credit unions and banks to be sure they understand why institutions are collecting race and ethnicity data and the legal framework that makes this data collection permissible. Treasury should also ensure that NCUA issues clear guidance that ECIP participants may collect data on race and ethnicity under ECIP's ECOA carveout. It is Treasury's responsibility to ensure that regulated depository institutions are not penalized by their prudential regulators for their efforts to comply with ECIP requirements.

Implementation Support

Since about 90% of credit union loans are consumer loans, credit unions would be forced to immediately move from collecting demographic data on the 5-10% of their portfolio made up of mortgages, if they are large enough to be HMDA reporters, to collecting demographic data for their entire loan portfolios. Race and ethnicity are new datapoints for these loans and core systems, loan applications and platforms will have to be updated to track this information. Change management takes time and resources. If these datapoints are to be required, Treasury should provide a transition period and exemptions for any loans originated prior to the finalization of the QSR. 161 ECIP-approved institutions have already closed on their investments. Requiring them to go back and require borrower demographic information for loans that have already closed is unduly burdensome.

Allow Use of Proxy Data

In addition, CDFI credit unions often serve communities that have been historically redlined and whose residents are discriminated against by mainstream banks and targeted by predatory lenders. This pervasive racism has eroded people's trust in financial institutions and can make collecting race and ethnicity information challenging if sufficient guidance, training and support are not provided to credit union staff to help them manage the process. Treasury has thus far failed to provide this guidance or support and should instead allow ECIP participants to use well-tested and rigorous statistical tools to report on race and ethnicity while adhering to the fair lending protections in ECOA and Regulation B.

We recommend that Treasury make Schedule C optional and allow ECIP recipients to use the CFPB's

Bayesian Improved Surname Geocoding (BISG) system instead of requiring the collection of race and ethnicity data from borrowers directly. This CFPB system can be used at scale, is compliant with ECOA and Regulation B, and allows credit unions to effectively serve members who prefer not to be asked about their identity as part of a financial transaction. Many vendors already offer this service, including nCino and Claritas.

If Treasury does not permit the use of BISG, it should provide clear definitions and guidance on acceptable datapoints and methodologies for collecting demographic data.

Data Collection Details
If Treasury requires ECIP participants to collect race and ethnicity data, it should add two additional reporting categories:

1. If borrowers decided to opt out or do not respond to the question, and
2. If the institution opts not to collect race and ethnicity data for that loan.

Lending Activity Definitions Penalize Borrowers and Participating CDFIs and MDIs
The ECIP definitions of qualified lending activities include "purchases of or participations in loans during the reporting period made by non-depository CDFI loan funds that were originated within one year of purchase by the institution" which penalizes both participating CDFI depositories and their borrowers. We request Treasury broaden this definition and use more inclusive categories of loan participations, in particular those from CDFI and minority depository institutions. CDFI and MDI credit unions at times partner and collaborate on loan participations given their ALM and balance sheet considerations and the needs of the potential borrower. Given their target markets, pre-development work is also generally involved, as well as the standard transactional and closing fees. Excluding loan participations between depositories may have the unintended impact of causing borrowers to have to go to multiple financial institutions, increasing financing costs and time spent obtaining capital to finance their business or project, which is counter to the purpose of ECIP.

Treasury should clarify the definitions of which refinance loans and extensions of lines of credit are reportable lending activities. The current definitions are unclear and may deter ECIP participants from providing needed refinance loans that would indeed be eligible ECIP activities.

The Time Commitment of Preparing Proposed ECIP Reports Is Overly Burdensome for Small Depository Institutions
Treasury's current estimate of time spent per report sums to more than a month of full-time work by staff for each ECIP reporter. CDFI and MDI credit unions are not-for-profits that are often staffed on a shoestring budget. Requiring more than a month 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 of thousands of dollars to external consultants for analysis related to the application and initial ISR. 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, aligned with

CDFI Fund requirements, and make Schedule C optional.

Mergers & Acquisitions

Treasury's current guidance on mergers and acquisitions for ECIP reporters generally takes a reasonable approach to combining baseline data for two ECIP reporters or collecting baseline data for a non-ECIP reporter. However, the proposed deadlines are very aggressive, especially when a non-ECIP reporter combines with an ECIP reporter. We recommend allowing at least an additional quarter but preferably a year before requiring combined reporting, given that it can take up to a year after the legal closing of a merger or acquisition for full integration of the institutions' data and core systems.

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

Sincerely,

Cathie Mahon
President/CEO