Thank you for the opportunity to provide comments on the proposed quarterly and annual reporting forms for ECIP recipients. It is incredibly disappointing to see the U.S. Treasury Department disregard twenty years of Regulation B and fair lending best practices that have been developed by lenders. Requirements like this will only hurt those the CDFI fund was created to help. My specific concerns and suggested remedies are outlined in more detail below.

1. Requiring the collection of race and ethnicity data via borrower self-reporting on consumer loans is detrimental to ECIP recipients.

Since 2003 lenders have been prohibited from inquiring about the race and ethnicity of applicants and borrowers of consumer loans. This was done to prohibit lenders from unlawfully discriminating against borrowers based on these factors. By requiring it only for ECIP recipients, consumers will be subjected to a practice that has been illegal for 20 years. This is likely to result in reputation risk and lost business for ECIP recipients, as ECIP recipient borrowers are presented with a data request that has been illegal for 20 years. This will be exacerbated for ECIP recipients who are the only recipient in their market. **To mitigate this problem, the Treasury could eliminate the prohibition on use of proxies or other methods for race and ethnicity data or could make collecting this information optional for lenders.**

2. Treasury is creating a new stringent and cumbersome reporting process specific to ECIP.

Lenders are accustomed to the data gathering and reporting requirements for HMDA and the normal CDFI reporting requirements. For ECIP recipients, Treasury has created a new requirement on consumer and business loans. Compliance with this requirement is far more cumbersome, dangerous, and costly to ECIP recipients than existing government reporting requirements. While ECIP recipients may utilize existing HMDA processes for certain residential real estate loans, those loans represent only a small fraction of ECIP reportable loans. Entire new processes and reporting systems will need to be created by ECIP recipients specific to the borrower self-reported race and ethnicity data. Furthermore, ECIP recipients have both a quarterly and annual reporting requirement. This means we will have to have separate data sets to comply with each frequency, even though reports due by April 30th of each year will include quarterly data from the current year for schedule A and B, and annual data from the prior year for schedules D and E. Furthermore, the requirement to identify multiple borrower loans in each category at least 1 borrower claims for race and ethnicity for schedules C and D, while only counting the loan once for Schedule A, is incredibly challenging with any type of automated reporting logic. **To mitigate this problem, Treasury could utilize existing CDFI reporting standards for the ECIP program and unify the reporting into a single frequency for all schedules.**

3. Asking borrowers for race and ethnicity information on consumers loans exposes ECIP recipients to excessive legal and reputation risk.

Very few people are aware of the obscure change included in the authorizing legislation that allowed the proposed collection of race and ethnicity data on consumer borrowers. As noted above, this practice has been illegal for 20 years. The authorizing legislation is very vague and there is no implementing guidance from Treasury on what type of data collection is permitted and which would continue to violate Regulation B. The lack of implementing regulations for 12 U.S.C. section 4703a(k) combined with the requirement to attempt to collect previously prohibited information from consumers exposes ECIP recipients to excessive legal risk. **To mitigate this risk, Treasury should publish implementing regulations for this data collection process and should provide a model form and disclosure for**

consumers that will provide ECIP recipients with safe harbor. Collection of race and ethnicity data should not be required until this is complete.

4. Treasury has been deceptive in the implementation of this requirement and is not providing an option for lenders to exit the program rather than comply with the objectionable reporting rules.

While the ECIP application and agreements contained notices that lenders would be required to collect additional demographic information on borrowers, only in the final instructions did the Treasury disclose their intent to require borrower reported, HMDA-type race and ethnicity data collection requirements on ECIP lenders. It is apparent from the fact that the statutory change that was made in the authorizing legislation that this was the intent from the beginning. I can tell you that Mid Oregon FCU would not have accepted the ECIP investment if the requirement to impose borrower reported, HMDA-type race and ethnicity data been clearly outlined as a condition of receiving funds. Furthermore, when I inquired with the ECIP program manager about the option to repay the ECIP funds rather than comply with this data collection requirement, he advised that "redemption is limited for the first five year(sic) under the terms of the agreement." **Treasury can address this problem by allowing ECIP recipients who do not wish to participate in the new data collection requirements the option to exit the program within the two year no-interest period, subject to whatever redemption requirements are imposed by the applicable regulator**. Failure to allow program recipients to exit after imposition of such a significant change in the program requirements presents a strong basis for legal action against the Treasury by ECIP recipients to compel redemption. I strongly urge Treasury to allow lenders to exit from the program voluntarily.

5. Treasury has provided insufficient time to begin reporting, given the complexity of the requirements.

The earliest possible date the forms and instructions could be finalized is approximately April 30, 2023. ECIP lenders will then have less than 60 days to submit no less than 3 quarters of activity. It is unlikely most lenders are willing to build the necessary systems to report this information until the rules are finalized. Expecting ECIP lenders to complete this reporting, including the various schedules in 60 days, is outrageous. For institutions that qualified for ECIP utilizing proxy data for income level, it will be necessary to reconstruct the data needed to complete the reporting. Since it has taken the Treasury nearly a year to promulgate the rules, is it not reasonable to allow ECIP lenders an equal amount of time to implement them? No lenders are subject to changes in interest rates until 2024 so there is no obvious reason for the due dates that were chosen. **Treasury can address this issue by extending the due date or delinquent date for any reporting until at least 12/31/2023 or preferably until one year after the reporting rules are finalized.**

6. There is a fundamental unfairness that results from changing the definition of qualification as a low-and-moderate income (LMI) borrower between the initial supplementary report (ISR) and the performance period.

Many lenders qualified for ECIP and provided ISR data to establish a baseline of qualified lending using proxy data and including purchased loans, which were not excluded from the definition of lending in the ISR instructions. The rate charged on ECIP is based on the level of increase in qualified lending above the baseline. By eliminating the use of proxies to measure LMI status, establishing a more stringent

definition of LMI, and excluding purchased loans from the definition of qualified lending, Treasury is decreasing the likelihood lenders will be able to increase lending enough to qualify for a rate reduction. In the case of Mid Oregon FCU, the elimination of purchased loans makes it impossible for us to qualify for a rate reduction through qualified lending. While other lenders will not know if this is case until they build the necessary reporting systems, the change in the method of determining qualified lending between the application process, ISR, and performance period is fundamentally unfair to lenders and represents an unfair and deceptive business practice by the Treasury. **Treasury can address this issue by allowing ECIP lenders to report performance using the same standards that were allowed during the application and ISR periods.**

7. The requirement for attestation by an Independent Auditor is expensive, unnecessary, and impossible to obtain without additional guidance from the Treasury.

The CDFI Fund is proposing to require an independent audit certification of an ECIP lender's reporting processes, separate and beyond the attestation that is required as part of the audited financial statements. Treasury has provided no guidance or standards to which the independent auditor would be attesting. Such an additional certification will be expensive, time consuming, and may not be available for some quarters. Most small ECIP recipients have at most one person who is responsible for preparing ECIP reports. In these cases, it will not be possible to have separation of duties and other controls to which an auditor would attest without an undue burden on the lender. In conjunction with the other onerous requirements, this requirement may result in a net cost to ECIP lenders from their participation in the program. This will result in less lending to underserved communities because the resources will be consumed by the reporting, audit, and attestation requirements. Like so many other requirements in the proposed rules, the CDFI Fund's proposal for ECIP far exceeds the requirements of CDFI program reporting or HMDA reporting. **To address this problem, the Treasury should accept the certification over controls that accompanies an ECIP recipient's audited financial statements as sufficient to fulfill the attestation requirement.**

I strongly urge the CDFI Fund to revise the reporting requirements for the reasons and in the manner outlined above. Furthermore, the Treasury should give consideration to its own legal exposure from utilizing a vague and undefined carve-out from the Equal Credit Opportunity Act without implementing regulations and a model form and disclosure for collection of the data requested.

Sincerely,

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