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**Category**

**Attestation**

**Data Collection - Race and Ethnicity Data**

**Data Collection - Race and Ethnicity Data**

**Attestation**

## **Reporting Timeline and Grace Period**

## **Data Collection - Race and Ethnicity Data**

## **Collaboration with Regulatory Agencies**

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**Data Collection - Race and Ethnicity Data**

**Risk**

**Risk**

**Data Collection - Race and Ethnicity Data**

**Data Collection - Race and Ethnicity Data**

**Data Collection - Race and Ethnicity Data**

**Data Collection - Race and Ethnicity Data**

**Data Collection - Race and Ethnicity Data**

**Risk**

**Risk**

**Burden**

**Risk**

**Risk**

**Proxy data**

**Risk**

**Risk**

**Risk**

**Burden**

**Risk**

**Risk**

**Proxy data**

**Instructions**

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**Data Collection - Race and Ethnicity Data**

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**Committer**

Banesto USA

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Community Development Bankers Association

Community Development Bankers Association

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Mid Oregon Credit Union

Mid Oregon Credit Union

Mid Oregon Credit Union

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Mid Oregon Credit Union

Community FCU Guam

Central Willamette Credit Union

Security Credit Union

Heritage Financial CU

Heritage Financial CU

Five Star Credit Union

National Association of Federal Credit Unions

National Association of Federal Credit Unions

National Association of Federal Credit Unions

GoWest Credit Union Association

GoWest Credit Union Association

GoWest Credit Union Association

PrimeWay Federal Credit Union

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## Comment

I am the CFO of Banesco USA, an ECIP recipient bank based in Miami, FL. We have ~\$3 advised us that based on their professional audit standards, they would not be able to AUDITOR as it is currently drafted. In particular, I understand that they are concerned v understand that our audit firm's concern is shared by other external audit firms as well engagement that meets your objective and is able to be performed under AICPA attest minutes, but I understand from our auditors that this would take considerably longer a cost associated with the external auditor required procedures. While we understand T the overall program. Lastly, we are concerned with the April 30, 2023 deadline, for which Treasury to delay the April 30, 2023 deadline until the matters above are addressed.

putting procedures in place to be able to track their minority lending going forward for definition of each of the Minority-related Qualified Lending categories, and in most cases comment, are the relatively small number of loans that are made (1) to borrowers who borrowers identify as different Minorities.

We request that Treasury accept a methodology for preparing the Quarterly Supplement because it represents a minute change to the reported data but saves the banks from a system is needed for each new data point required by the QSR Instructions. This additional to how many additional spaces can be purchased before a large system upgrade is needed QSR Instructions, but the utility of the collected data needs to be weight against the number prepare the QSR can be collected in approximately 45 spaces in a bank's system. About QSR Instructions. This includes, among other data points, the ability to mark a loan as by individual was or what Minority(ies) own a majority of the business. In order to account necessary, one for each potential additional Minority on Treasury's list. This is an in order one Minority represented on the loan. Again, every Minority loan will be captured under the few loans where additional Minorities are represented. An additional merit of the approach changing the QSR Schedules.

If Treasury determines that ECIP recipients must report when multiple Minorities were that would require only a small change: A new category be made that allows the ECIP recipients that either someone on the loan identified as more than one Minority or that multiple individuals. This is similar to the new category in the Schedule published for the 2014 document.

## **CUSTOMER DISCLOSURES**

CDBA strongly agrees with Treasury that “self-identification is the best method of collection of demographic data.” 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 do not provide the reporting fields that allow lenders to report the number and dollar amount of loans made to minority individuals. The current reporting fields allows for inferences that a lender is not meeting the needs of minority individuals. By omitting fields to capture non-disclosing customers, the reporting forms compromise borrower anonymity.

CDBA recommends that Treasury amend the reporting forms to allow ECIP participants to report loans to borrowers who have opted not to disclose their race or ethnicity. One way to accomplish this is to add a “Not Known” field for Minority owned business should be reported as loans to borrowers who are “Not Known.” The current reporting fields overlooks the privacy concerns and individual preferences of borrowers, and could

## **INDEPENDENT AUDITOR ATTESTATION, PROCESSES AND CONTROLS**

Independent audit firms have informed ECIP participants that their firms cannot underwrite the Securities Purchase Agreement until there is formal, published guidance on how to conduct the review. 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 by the deadline, even if Treasury has guidance ready to issue, there is insufficient time for auditors to complete the review by the deadline.

We strongly urge Treasury to 1) provide the guidance required by independent audit firms as soon as possible, and 2) provide a grace period, extending at least three months from the review deadline 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 statement that “Treasury will not consider the QSR to be inaccurate or incomplete solely on the basis of an affirmation that this guidance constitutes a grace period for lenders to stand up collectible data. What data will be adequate up to, including, and after the quarter ending on June 30, 2015? We request narratives on plans to implement data collection systems and progress on implementing such systems.

## **DATA COLLECTION**

ECIP only requires participants to initiate the collection of demographic data, and not to report it. If it is not feasible to collect demographic data on all loans, it is more sensible, it creates a problem for lenders in that historical loans lacking demographic data may have been. CDBA recommends that for records dating from before the collection of demographic data was initiated, the data be reported as "not collected" and that such data be reported separately and not contribute towards calculations of the proportion of minority borrowers.

In addition to explaining plans for implementing demographic data collection systems, lenders should be allowed to assess minority borrowers as is permitted by the CDFI Fund until the June 2025 deadline. Lenders should maintain the same proportion of minority borrowers as they have historically, without omitting minority-lending, 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 report data without fear of reprisal. While the ECIP statute provides an exemption under ECOA, our members report that they have not received any guidance from Treasury. We have no knowledge of guidance being promulgated to field personnel to suggest that reporting data is a Lending or Regulation B violation. While we understand that Treasury has raised this issue, it has not 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, Board of Governors of the Federal Reserve System) needs to issue formal written guidance to 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 type of data they can collect with confidence, and we urge Treasury to continue to work with the Agencies to issue consistent guidance as soon as possible.

## LOAN PARTICIPATIONS & LOAN PURCHASES

We commend Treasury for clearly stating in the QSR Instructions that loan purchases from ECIP Participants are eligible for the reporting period. However, we believe further clarification is required. The following two (2) statements of related language when referring to the reporting of Qualified Lending and Deep Impact Lending Participations” clearly states that purchases and participations in loans originated by ECIP

[image excluded from chart presentation]

However, language immediately following suggests that Treasury intends the opposite

[image excluded from chart presentation]

Later, on Page 12, the following quote clearly states that loan purchases from ECIP Participants tracks with the language establishing a baseline for such purchases so they may qualify

[image excluded from chart presentation]

This important update will encourage ECIP participants to work with each other. However, we need to reconcile with the negative statement. This needs to be resolved to state clearly the circumstances under which 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. Lending activity shall include purchases made “during the reporting period:”

[image excluded from chart presentation]

However, later, on Page 9, Treasury requires lenders to “Report the purchase price of loans at the day of origination:”

[image excluded from chart presentation]

We request that Treasury clarify whether these provisions mean an ECIP recipient must purchase loans during the reporting period or whether it can be purchased any time during the reporting period. If the former is interpreted to the latter (during the reporting period). Restricting qualifying purchase to those made during the reporting period may discourage, rather than promote collaboration.

## **BASELINE ADJUSTMENTS**

### **TIMELINE AND LOGISTICS**

CDBA acknowledges and thanks Treasury for issuing instructions for ISR reporting for in documented challenges facing depository institutions leading up to, during, and follow concerning. As the instructions state, “if the Participant’s acquisition of another institution Acquired Institution covering the annual period ending on March 31, 2025.” We strongly in such circumstances to ensuring that the Agency gets the best and more accurate data

We also encourage Treasury to identify any other causes for baseline adjustment – esp to address how future changes in economic or demographic indicators for counties or recommends Treasury clarify how future changes in economic or demographic indicators reductions. For example, census updates may affect the eligibility of geographic areas. Persistent Poverty County improve and it no longer qualifies as such, but that county is

Likewise, as it pertains to participant actions, we recommend that Treasury issue guidance to specify under which circumstances these activities would impact the baseline. We adjustment (e.g., a percentage increase/decrease in lending activity), given that participant which may result in significant changes to the size and lending strategy of the participant

1. Requiring the collection of race and ethnicity data via borrower self-reporting on co

Since 2003 lenders have been prohibited from inquiring about the race and ethnicity of borrowers from unlawfully discriminating against borrowers based on these factors. By requiring lenders to collect race and ethnicity data via borrower self-reporting, it has been illegal for 20 years. This is likely to result in reputation risk and lost business for lenders that has been illegal for 20 years. This will be exacerbated for ECIP recipients who are trying to eliminate the prohibition on use of proxies or other methods for race and ethnicity data.

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

Lenders are accustomed to the data gathering and reporting requirements for HMDA and have now created a new requirement on consumer and business loans. Compliance with this requirement is in addition to existing government reporting requirements. While ECIP recipients may utilize existing reporting systems for only a small fraction of ECIP reportable loans. Entire new processes and reporting systems are required to report race and ethnicity data. Furthermore, ECIP recipients have both a quarterly and an annual reporting sets to comply with each frequency, even though reports due by April 30th of each year require only annual data from the prior year for schedules D and E. Furthermore, the requirement to report race and ethnicity for schedules C and D, while only counting the loan once for Schedule E. To mitigate this problem, Treasury could utilize existing CDFI reporting standards for the E

### 3. Asking borrowers for race and ethnicity information on consumers loans exposes ECIP

Very few people are aware of the obscure change included in the authorizing legislation that allows lenders to ask borrowers for race and ethnicity information. As noted above, this practice has been illegal for 20 years. The authorizing legislation is unclear on what type of data collection is permitted and which would continue to violate Regulation B. If the new rule is combined with the requirement to attempt to collect previously prohibited information, it could increase credit risk. Treasury should publish implementing regulations for this data collection process that provide ECIP recipients with safe harbor. Collection of race and ethnicity data should not be required for

4. Treasury has been deceptive in the implementation of this requirement and is not providing objectionable reporting rules.

While the ECIP application and agreements contained notices that lenders would be required to report, the final instructions did not. The Treasury disclosed their intent to require borrower reported, however, it is not apparent from the fact that the statutory change that was made in the authorizing legislation that Oregon FCU would not have accepted the ECIP investment if the requirement to impose reporting as a condition of receiving funds. Furthermore, when I inquired with the ECIP program manager about the data collection requirement, he advised that "redemption is limited for the first five years, allowing ECIP recipients who do not wish to participate in the new data collection requirement to be subject to whatever redemption requirements are imposed by the applicable regulator." This change in the program requirements presents a strong basis for legal action against the 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 6 months, less than 3 quarters of activity. It is unlikely most lenders are willing to build the necessary infrastructure for lenders to complete this reporting, including the various schedules in 60 days, is outrageous. At this level, it will be necessary to reconstruct the data needed to complete the reporting. Since it is not reasonable to allow ECIP lenders an equal amount of time to implement them? No lender has a good reason for the due dates that were chosen. Treasury can address this issue by extending the reporting period, preferably until one year after the reporting rules are finalized. Treasury is creating a new

6. There is a fundamental unfairness that results from changing the definition of qualified lender for the quarterly issuer supplementary report (ISR) and the performance period.

Many lenders qualified for ECIP and provided ISR data to establish a baseline of qualified lender. Lenders that were excluded from the definition of lending in the ISR instructions. The rate charged on ECIP loans is based on the rate charged on qualified lender. By eliminating the use of proxies to measure LMI status, establishing a more stringent definition of qualified lender, Treasury is decreasing the likelihood lenders will be able to increase lending on ECIP loans. The elimination of purchased loans makes it impossible for us to qualify for a rate reduction. If we are required to build the necessary reporting systems, the change in the method of determining qualified lender is fundamentally unfair to lenders and represents an unfair and deceptive business practice. We will not report performance using the same standards that were allowed during the application period.

7. The requirement for attestation by an Independent Auditor is expensive, unnecessary

The CDFI Fund is proposing to require an independent audit certification of an ECIP lender as part of the audited financial statements. Treasury has provided no guidance or standards. This certification will be expensive, time consuming, and may not be available for some qualified preparers preparing ECIP reports. In these cases, it will not be possible to have separation of duties on the lender. In conjunction with the other onerous requirements, this requirement may be too burdensome. This will result in less lending to underserved communities because the resources will be spent on other requirements in the proposed rules, the CDFI Fund's proposal for ECIP far exceeds the benefits. To solve this problem, the Treasury should accept the certification over controls that accompany the attestation requirement.

Treasury should give consideration to its own legal exposure from utilizing a vague and implementing regulations and a model form and disclosure for collection of the data re

As a general matter, we understand Treasury's desire to have the management of each around the data collected and presented to the Treasury. And, we agree that such a ce Treasury has made in the subordinated debt of our credit union. As a practical matter, Controls Attestation is rather inflexible. More specifically, we are concerned that the p collected in connection with this program will (1) represent a new frontier for our staff be fully equipped to store such information fields. As such, we expect a certain "learning with the new processes required by the ECIP investment. Additionally, we suggest a s reliance on systems and processes that might be supported by third party vendors and collected addresses of our borrowers through professional geocoding tools. Against su seems overly conclusory. We respectfully suggest that the Treasury consider changing generate the Supplemental Reports of the Recipient's fiscal year ending [ ], 20[ ] are sa knowledge, the processes and controls used to generate the Supplemental Reports of a change would require our senior executives to affirmatively investigate the credit uni reliance on the process of expert systems beyond our ability to certify with absolute ce

Central Vermont Credit Union (CVCU) is a low-income, CDFI credit union serving over 100,000 members in Vermont. We have strong concerns about the changes needed to ensure ECIP is beneficial and effective for regulated credit unions. In our written comments on the proposed Quarterly Supplemental Report for Emergency Capital Investment Program (ECIP) and in our testimony at the public hearing on this report, if implemented, will have a negative impact on the success of the ECIP and

Furthermore, we are concerned about its potential conflict with the Regulation B Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA) regarding accountability in government programs, we believe that the proposed report goes beyond the requirements of Regulation B. The requirement for disclosure of individual borrower information in the report is concerning and could cause reputational damage.

We are concerned that this requirement may also violate Regulation B of the Equal Credit Opportunity Act (ECOA) which prohibits discrimination on the basis of the race, ethnicity, and other personal characteristics of credit applicants. We believe that the proposed Quarterly Supplemental Report will deter potential ECIP recipients from applying for the program.

The time and resources required to comply with the reporting requirements may be too burdensome for credit unions, particularly smaller ones, ultimately limiting the program's impact and effectiveness. As a credit union, we are committed to serving our members and businesses, regardless of their race, ethnicity, or other personal characteristics. We are concerned that the proposed report will undermine this commitment and create unnecessary barriers for small businesses and individuals.

We urge you to reconsider the proposed Quarterly Supplemental Report for ECIP awarding and accountability for this important program. We believe that with some modifications, the program can be successful while also ensuring appropriate oversight and transparency.

Thank you for the webinar today. Very informative and concerning. As an institution through various channels, I have major concerns on how data collection of race may impact members, reputational risk in asking indirect applicants to supply race data when trying to secure credit. What are they doing with that data? Why are they asking? Dealers might question: What data have on my dealership? What is the applicant's perspective when I'm gathering that data? Potential treatment by applicant, discrimination threats and litigation, less loans from concerned

ECIP needs to rely more on Schedule D, Place-based Lending, than focusing on collecting race data. I'm very legal system happy. There is constant news about racial profiling leading to poor credit decisions. This may make us susceptible to unnecessary lawsuits. I can confidently say our lending decisions were made before we have to ask for it and would've made the same determination without that info, though now we may have to spend money to protect ourselves.

Then it comes back to reputational risk. The CFPB published the attached article titled, "CFPB's New Rule on Rate Bumping for Higher Reserve Insured Depositors," which was happy to hear a good portion of the allowable rate bumping for higher reserve insured deposits was back in 2015. However, here we are still hearing from a FI governing body about the impact of the rule. We haven't needed all along to get better ECIP repayment terms? Has the impact on FI's already been felt? I see no good in collecting this sensitive info for an applicant by a dealer or lender. It's a good idea to have initiatives. Like we already do today.

As a general matter, we understand Treasury's desire to have the management of each around the data collected and presented to the Treasury. And, we agree that such a ce Treasury has made in the subordinated debt of our credit union. As a practical matter, Controls Attestation is rather inflexible. More specifically, we are concerned that the p collected in connection with this program will (1) represent a new frontier for our staff be fully equipped to store such information fields. As such, we expect a certain "learning with the new processes required by the ECIP investment.

[W]e suggest a slightly revised form of the attestation which accounts for some appropriate vendors and products. For example, as part of the reporting process, we expect to run [ ] Against such a reality, the current version of the "Process and Controls Certification" section is changing the statement in paragraph 2 that "[t]he processes and controls used to generate the [ ] satisfactory" to: "upon my reasonable investigation and to the best of my knowledge, the Recipient's fiscal year ending [ ], 20[ ] are satisfactory" (emphasis ours). Such a change would address the union's processes but would remain flexible enough to allow for reasonable reliance on the [ ] certainty.

As a general matter, we understand Treasury's desire to have the management of each appropriate and reasonable considering the investment that Treasury has made in the concerned that the current version of the Form of Process and Controls Attestation is r

We are concerned that the proposed version does not account for the fact that much o new frontier for our staff and members alike, and will (2) be collected into systems whi expect a certain "learning curve" at our institution as our systems and our staff become

We suggest a slightly revised form of the attestation which accounts for some appropri vendors and products. For example, as part of the reporting process, we expect to run We respectfully suggest that the Treasury consider changing the statement in paragraph Reports of the Recipient's fiscal year ending December 31, 2022 are satisfactory" to: "U processes and controls used to generate the Supplemental Reports of the Recipient's f change would require our senior executives to affirmatively investigate the credit union on the pprocess of expert systems beyond our ability to certify with absolte certainty

## General Comments

Prior to the first round of ECIP awards, Treasury allowed applicants to assess lending to specific methodologies for completing the Initial Supplemental Report (ISR) or the initial “supporting documentation that indicates which figures used for FY 2019 and FY 2020 estimates.” At no point during the initial application stage was there any discussion of completing Schedules A and B of the ISR.

Discussion of demographic reporting requirements for ECIP participants also appeared requirements or include any prohibition on the use of statistical proxies. The FAQ states sheets and investment agreements.” However, the term sheet provided to credit unions demographic information.

A February 2022 draft of the proposed Initial Supplemental Report for insured deposits methodologies or the use of statistical proxies. Slides included in an accompanying were explanation of the methodology used to generate the data in the report.”

The use of specific, approved methodologies for collecting demographic information with Report (QSR) data collection on June, 30 2022—approximately six months after announcing qualified lending relative to the first- round ISR methods for establishing baseline levels. ~~from the actual distribution of ECIP funds to target communities in order to develop~~

**Uncertainty regarding the scope of the ECOA safe harbor may increase exposure to p**

Notwithstanding the Equal Credit Opportunity Act (ECOA), the ECIP statute specifically applicants for the purpose of monitoring compliance with ECIP program requirements. the potential applicability of state law equivalents of ECOA that may grant a private rig

To the extent the CFPB is authorized to address potential inconsistencies between stat the CFPB to ensure that credit unions are fully protected from potential legal liability w program requirements. Although the purpose of the ECIP is to encourage lending in lov information from borrowers presents inherent risks.

Borrowers may be unaccustomed to sharing demographic information for non-mortgaa may invite unwarranted litigation. Treasury should address those risks with greater spe

While HMDA data may be useful for assembling demographic information related to mortgage origination systems designed for collecting borrowers demographic data and developing

Even if developing data collection systems and procedures were feasible in the short term, it is a separate challenge. In an FAQ, Treasury advises participants to rely on borrower self-identification. It does not clarify what legal safe harbors (if any) can be extended to third parties who manage

Developing procedures for collecting demographic information for all types of qualified mortgage loans carries additional legal risk in the absence of more detailed guidance, and could result in serious costs. Participants applied for ECIP funding may not have factored these costs into their plans to deploy funding. The ECIP program as a whole. Although Treasury has proposed a grace period during which participants can be on the basis of a lack of demographic data," a period of approximately one year is unlikely to be sufficient for the methodologies needed.

As a point of comparison, the CFPB's final rule implementing small business lending data requirements requires to develop procedures for gathering demographic information from small business owners. The rule covers covered credit transactions for small businesses in each of calendar years 2022 and 2023. The rule recognizes that smaller entities may need additional time. Under the final rule, a covered credit transaction for small businesses in each of calendar years 2022 and 2023 has until January 1, 2026 to be reported.

At a minimum, NAFCU recommends Treasury extend the QSR reporting grace period for

### **Exposure to legal ramifications**

[N]ew reporting requirements, specifically the requirements to report demographic information, could create potential legal ramifications.

It would be challenging and time-consuming to develop the documentation and the systems to report this information to the funds while adhering to Regulation B., as issued by the Bureau of Consumer Financial Protection. This requires interagency communication and agreement on how this should be done.

Treasury should work with the Bureau to make available instructions for collecting and reporting this information without violating fair lending laws. Further, Treasury should consult with the National Credit Union Administration on these processes.

## **Process**

Treasury should follow a more thorough rulemaking process for making substantive policy changes. The Administrative Procedure Act (APA) is essential to understanding the landscape and the impact of changes on the community. Especially, how new requirements will impact small financial institutions like credit unions. Treasury should not change with such significant consequences without first going through a full rulemaking process. If Treasury does move forward with changes to the current reporting, there must be a public comment period. The comment letter has detailed, any requests for information covered by Regulation Z with credit unions.

## **Reporting Time**

Treasury has provided insufficient time to begin reporting on these new quarterly reports to build the necessary frameworks and systems to report this information. For institutions that have been awarded the award has been given ignores the additional work and time it will take to aggregate this information.

These new reporting requirements should be implemented this year on a volunteer basis to ensure awards so that everyone understand the expectations and work before applying for the due date or delinquent date for reporting after consulting with the Bureau and NCUA regarding the reporting requirements.

**Treasury severely underestimates the significance of its requirement to obtain actual litigation, and reputational risk associated with the requirement.**

The QSR instructions state that credit unions will be required to have “processes in place including customer’s demographic data. While credit unions do not have to require that credit unions must collect the information using methods other than statistical proxies under the Fair Housing Disclosure Act (HMDA) or the Community Development Financial Institution (CDFI) Fund.

When credit unions have raised deep concerns regarding the fair lending risk associated with this requirement, the CFPB has pointed to the statutory provision that clarifies that collecting this information is not a violation of ECOA. This carve out clarifies that collection is not a violation of ECOA and specifies that neither the CFPB nor the regulator may take adverse action related to that collection. This in and of itself does not provide credit unions with a safe harbor from the credit union to unacceptable levels of risk.

**The statutory carve-out does not protect credit unions from private rights of action on discrimination. These items ignore that the trust between the credit union and the information is being solicited from a member. The underserved Hispanic community type of data will only exacerbate the problem. The public perceptions of what has occurred standards are applied, could be extremely unfavorable to PrimeWay.**

Further, it is not at all clear that the federal carve out would protect credit unions against exceptions in ECOA.

Credit unions that attempted compliance with the requirement would likely be exposing a credit union were to eventually succeed in winning that litigation, the risk of reputation is an acceptable risk.

Lenders are accustomed to the data gathering and reporting requirements for HMDA a extensively- regulated type of consumer lending and because of the significant training obtain. While the statutory carve out cited by Treasury may provide some protection related to the act of collection itself, it does not address the compliant methods of coll should be appropriately stored or shared throughout the lending process.

It is simply not reasonable for Treasury to assume that credit unions can simply “cross- example, Treasury has not provided any guidance in how credit unions should design c auto lending is exceedingly common among credit unions and a critical way to assist m When this was raised to Treasury, credit unions were told to call Treasury directly to ob lending context, dealers have the ability to decline to work with lenders. Where credit to implement processes that they are not comfortable with, they may simply be dropp need guidance from the CFPB to be established and broadly published so that lending p their own levels of risk associated with doing business with ECIP-awardee credit unions

It is simply not reasonable for Treasury to assume that credit unions can simply “cross- example, Treasury has not provided any guidance in how credit unions should design c

**Treasury severely underestimates the time, cost, and burden associated with implementation required to perform this data gathering, greatly affects our ability to assign our staff to service this community is adversely affected by deploying our limited employees in other areas. If some of the funds obtained through ECIP are used to increase staff so the credit union must not believe that to be directly working with the members of the community and not performing their duties. If a credit union were to ignore the litigation, compliance, and reputational risk associated with doing so would be enormous.**

PrimeWay invested significant time and resources into developing its HMDA compliance system and an ongoing quality review. We have a small team of highly trained employees who carefully review loans while maintaining compliance with ECOA. It would be financially impossible to re-create the system for real estate secured consumer loans.

Credit unions often use a different loan origination system (LOS) for consumer and open-end loans. Reporting on this information for all loans would likely involve an overhaul of these systems. The implemented regulation to drive the market and the creation of new software platforms are very large and the guidance provided by Bureau rules is very detailed. Given the small size of credit unions, the requirements, the lack of guidance provided in how to implement the requirements, and the number of software solutions created to address Treasury's requirements would be enormous.

## **Implementation of Treasury's requirement would harm and confuse consumers and**

Because mortgage lending is the most extensively-regulated type of consumer lending, it is also the most expensive type of loan to obtain. Creating parallel frameworks for other types of loans. Further, these requirements may mean credit unions are less competitive in their markets.

Treasury's requirements would apply to only a small number of individual credit unions, providing less information on non-mortgage loans. If a consumer asks another lender why the credit union they were being discriminated against based on their race or ethnicity. This is simply an unfair practice. Data under HMDA makes these requests ubiquitous and legitimizes them in the request process without those protections or any consumer-facing messaging.

**Basic fairness requires that Treasury should have been clear about this requirement p funds.**

Neither the Initial Supplemental Report nor the Securities Purchase Agreement indicate demographic data on all loans without the use of proxies. The use of proxies was clearly absolutely no indication this would be required. This requirement is incredibly burdensome declined to apply for or accept the funds if this requirement had been disclosed prior to

Obligating credit unions to accept this level of risk without notice once they have already comply is not reasonable. This fails as a measure of basic fairness in dealing with ECIP-a

**Treasury should make the requirement to collect demographic data on non-HMDA loans**

For all the reasons previously stated, Treasury should make the requirement to collect C voluntary. If Treasury wants demographic data on loans of all types, it should accept

Thank you for your time and attention. I have been a volunteer caregiver for my aging  
phone with any regularity. Can you assist with financing for housing? The emergency c  
communication.

**The statutory carve-out does not protect credit unions from private rights of action regarding discrimination.**

The statutory carve out cited by Treasury specifically protects credit unions from adverse actions by the National Credit Union Administration (NCUA) which oversees credit union consumer compliance as part of its duties. It does not provide credit unions with protection against individual or class action lawsuits brought under ECOA's private right of action.

Further, it is not at all clear that the federal carve out would protect credit unions against private rights of action, except for the exceptions in ECOA.

Credit unions that attempted compliance with the requirement would likely be exposing themselves to litigation. If a credit union were to eventually succeed in winning that litigation, the risk of reputational damage would be an acceptable risk.



## **Treasury severely underestimates the time, cost, and burden associated with implementation**

If a credit union were to ignore the litigation, compliance, and reputational risk associated with doing so would be enormous.

In addition to system requirements, credit unions would also need to conduct highly sensitive data on an extremely broad class of employees. Credit unions would need to implement new forms and processes that involve third parties. Additionally, as the credit union would now be storing significant amounts of sensitive information, it would need to implement additional protection for the safety and confidentiality of this information, such as encryption. Credit unions would have to design all these structures themselves and obtain legal opinions from the NCUA regarding what is sufficient. Credit unions estimate that these changes could take months of time, staff sophistication, and the loan products offered.

## ~~Implementation of Treasury's requirement would harm and confuse consumers and~~

Because mortgage lending is the most extensively regulated type of consumer lending and also the most expensive type of loan to obtain. Creating parallel frameworks for other types of loans. Further, these requirements may mean credit unions are less competitive in their markets.

When consumers obtain a mortgage loan, they experience the same forms and inquiries from all lenders. Many credit unions report that consumers are sometimes put off by the request for information. The same experience across all lenders leads consumers to understand and accept that the information is being used to discriminate.

Treasury's requirements would apply to only a small number of individual credit unions that do not provide information on non-mortgage loans. If a consumer asks another lender why the credit union is not providing information, they would be being discriminated against based on their race or ethnicity. This is simply an unfortunate side effect of data under HMDA makes these requests ubiquitous and legitimizes them in the request for information.

~~without the protections of the Equal Housing Lending Act.~~

**Basic fairness requires that Treasury should have been clear about this requirement prior to the issuance of the funds.**

Neither the Initial Supplemental Report nor the Securities Purchase Agreement indicated that credit unions were required to collect demographic data on all loans without the use of proxies. The use of proxies was clearly stated in the Supplemental Report and there was absolutely no indication this would be required. This requirement is incredibly burdensome and credit unions have declined to apply for or accept the funds if this requirement had been disclosed prior to the issuance of the funds.

Obligating credit unions to accept this level of risk without notice once they have already accepted the funds is not reasonable. This fails as a measure of basic fairness in dealing with ECIP award recipients.

**Treasury should make the requirement to collect demographic data on non-HMDA loans voluntary.**

For all the reasons previously stated, Treasury should make the requirement to collect demographic data on non-HMDA loans voluntary. If Treasury wants demographic data on loans of all types, it should accept the burden of making the requirement voluntary.

If Treasury wishes to pursue the goal of obtaining actual demographic data on all loans, it should provide clear guidance and examination expectations for ECIP-awardee credit unions so that credit unions can meet their compliance obligations and not unduly expose the credit union to litigation. Treasury should also undertake a consumer-facing messaging campaign to make consumers aware that this requirement is voluntary and provide reasonable assurances to consumers that ECIP awardee credit unions are not overburdened.

Finally, once these basic foundations have been laid, Treasury should permit a reasonable period of time for the establishment of third-party solutions, vendor due diligence, and implementation of the requirement.

The Credit Union National Association (“CUNA”) represents America’s credit unions and is writing to express our deep concern regarding certain provisions in the proposed Quarterly Investment Program (ECIP) and its goals to encourage investment in small businesses and the efforts to assess the success of the ECIP through reporting, however, if the QSR is finalized, it outweighs the benefits of the data sought by Treasury and, for some, the benefits of the ECIP. We urge you to finalize a requirement for ECIP-awardee credit unions to implement the collection, storage, and reporting of data.

## General Comments

Most concerning, the QSR Instructions would require credit unions to have “processed the QSR, including customers’ demographic data, including race and ethnicity, in Schedule C demographic data. However, if members refuse to do so, the QSR mandates credit unions to disclose under the Fair Housing Act (FMDA) or the Community Development Financial Institution (CDFI) Fund done regarding applications to the CDFI Fund. This therefore appears to refer solely to first or surname as permitted by HMDA. For reasons detailed in this letter, many of which include litigation, compliance, reputation, market, and operational risk to ECIP-awardee credit unions, this requirement is essentially impossible to meet and a poison pill for the program.

In addition to the issues surrounding the demographic data collection, multiple ECIP-awardee area median income (AMI) levels in Schedule C is also extremely difficult. Schedule C requires that they originate for borrowers across three AMI tiers: 50% or below of AMI; 51-80% of AMI. While they contain the functionality to automatically calculate and store individual borrower AMI measurements, if these measurements may be consulted in a mortgage context, they are not commonly considered. If configured to pull, calculate, or store this information for reporting. This calculation would perhaps Treasury could create an ease-of-use tool to assist with this.

data for the sole purpose of monitoring compliance with the program. The statute mandates under 701(a)(1) of the Equal Credit Opportunity Act (ECOA). It further specifies that neither the CFPB nor the FDIC may take adverse action against an ECIP-awardee credit union related to that collection of data. The statute requires credit unions with sufficient infrastructure to undertake collection without exposing the

In its Quarterly Supplemental Report Frequently Asked Questions (QSR FAQs), Treasury has stated that on a “particular transaction that it reasonably believes would not fall within any of the exemptions, a credit union choosing not to inquire about the demographic data of a borrower based on assumptions that the borrower could decline to collect information about the race of an applicant he or she presumes to be of color would create more friction in the lending process by completing additional steps to provide (or refuse to provide) information to applicants of color being exposed to colorism-based discrimination. While the statute requires the CFPB or other federal agencies, it is not clear that it would protect credit unions in

The statute also does not provide credit unions with protection against individual or class

Loan/Application Register (LAR) data for the year 2022,22 only 31 of the 77 ECIP-awardee credit unions did not submit HMDA data in 2022. This could be for many reasons. Some credit unions have a Community Union Service Organization (CUSO) or other partner who handles the collection and submission of HMDA data. Some credit unions have loan volumes that cross the reporting thresholds in the HMDA regulation. Or these credit unions are now asking these ECIP-awardee credit unions to understand and implement a complex regulation they do not have to comply with.

Further, mortgage lending is simply not analogous to other types of loans. Different types of loans have different requirements, degrees of friction and disclosure. Indirect lending provides a clear path for credit unions to work with applicants, and degrees of friction and disclosure. Indirect lending provides a clear path in different forms, but a common arrangement involves a credit union contracting with a CUSO or other outside party to perform activities related to indirect lending including underwriting. Credit unions are subject to credit union underwriting criteria and subject to credit union oversight and quality control. Credit unions provide a critical way to assist members in accessing affordable loans to ensure they have access to credit. Credit unions provide a critical way to assist members in accessing affordable loans to ensure they have access to credit. Credit unions provide a critical way to assist members in accessing affordable loans to ensure they have access to credit.

formalize the requirements and provide nervous applicants with a clear, believable explanation. If credit unions do not formalize the requirements and provide nervous applicants with a clear, believable explanation, applicants who apply to other lenders, they will be asked the same questions and receive the same answers.

Even so, some applicants do refuse to provide racial and ethnic data. HMDA requires loan officers to observe and document an applicant's race and ethnicity, a practice widely loathed by credit union staff. In the context of a loan application, an applicant's ethnicity and race based on visual observation incorrectly, causing the applicant to feel uncomfortable. Some applicants purposefully as they come from a multiethnic family, and that they self-identify differently. Some applicants made by the loan officer to be racist and rude. The loan officer apologized, explained that it was not their intent, and that it was a mistake. Other credit unions shared similar stories and indicated the explanation for why applicants abandon the application entirely as a feeling of mistrust and a suspicion of racism. Credit unions are concerned about litigation concerns and reputational risk. Even if the existence of the legal requirements is not a concern, credit unions are concerned about the harm to their membership and potential harm to their reputation in their community due to the requirements.

If a credit union were to ignore the litigation, compliance, and reputational risk associated with doing so could be enormous. Credit unions often use a different loan origination system for lending. Collecting, storing, and reporting on this information for all loans would likely be a significant burden for credit unions.

It is common for CFPB-implemented regulation to drive the market and the creation of new products. The Bureau has recognized that larger financial institutions are often at the tip of the compliance spear when it comes to testing. Smaller financial institutions often benefit from larger financial institutions initiating compliance obligations is very large and the guidance provided by Bureau rules is very

Given the small number of ECIP-awardees who would be obligated to comply with these requirements, and the breadth of products that would need to be covered, it seems likely that the number of ECIP-awardees would be small and the cost of these solutions would be very expensive. Credit unions will be left to bear the entire cost of the designing and building of data collection systems. Credit unions must do it in an incredibly short time, which will only further inflate the cost.

Further, because mortgage lending is the most extensively-regulated type of consumer credit, it is also the most expensive type of loan to obtain. Creating parallel frameworks for other types of loans. Further, these requirements may mean credit unions are less competitive in the market. Credit union plans for ECIP awards did not include this type of significant outlay.

For comparison, the 2015 changes to HMDA were published in the Federal Register on July 26, 2015, but the rule was not implemented until January 1, 2018, a full 26 months after the rule was finalized. In finalizing the rule, the Bureau was tiered based on asset size, the absolutely shortest of which was 18 months, and the longest was 36 months implementation timeline:

The Bureau gives credence to a set of three major factors commenters cited in requests for comment (24 months to 3.5 years): the need to purchase or upgrade compliance software (including the need to purchase, integrate compliance software with other systems, and test all of these); the need to create and train staff to use the new software and implement the policies;

In the Final Small Business Rule, the Bureau thoroughly discussed its recognition that smaller financial institutions need additional time to comply with the rule. The Bureau recognized that smaller financial institutions



**The statutory carve-out does not protect credit unions from private rights of action on discrimination. These items ignore that the trust between the credit union and the information is being solicited from a member. The underserved Hispanic community type of data will only exacerbate the problem. The public perceptions of what has occurred standards are applied, could be extremely unfavorable to PrimeWay.**

Further, it is not at all clear that the federal carve out would protect credit unions against exceptions in ECOA.

Credit unions that attempted compliance with the requirement would likely be exposing a credit union were to eventually succeed in winning that litigation, the risk of reputation is an acceptable risk.

obtain. While the statutory carve out cited by Treasury may provide some protection from related to the act of collection itself, it does not address the compliant methods of collection should be appropriately stored or shared throughout the lending process.

It is simply not reasonable for Treasury to assume that credit unions can simply “cross-” example, Treasury has not provided any guidance in how credit unions should design credit auto lending is exceedingly common among credit unions and a critical way to assist members. When this was raised to Treasury, credit unions were told to call Treasury directly to obtain lending context, dealers have the ability to decline to work with lenders. Where credit unions to implement processes that they are not comfortable with, they may simply be dropped. They need guidance from the CFPB to be established and broadly published so that lending practices and their own levels of risk associated with doing business with ECIP-awardee credit unions.

## **Treasury severely underestimates the time, cost, and burden associated with implementation**

If a credit union were to ignore the litigation, compliance, and reputational risk associated with doing so would be enormous.

Credit unions often use a different loan origination system (LOS) for consumer and open reporting on this information for all loans would likely involve an overhaul of these systems. Implemented regulation to drive the market and the creation of new software platforms are very large and the guidance provided by Bureau rules is very detailed. Given the small number of requirements, the lack of guidance provided in how to implement the requirements, and the number of software solutions created to address Treasury's requirements would be

In addition to system requirements, credit unions would also need to conduct highly- skilled, extremely broad class of employees. Credit unions would need to implement new forms that involve third parties. Additionally, as the credit union would now be storing significant information, implement additional protection for the safety and confidentiality of this information, and Credit unions would have to design all these structures themselves and obtain legal opinions from NCUA regarding what is sufficient. Credit unions estimate that these changes could take significant sophistication, and the loan products offered.

## **Implementation of Treasury's requirement would harm and confuse consumers and**

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**Basic fairness requires that Treasury should have been clear about this requirement p funds.**

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Obligating credit unions to accept this level of risk without notice once they have already comply is not reasonable. This fails as a measure of basic fairness in dealing with ECIP a

**Treasury should make the requirement to collect demographic data on non-HMDA loans**

For all the reasons previously stated, Treasury should make the requirement to collect demographic data on non-HMDA loans voluntary. If Treasury wants demographic data on loans of all types, it should accept

If Treasury wishes to pursue the goal of obtaining actual demographic data on all loans, it should provide clear guidance and examination expectations for ECIP-awardee credit unions so that credit unions can focus on meeting their compliance obligations and not unduly exposing the credit union to litigation. Treasury should undertake a consumer-facing messaging campaign to make consumers aware that this data is being collected and provide reasonable assurances to consumers that ECIP awardee credit unions are not

Finally, once these basic foundations have been laid, Treasury should permit a reasonable path forward for the establishment of third-party solutions, vendor due diligence, and implementation

The QSR instructions state that credit unions will be required to have “processes in place to collect and maintain information including customer’s demographic data. While credit unions do not have to require the collection of this information, credit unions must collect the information using methods other than statistical proxies or other methods prohibited by the Fair Housing Disclosure Act (HMDA) or the Community Development Financial Institution (CDFI) Fund

When credit unions have raised deep concerns regarding the fair lending risk associated with collecting this information, the CDFI Fund has pointed to the statutory provision that clarifies that collecting this information is not a violation of ECOA. This carve out clarifies that collection is not a violation of ECOA and specifies that neither the CDFI Fund nor the credit union can take adverse action related to that collection. This in and of itself does not provide credit unions with a safe harbor from the credit union to unacceptable levels of risk.

~~The statutory carve out does not protect credit unions from private rights of action on discrimination.~~

The statutory carve out cited by Treasury specifically protects credit unions from adverse actions by the National Credit Union Administration (NCUA) which oversees credit union consumer compliance as part of its duties. Credit unions are protected with protection against individual or class action lawsuits brought under ECOA's private right of action.

Credit unions that attempted compliance with the requirement would likely be exposing themselves to litigation. If a credit union were to eventually succeed in winning that litigation, the risk of reputation damage would be an acceptable risk.

**Treasury has not provided the necessary regulatory infrastructure to permit ECIP-awardee credit unions to collect and share data.**

Lenders are accustomed to the data gathering and reporting requirements for HMDA and are used to the extensively-regulated type of consumer lending and because of the significant training and resources they can obtain. While the statutory carve out cited by Treasury may provide some protection for lenders related to the act of collection itself, it does not address the compliant methods of collection and how data should be appropriately stored or shared throughout the lending process.

It is simply not reasonable for Treasury to assume that credit unions can simply "cross-train" staff. For example, Treasury has not provided any guidance in how credit unions should design and implement auto lending is exceedingly common among credit unions and a critical way to assist members. When this was raised to Treasury, credit unions were told to call Treasury directly to obtain guidance. In the lending context, dealers have the ability to decline to work with lenders. Where credit unions are required to implement processes that they are not comfortable with, they may simply be dropped. Credit unions need guidance from the CFPB to be established and broadly published so that lenders can understand their own levels of risk associated with doing business with ECIP-awardee credit unions.

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Treasury's requirements would apply to only a small number of individual credit unions and information on non- mortgage loans. If a consumer asks another lender why the credit union were being discriminated against based on their race or ethnicity. This is simply an unfair practice. Data under HMDA makes these requests ubiquitous and legitimizes them in the request

**Basic fairness requires that Treasury should have been clear about this requirement prior to the release of the funds.**

Neither the Initial Supplemental Report nor the Securities Purchase Agreement indicated that credit unions would be required to collect demographic data on all loans without the use of proxies. The use of proxies was clearly stated in the guidance. There was absolutely no indication this would be required. This requirement is incredibly burdensome and credit unions have declined to apply for or accept the funds if this requirement had been disclosed prior to the release of the funds.

Obligating credit unions to accept this level of risk without notice once they have already accepted the funds to comply is not reasonable. This fails as a measure of basic fairness in dealing with ECIP award recipients.

**Treasury should make the requirement to collect demographic data on non-HMDA loans voluntary.**

For all the reasons previously stated, Treasury should make the requirement to collect demographic data on non-HMDA loans voluntary. If Treasury wants demographic data on loans of all types, it should accept the burden of making the requirement voluntary.

If Treasury wishes to pursue the goal of obtaining actual demographic data on all loans, it should provide clear guidance and examination expectations for ECIP-awardee credit unions so that credit unions can meet their compliance obligations and not unduly exposing the credit union to litigation. Treasury should undertake a consumer-facing messaging campaign to make consumers aware that this requirement is voluntary and provide reasonable assurances to consumers that ECIP awardee credit unions are not collecting demographic data on all loans.

Finally, once these basic foundations have been laid, Treasury should permit a reasonable period of time for the establishment of third-party solutions, vendor due diligence, and implementation of the requirement.

## A. General Clarifications

1) We noticed in the updated QSR Instructions that there will be a list of the various Schedules for the Schedules it is uploading. Does this mean it is acceptable to uncheck boxes with no report in that schedule? For example, if an ECIP Participant does no lending in U.S. Territories as of 12/31, 2023 or just uncheck the Schedule D7 box in ID.me?

2) We greatly appreciate the additional time allowed to include an acquired institution's QSR clarification to request about institutions that acquire ECIP Recipients: Is the surviving institution's QSR due on the date the acquired institution ceases to exist (the Merger Closing Date) and the date the surviving institution's QSR?

## B. Clarification about Participations

Regarding participations, we think we understand that participations purchased from a reporting entity are reported in Supplemental Reports, but a reporting entity should report loans that it originated even if they are sold or originated. The reportable amount of these loans would be the portion that the reporting entity originated. Is that this is correct?

1) If an ECIP Participant uses HMDA methodology to track minority status for mortgage loans, is that acceptable?

2) May non-HMDA reporters use HMDA methodologies to track minority status, or is that not acceptable?

3) May Participants submit other methodologies to Treasury for tracking minority status?

4) We appreciate the express provision in the QSR Instructions that ECIP Participants should report information on customers who are not known to be minorities, but we request a slight change in terminology to account for customers that are not known to be minorities under an approved methodology. We request that these customers be termed "Not Known to Be Minorities."

#### D. Clarifications about Tracking Demographic Information – Income

We appreciate the clarification that the combined income of the applicant, joint applicant or LMI status. We have just a few further clarifications to request:

- 1) Is it acceptable for an ECIP Participant to calculate LI or LMI status using whatever information is available in the normal course of making the loan, or is it necessary to collect additional sources of income information?
- 2) If income is not collected in the normal course of making a loan (e.g., if the loan is made to a borrower who does not have income solely to determine a borrower's LI or LMI status for QSR reporting purposes?
- 3) Similarly, if business owner income is not collected in the normal course of making a loan, is it necessary to collect this information for the purpose of determining whether the business is owned by an LI individual for QSR reporting purposes?

#### E. Clarifications about Small Businesses and Farms and Underserved Small Businesses

- 1) When evaluating the Gross Annual Revenue (GAR) of a loan applicant's parent company and its subsidiaries? In other words, if a loan applicant business has a GAR of \$700K and the parent company by itself has a GAR of \$900K, would this count as a loan to a small business?
- 2) Are farms excluded from the definition of Underserved Small Businesses?

#### F. Clarifications about Mortgages

What definition should be used for Mortgage Lending? The CDFI Fund has defined Mortgage Lending as "any residential mortgage where the ECIP Participant is the lender, regardless of whether the residence, vacation home, rental or investment residences etc., all be included in the "Targeted Populations" category?

## Treasury Action

Based on comments received regarding the independent auditor attestation and potential impact on Recipients, Treasury to reasonably ensure that Recipients are providing accurate lending reporting, Treasury will waive the requirement for this attestation for FY 2022. Treasury will also consider providing guidance to recipients on the auditor attestation for future years.

Treasury added a column to Schedule C to allow for borrowers to be categorized as multiracial. This new category will include loans made to individuals who identify as two or more races or who are the child of borrowers of different races.

Loans where the borrower has not reported their demographic data and the demographic data is not identified through the other approved methods are not Qualified Lending under the PEIS. Since the schedules only capture Qualified Lending, Treasury determined that it would add additional columns to collect data on loans that are not Qualified Lending. Instead, Treasury has a separate schedule for loans for which the borrower has not reported demographic data in the narrative.

Based on comments recieved regarding the independent auditor attestation and poter Treasury to reasonably ensure that Recipients are providing accurate lending reporting waive the requirement for this attestation for FY 2022. Treasury will also consider prov guidance to recipients on the auditor attestation for future years.

Treasury has reviewed the guidance provided in the instructions and does not believe it necessary.

Loans where the borrower has not reported their demographic data and the demographic data is not identified through the other approved methods are not Qualified Lending under the Payroll Deduction Method. Since the schedules only capture Qualified Lending, Treasury determined that it would add additional columns to collect data on loans that are not Qualified Lending. Instead, Treasury has a separate schedule for loans for which the borrower has not reported demographic data in the narrative.

No changes to forms or instructions are necessary in response to this comment.

Treasury has and will continue to communicate with the federal banking regulators and the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance. Treasury will encourage Participants and interested parties to contact their regulators with examinations.

Treasury will provide additional guidance to clarify the treatment of participations and ECIP recipients

Treasury will work with institutions on a case by case basis to determine the need for a general rule for when baseline data must be updated. Participants will be required to provide updated baseline data prior to being able to receive credit for Qualified and Deep Impact Lending. Under the draft instructions, recipients have until the first full quarter after the Participant and the institution have completed integrating data management systems, and no later than the first quarter of the date that is nine months after the merger, acquisition or other business combination to submit updated baseline data

Treasury will not allow participating institutions to use proxy data for the purpose of identifying loans to the People-based categories of Qualified Lending. Loans to Minority Communities are not eligible for the People-based categories of Qualified Lending. Loans to Minority Communities are eligible for the Place-based categories of Qualified Lending.

Treasury notes that the ECIP statute provides an exemption from ECOA for ECIP participants for the period of time that was used for the Initial Supplemental Report. As a result, the exemption was permitted for the Initial Supplemental Report.

Treasury considered harmonization of ECIP and CDFI Fund reporting definitions and ti  
various programs have different requirements and objectives, complete alignment is n

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury has and will continue to communicate with the federal banking regulators and the FDIC regarding the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance.

Treasury does not prevent Participants from using signage, information sheets, or other materials to inform borrowers of the purpose of collection of race and ethnicity data to comply with reporting requirements.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP investments in accordance with the requirements in the ECIP legal agreements.

Treasury published the draft forms and instructions for the QSR in April 2022, before the start of the program. The draft forms and instructions noted that proxies would not be permitted for the reporting of their funds.

Treasury will not find a Participant non-compliant for overdue reporting if such reports are submitted by June 30, 2023. Treasury initially published the draft forms and instructions for the QSR in April 2022, and then published the 30-day comment period version in March 2023. Treasury also held a webinar in March 2023, noting that recipients should begin preparing to report in June 2023.

Treasury will not allow participating institutions to use proxy data for the purpose of identifying loans to the People-based categories of Qualified Lending. Loans to Minority Communities are not eligible under the Place-based categories of Qualified Lending.

Treasury notes that the ECIP statute provides an exemption from ECOA for ECIP participants that do not exist for the period of time that was used for the Initial Supplemental Report. As a result, no data was permitted for the Initial Supplemental Report.

Based on comments recieved regarding the independent auditor attestation and poter Treasury to reasonably ensure that Recipients are providing accurate lending reporting waive the requirement for this attestation for FY 2022. Treasury will also consider prov guidance to recipients on the auditor attestation for future years.

Treasury does not prevent Participants from using signage, information sheets, or other means of informing borrowers of the purpose of collection of race and ethnicity data to comply with the reporting requirements.

Treasury has and will continue to communicate with the federal banking regulators and the public regarding the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance.

Treasury is not revising the language of the process and controls certification - we have  
language is necessary for us to obtain the comfort we need on the accuracy of the sup

Treasury will not allow participating institutions to use proxy data for the purpose of identifying loans to the People-based categories of Qualified Lending. Loans to Minority Communities are not eligible under the Place-based categories of Qualified Lending.

Treasury guidance requires ECIP participants to collect on race and ethnicity data through borrower self-identification or other non-proxy methods. Borrowers do not have to provide race and ethnicity data and Participants are not non-compliant under such circumstances.

Treasury notes that the ECIP statute provides an exemption from ECOA for ECIP participants that exist for the period of time that was used for the Initial Supplemental Report. As a result, the use of proxy data was permitted for the Initial Supplemental Report.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury does not prevent Participants from using signage, information sheets, or other materials to inform borrowers of the purpose of collection of race and ethnicity data to comply with reporting requirements.

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language is necessary for us to obtain the comfort we need on the accuracy of the sup

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Treasury published the draft forms and instructions for the QSR in April 2022, before awarding their funds. The draft forms and instructions noted that proxies would not be permitted.

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Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury has and will continue to communicate with the federal banking regulators and the public regarding the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance. Treasury also has no ability to provide safe harbors under state law.

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Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Since Treasury does not enforce ECOA, it cannot provide safe harbors from ECOA requirements. Treasury does not prevent recipients from developing forms, signage or other materials explaining the requirements for data collection.

Since ECIP recipients will only be required to submit QSRs for the first ten years after receiving the instrument, providing a longer grace period for recipients to develop data collection systems is not required.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury has and will continue to communicate with the federal banking regulators and the public regarding the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance.

Treasury provided robust opportunities for comment under the Paperwork Reduction Act, and instructions for the QSR were published in April 2022, before any institutions had received a large number of comments in response. Treasury then considered the comments and published a revised draft of the QSR forms and instructions for an additional 30-day comment period.

Treasury will not find a Participant non-compliant for overdue reporting if such reports are filed by June 30, 2023. Treasury initially published the draft forms and instructions for the QSR in April 2022 and published the 30-day comment period version in March 2023. Treasury also held a webinar in April 2023, noting that recipients should begin preparing to report in June 2023.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury guidance requires ECIP participants to collect race and ethnicity data through borrower self-identification or other non-proxy methods. Borrowers do not have to provide race and ethnicity data and Participants are not non-compliant under such circumstances.

Treasury has and will continue to communicate with the federal banking regulators and the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance. Treasury also has no ability to provide safe harbors under state law.

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Institutions that cannot meet the requirements for reporting may redeem the ECIP instruments in accordance with the requirements in the ECIP legal agreements.

While the commenter indicated that Treasury underestimated the burden associated with the program, Treasury will not provide information to allow for the burden estimates to be considered for revision.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to provide an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

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Treasury does not prevent Participants from using signage, information sheets, or other materials to inform borrowers of the purpose of collection of race and ethnicity data to comply with reporting requirements.

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Treasury will not allow participating institutions to use proxy data for the purpose of identifying loans to the People-based categories of Qualified Lending. Loans to Minority Communities are eligible for reporting under the Place-based categories of Qualified Lending.

Treasury notes that the ECIP statute provides an exemption from ECOA for ECIP participants for the period of time that was used for the Initial Supplemental Report. As a result, the exemption was permitted for the Initial Supplemental Report.

Participation in the ECIP is not a condition of CDFI Certification.

Treasury published the draft forms and instructions for the QSR in April 2022, before any final rulemaking.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure statutory-driven program reporting requirements.

Treasury will not allow participating institutions to use proxy data for the purpose of identifying loans to the People-based categories of Qualified Lending. Loans to Minority Communities are eligible for reporting under the Place-based categories of Qualified Lending.

Treasury notes that the ECIP statute provides an exemption from ECOA for ECIP participants for the period of time that was used for the Initial Supplemental Report. As a result, the exemption was permitted for the Initial Supplemental Report.

This comment does not address reporting requirements under the program.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to meet statutory-driven program reporting requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument in accordance with the requirements in the ECIP legal agreements.

Treasury has and will continue to communicate with the federal banking regulators and the public regarding the ECOA exemption in the ECIP statute, but Treasury has no authority to promulgate guidance. Treasury also has no ability to provide safe harbors under state law.

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Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument with the requirements in the ECIP legal agreements.

Since ECIP recipients will only be required to submit QSRs for the first ten years after receiving the loan, providing a longer grace period for recipients to develop data collection systems is not required.

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Treasury published the draft forms and instructions for the QSR in April 2022, before the release of their funds. The draft forms and instructions noted that proxies would not be permitted.

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Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

Institutions that cannot meet the requirements for reporting may redeem the ECIP instrument if they are not in compliance with the requirements in the ECIP legal agreements.

Treasury guidance requires ECIP participants to collect race and ethnicity data through borrower self-identification or other non-proxy methods. Borrowers do not have to provide race and ethnicity data and Participants are not non-compliant under such circumstances. Treasury has guidance on how to use specified non-proxy techniques such as visual observation but recipients are not required to use such techniques. Treasury will provide additional guidance on this point.

Treasury will consider the development of additional tools to facilitate calculation of borrower income for comparison to Area Median Income.

Treasury will collect data on Qualified Lending and Deep Impact Lending by race and ethnicity to ensure an effective and accurate assessment of the impact of the program, consistent with statutory requirements.

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Treasury published the draft forms and instructions for the QSR in April 2022, before the release of the final forms and instructions. The draft forms and instructions noted that proxies would not be permitted for the QSR.

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Since ECIP recipients will only be required to submit QSRs for the first ten years after receiving funds, providing a longer grace period for recipients to develop data collection systems is not

Treasury will provide technical instructions regarding the submission of each schedule.

Treasury will provide technical assistance regarding submission of QSRs when both the a and surviving institution are participants in the ECIP.

**This is correct**

This is addressed in FAQ 3.2

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Treasury will provide technical assistance if requested.

Loans where the borrower has not reported their demographic data and the demographic data is not identified through the other approved methods are not Qualified Lending under the PE. Since the schedules only capture Qualified Lending, Treasury determined that it would not add additional columns to collect data on loans that are not Qualified Lending. Instead, Treasury has a narrative column for loans for which the borrower has not reported demographic data in the narrative.

Treasury will clarify in guidance that Participants are not required to collect income data if they are not doing so in the normal course of business.

Treasury will revise the instructions to address these comments.

Treasury will revise the instructions to clarify the definition that should be used for Mo

Third Party Credit Risk  
Exclusion of Refinanced Loans  
Line of Credit Extensions and Renewals  
Purchases and Participations  
Mergers and Acquisitions  
Household Income  
Small Business Gross Annual Revenue  
Submission of the Report  
Initial Reporting Deadlines

Concurrence with Other Comments  
Datasets  
Other Data Sources  
Third Party Credit Risk  
Third Party Credit Risk  
Line of Credit Extensions and Renewals

Purchases and Participations  
Concurrence with Other Comments  
Investments  
Demographic Reporting/Business Ownership  
Demographic Reporting/Business Ownership  
Reporting Burden  
Other  
Mergers and Acquisitions  
Datasets  
Initial Reporting Deadlines  
Household Income  
Demographic Reporting/Business Ownership  
Datasets  
Datasets  
Reporting Burden  
Datasets  
Datasets  
Reporting Deadlines  
Datasets  
Initial Reporting Deadlines  
Reporting Burden  
Mergers and Acquisitions  
Investments  
Reporting Burden  
Initial Reporting Deadlines  
Alignment with Section 1071  
Disposition to Non-Profit Affiliate  
Investments  
Initial Reporting Deadlines  
Mergers and Acquisitions  
Baseline Adjustments  
Schedule D  
Definitions  
Demographic Reporting/Business Ownership  
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Household Income  
Definitions  
Baseline Adjustments  
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Mergers and Acquisitions  
Initial Reporting Deadlines

Baseline Adjustments  
Demographic Reporting/Business Ownership  
Small Business Gross Annual Revenue  
Baseline Adjustments  
Necessity of Information Collection  
Reporting Burden  
Reporting Burden  
Cost Estimates  
Datasets  
Reporting Burden  
Reporting Burden  
Reporting Burden  
Reporting Burden  
Necessity of Information Collection  
Reporting Burden  
Datasets  
Datasets  
Reporting Burden  
Cost Estimates  
Datasets  
Other Data Sources  
Additional Data Points  
Reporting Burden  
Submission of the Report  
ECIP Collaboration/Best Practices  
Reporting Burden  
Reporting Burden  
Necessity of Information Collection  
Reporting Burden  
Schedule D  
Datasets  
Additional Data Points  
Initial Reporting Deadlines  
CDFI/MDI Certification  
CDFI/MDI Certification

Additional Data Points	2
Alignment with Section 1071	1
Baseline Adjustments	5
CDFI/MDI Certification	2
Concurrence with Other Comments	2
Cost Estimates	2
Datasets	12
Definitions	2
Demographic Reporting/Business Ownership	7

No change was made to treatment of loan purchases and participations. The QSR counts lending activity on an originations basis and not a balance sheet basis. Treasury has determined that a purchase or participation in a loan does not meet the criteria to be counted as an "origination."

Disposition to Non-Profit Affiliate	1
ECIP Collaboration/Best Practices	1
Exclusion of Refinanced Loans	1
Household Income	3
Initial Reporting Deadlines	9
Investments	6

Line of Credit Extensions and Renewals	2
Mergers and Acquisitions	5
Necessity of Information Collection	3
Other	1
Other Data Sources	2
Purchases and Participations	2
Reporting Burden	17
Reporting Deadlines	1
Schedule D	2
Small Business Gross Annual Revenue	2
Submission of the Report	2
Third Party Credit Risk	3