

Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP)

**Initial Training
September 8, 2022
9:00 AM – 12:00 PM**

Agenda

9:00 - 9:10	Welcome and Introduction
9:10 - 9:40	MT SSBCI 2.0 LPP Policy – Herb Kulow
9:40 - 10:10	CDFI/RLF and Lender Processes – Carolyn Jones
10:10 - 10:25	Break
10:25 - 10:55	Electronic Application- Danielle Williams
10:55 - 11:10	Commitment Letter – Herb Kulow
11:10 – 11:25	Required Certifications – Carolyn Jones
11:25 – 12:00	Q&A

Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP)					
Business		CDFI or EDO with RLF working with Montana Banks		Department of Commerce	
Start					
↓					
Business goes to bank, credit union, or CDFI/RLF for loan					
↓					
Access MT SSBCI 2.0 LPP Application from Website					
↓					
Complete, Print, and Sign Application					
↓					
Submit application with credit underwriting and approval materials to CDFI/RLF	→	Reviews Application for MT SSBCI 2.0 LPP lending criteria			
		↓			
	No	←	Eligible to apply to program		
	↓		↓		
	STOP		Yes		
			↓		
			Submit Application with CDFI/RLFs credit underwriting and approval materials to MT SSBCI 2.0 LPP (or) Re-submit Application with CDFI/RLFs credit underwriting and approval materials to MT SSBCI 2.0 LPP	→	Receive, Log, and Review for necessary MT SSBCI 2.0 LPP requirements
			↑		↓
		←	Prepare additional information as required	Yes	←
					↓
					No
					↓
					Prepare materials for MT SSBCI 2.0 LPP review/approval
					↓
		←	Notified by MT SSBCI 2.0 LPP that loan was not approved	No	←
			↓		↓
		Loan Withdrawn		Yes	
				↓	
		Review loan documents submitted by lender and acquire required signatures	←	Send Commitment Letter to CDFI/RLF outlining conditions for funding	
		↓			
		Return Commitment Letter assuring compliance and request funds	→	Review Commitment Letter to ensure in compliance and then release funds to CDFI/RLF	
			↙		
		Receive funds, transfer funds to primary lender, manage loan, and submit required reports to MT SSBCI 2.0 LPP staff	→	Receive required reports and report to US Department of Treasury	

Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP) Policy

1. Program Overview

The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the Department of the Treasury (Treasury) that was created to strengthen state programs that support private financing to small businesses. SSBCI is expected to, in conjunction with new small business financing, create billions of dollars in lending and investments to **small businesses that are not getting the support they need to expand and create jobs**.

The MT SSBCI 2.0 Loan Participation Program (MT SSBCI 2.0 LPP) will be used to assist existing Montana businesses that need additional borrowings to stabilize, pivot, expand, or re-start their business and to assist new Montana businesses' entering the market. The MT SSBCI 2.0 LPP will partner with "CDFI/RLFs" throughout the state to identify small business in their regions that could benefit from the program.

Note: Underlined words in quotation marks, such as "CDFI/RLFs" above, are defined in the appropriate Section or in Section 20, starting on page 8 of this document.

2. Program Objectives

- Expand access to capital for underserved communities
- Assist in financing small businesses that are unable to access credit on reasonable terms
- Provide greater opportunity to rural and Native American entrepreneurs to create new businesses
- Partner with existing small businesses in attaining their growth goals
- Expand jobs and economic opportunities in Montana's rural counties and Indian country

3. 10:1 Leverage Requirement

The MT SSBCI 2.0 LPP must demonstrate a reasonable expectation that its program has the ability to use federal contributions to generate small business lending and investing of at least 10 times the federal contribution amount. (*Treasury Guidelines* [page 26](#))

4. 1:1 Financing Requirement

The MT SSBCI 2.0 LPP must, at a minimum, require that \$1 of public investment by the program will cause and result in \$1 of new private financing. (*Treasury Guidelines* [page 28](#))

"Private financing" means private financing across all approved state programs and includes all loans from a private source to an eligible borrower, whether occurring at or subsequent to loan closing (subject to certain Allocation Agreement restrictions regarding permissible types of subsequent private financing), and whether funded or unfunded. It encompasses term loans, lines of credit, and any new infusions of cash by the small business owner into the borrower. Private financing does not include financing provided

by tax-credit supported vehicles, such as funds capitalized by the sale of state tax credits. (Treasury Guidelines [page 27](#))

With this private investment financing requirement, a CDFI/RLF can act as both the primary and the participating lender in an MT SSBCI LPP loan, only if documentation is provided to the MT SSBCI 2.0 LPP certifying the primary lender portion of the funds is not funded by or commingled with any federal, state, or local public funds.

5. Assistance to VSBs and SEDI-Owned Businesses Requirement

The MT SSBCI 2.0 LPP must expend a portion of its allocation on loans to assist “Very Small Businesses” (VSBs) and “Socially and economically-disadvantaged individual (SEDI) owned businesses”. (Treasury Guidelines [pages 8-13](#))

6. Private Capital at Risk (PCAR)

Lenders have a meaningful amount of capital resources at risk based on MT SSBCI 2.0 LPP’s 50/50 loan participation rate. If a lender wishes to sell a portion of their retained participation amount of the MT SSBCI 2.0 LPP loan, they must receive written approval from the MT SSBCI 2.0 LPP prior to the sale. In addition, the lender must retain at least 5 percent of the risk of loss of the transaction. (Treasury Guidelines [page 29](#))

7. Borrower/Loan Size Requirements

- Eligible borrowers must have fewer than 750 employees
- The MT SSBCI 2.0 LPP is targeting employers with fewer than 500 employees
- The MT SSBCI 2.0 LPP maximum participation amount is \$1 million (Revised 09.26.22)
- If the Primary and Participating Lenders feel a project warrants a participation amount of more than \$1 million, it can be presented to program staff Agency Management for consideration. It must demonstrate revenue growth, an employment base increase, and a positive market share impact (Revised 09.26.22)
- The MT SSBCI 2.0 LPP will not provide credit if a given transaction exceeds \$20,000,000 (\$20 million)

(Treasury Guidelines [pages 30-31](#))

8. Interest Rates

Interest rates will be fixed for the term of the loan as follows:

- Up to 3-year term with monthly payments – 50 basis points (0.50%)
- 3-year up to 5-year term with monthly payments – 100 basis points (1.00%)
- 5-year up to 7-year term with monthly payments – 150 basis points (1.50%)
- 7-year up to 10-year term with monthly payments – 200 basis points (2.00%)
- 10-year up to 15-year term with monthly payments – 250 basis points (2.50%)
- 15-year to 20-year term with monthly payments – 300 basis points (3.00%)
- Any intermediate term amortization will be at the next tier higher interest rate
- If amortization other than monthly, the MT SSBCI 2.0 Interest Rate will be increased by 50 basis points (0.50%)
- Lender service fee cannot exceed 50 basis points (0.50%)

- The servicing CDFI/RLF will be assessed an annualized 25 basis points (0.25%) service fee by MT SSBCI 2.0 LPP. The fee will be assessed on the calendar quarter on the balances of all outstanding loans.

9. Collateral Requirements

- The collateral must have sufficient value to support the debt and can be shared proportionately with the lender by the CDFI/RLF
- The collateral must have sufficient value to support the debt and can be in a subordinated position with the lender and/or CDFI/RLF
- Loan-to-Value is based on the lesser of the reasonable project costs (including architecture, engineering, and capitalized interest) or market value appraisal, whichever is less. The loan(s) must not be greater than the value of the collateral.
- Lender may require an attorney opinion on authority of borrower to borrow and all collateral documents
- MT SSBCI 2.0 participated loan documents must have a “Due on Sale” clause
- MT SSBCI 2.0 participated loan documents must not have a “Future Advance” clause
- MT SSBCI 2.0 participated loan documents must not have a “Cross Collateral” clause associated with other lender loans
- Any loan with an outstanding MT SSBCI 2.0 funded participation that is refinanced must have the participation portion of the loan paid off in full
- Other collateral as may be required by the lender, CDFI/RLF, and/or the MT SSBCI 2.0 LPP

10. Guarantees

- Personal or Corporate guarantees as required by the lender and/or CDFI/RLF
- For a Qualified Passive Company (Holding Company):
 - Operating company must be a guarantor or a co-borrower (*Treasury*)
 - Each natural person with a 20% or more ownership interest in the operating company or passive company must guarantee the loan (*Treasury*)

(*Treasury Guidelines pages 18-19*)

11. Appraisal/Valuation

- Appraisal/Valuation as required by lender
- Licensed Montana appraisers are preferred unless specialized property collateral requires an out of state appraiser

12. Lending Protection Safeguards

In addition to any other federal or state law requirements, the MT SSBCI 2.0 LPP and their participants must conform to the below minimum national customer protection standards:

- Rate cap – The interest rate for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration’s (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board. The NCUA’s permissible interest rate ceiling supports its mission to protect credit unions and its consumers. In choosing

to adopt the NCUA interest rate ceiling, Treasury aims to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them. (*Treasury Guidelines page 44*)

- **Fees and Terms** – SSBCI-supported transactions may not include:
 - 1) Confessions of judgment;
 - 2) Pre-payment or double-dipping fees; or
 - 3) Upfront fees or charges paid by the small business, excluding fees to the state program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000
(*Treasury Guidelines page 44*)
- **Disclosure of Terms** – SSBCI-supported transactions must include disclosure by the lender of all key terms in an easy-to understand manner including, but not limited to, loan/investment amount; payment obligation/schedule; terms providing control over cash balances, cash flows, or ownership; conversion rights; future rights to purchase equity; and any fees or extra costs. (*Treasury Guidelines page 44*)

13. Loans for Refinancing

(*Treasury Guidelines pages 24-25*)

A. New Lenders

Under the SSBCI statute, a lender is not prohibited from enrolling or refinancing loans previously made by another, non-affiliated financial institution. However, the purpose of SSBCI is to support small businesses, including by providing new capital. Accordingly, a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

- The amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;
- The transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and
- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

When a participating state uses SSBCI funds to support the purchase of a loan from another, non-affiliated financial institution, the state must make a determination that the transaction is beneficial to the small business borrower

B. Existing Lenders

A financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a "matured loan" or other debt that was previously used for an eligible business purpose when all the following conditions are met:

- The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

- The new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender;
- The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and
- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

If a participating state enrolls a loan that is used to repay principal under a loan previously made by the same financial institution or its affiliate, the participating state or the financial institution lender must maintain records showing that these criteria were met. The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an SSBCI approved program and subsequently refinancing the same loan under any approved program.

"Matured Loan": A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity. Transferring an accelerated loan into an SSBCI program does not promote the purpose of expanding small business access to capital and would primarily benefit lenders rather than small businesses.

(*Treasury Guidelines* [page 24](#))

14. Ineligible Loans

- Loans to borrowers with 750 or more employees (*Treasury*)
- Loans to finance a non-business purpose (*Treasury*)
- Loans to acquire or hold passive investments in real estate (not owner-occupied) (*Treasury*)
- Loans for land development or speculative ventures (*Treasury*)
- Loans to finance goodwill or blue-sky (*Treasury*)
- Loans to repay delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority (*Treasury*)
- Loans to repay taxes held in trust or escrow (e.g., payroll or sales taxes) (*Treasury*)
- Loans to reimburse funds owed to any owner, including any equity investment or investment of capital for the business' continuance (*Treasury*)
- Loans to purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business* (*Treasury*)
- Loans classified as substandard, doubtful, loss or similar category in lender's most recent examination report
- Loans classified as watch, substandard, doubtful, loss or similar category on the lender's internal watch list

- Loans to businesses with classified loans at the lender, other than the loan offered to the CDFI/RLF
- Loans to businesses or individuals with a negative net worth
- Loans for revolving lines of credit

(Treasury Guidelines pages 18-21)

**The tangible assets of an existing business can be purchased using SSBCI proceeds.*

15. Ineligible Borrowers

- An executive officer, director, or principal shareholder of the financial institution lender *(Treasury)*
- A member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender *(Treasury)*
- A related interest of immediate family member of such an executive officer, director, or principal shareholder of the financial institution lender *(Treasury)*
- State-regulated charitable, religious, or other non-profit or philanthropic institutions; government-owned corporation; consumer and marketing cooperatives; and faith-based organizations, unless the project is for a “business purpose” *(Treasury)*
- A business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade *(Treasury)*
- A business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company *(Treasury)*
- A business engaged in pyramid sales, where a participant’s primary incentive is based on the sales made by an ever-increasing number of participants *(Treasury)*
- A business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in conjunction with illegal activity, unless such use can be shown to be completely outside of the business’ intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedure 50 10 6 *(Treasury)*
- A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business *(Treasury)*

(Treasury Guidelines pages 18-23)

16. Program Specific Requirements

- All MT SSBCI 2.0 LPP applications must comply with the US Department of the Treasury’s SSBCI 2.0 guidelines, Frequently Asked Questions (FAQs), and any changes or amendments that may follow
- MT SSBCI 2.0 LPP funds can be used for non-passive real estate investment construction financing through the CDFI/RLF.
- MT SSBCI 2.0 LPP can participate through the CDFI/RLF in the non-passive real estate investment term loan, the proceeds of which would be used to pay off the construction loan.
- A real estate investment is NOT considered passive if the Borrower occupies 60%+ of a building that is new construction or 51%+ for acquisition or renovation of an existing building. (*Treasury Guideline page 19*)
- Any contract to construct a project financed by loan proceeds must require Montana residents to be given priority. Recipients of MT SSBCI 2.0 LPP funds must demonstrate efforts to obtain Montana labor.
- The following statement must appear in either the lender’s Note or the Loan Agreement: **“The borrower agrees that as a result of using MT SSBCI 2.0 LPP funds it will provide the lender and/or the MT SSBCI 2.0 LPP with tracking data as required by the US Department of the Treasury. This reporting requirement expires December 31, 2030.”**
- Certifications (templates provided by MT SSBCI 2.0)
 - Borrower Use of Proceeds and Conflict of Interest Certification
 - Borrower Sex Offender Certification
 - Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses)
 - Lender Use of Proceeds and Conflict of Interest Certification
 - Lender Sex Offender Certification
 - CDFI/RLF Sex Offender Certification
 (*Treasury Guidelines pages 17-25*)

17. Other Loan Policy Considerations

- “Approved Lenders” must have an executed MT SSBCI 2.0 LPP Lender Loan Servicing Agreement and are required to adhere to the terms and conditions contained therein.
- The CDFI/RLF must have a current executed MT SSBCI 2.0 LPP CDFI/RLF Loan Servicing Agreement and must adhere to the terms and conditions contained therein.
- Agricultural loans for machinery and equipment and/or real estate are eligible
- Environmental risk assessment as required by the lender
- Escrow impounds as required by the lender for taxes, hazard insurance, and/or maintenance
- Investor-owned properties must independently cash flow with a debt coverage ratio of at least 1 to 1 on a 20-year amortization. The CDFI/RLF or lender may establish a higher debt coverage ratio depending on economic and/or industry conditions
- Loans considered by the MT SSBCI 2.0 LPP must comply with lender and CDFI/RLF loan policies

- The participated portion of a MT SSBCI 2.0 LPP funded loan cannot be assigned
- Lenders and CDFI/RLFs are required to submit various data as requested by the state and/or federal government under the MT SSBCI 2.0 LPP
- Anytime a lender downgrades a MT SSBCI 2.0 LPP loan, the lender must notify the CDFI/RLF of the downgrade. Notification must occur within 30 days of the credit downgrade and provide an explanation as to why the credit was downgraded.

18. Applications/Commitments

- Information for application to the MT SSBCI 2.0 LPP, provided however the recipient submits information deemed confidential pursuant to Montana law, the application and information is deemed a public record.
- Completed loan applications submitted to the CDFI/RLF requesting MT SSBCI 2.0 participation in a new loan with a lender must be signed and include all the required financial information
- Loan applications must include signed proof (i.e., loan committee minutes, lender certification of approval, etc.) of official approval by the lender and the CDFI/RLF
- Completed applications will be processed in the order in which they are received by the MT SSBCI 2.0 LPP
- All completed applications will be reviewed for program compliance by MT SSBCI 2.0 LPP staff
- Upon approval by the MT SSBCI 2.0 LPP, a commitment letter will be issued to the CDFI/RLF listing the terms and conditions that must be complied with by the lender and CDFI/RLF before the loan can be funded
- The review and acceptance of all loan documents or documents required does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented

19. Funding

- Documents required in the commitment letter must be received by the CDFI/RLF prior to funding the loan
- The CDFI/RLF must submit a letter to the MT SSBCI 2.0 LPP requesting release of the MT SSBCI 2.0 LPP funds. The letter must certify that all conditions of the commitment letter have been complied with and copies of all documents required in Schedule A of the commitment letter must be submitted with the letter.
- After the CDFI/RLF funds the participation with the lender, the CDFI/RLF must send a copy of the completed and signed participation certificate to the MT SSBCI 2.0 LPP.

20. Definitions

Approved Lender

To qualify as an Approved Lender for the MT SSBCI 2.0 LPP, a financial institution must have a current executed MT SSBCI 2.0 LPP Lender Loan Servicing Agreement and must adhere to the terms and conditions contained therein when servicing any loans under the MT SSBCI 2.0 LPP.

CDFI/RLF

An economic development organization that is a certified Community Development Financial Institution and/or manages revolving loan funds (CDFI/RLF) that is authorized to access the MT SSBCI 2.0 LPP funds to participate in a small business loan.

Very Small Business (VSB) (*Treasury Guidelines* page 12-13)

A business with fewer than 10 employees at the time of the loan and may include independent contractors and sole proprietors.

Socially and economically-disadvantaged individual (SEDI) owned businesses (*Treasury Guidelines* pages 8-12)

SEDI-owned business needs are being met when MT SSBCI 2.0 funds are expended for loans to:

- Business enterprises which certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
 - 1) Membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society,
 - 2) Gender,
 - 3) Veteran status,
 - 4) Limited English proficiency,
 - 5) Physical handicap,
 - 6) Long-term residence in an environment isolated from the mainstream of American society,
 - 7) Membership of a federally or state-recognized Indian Tribe,
 - 8) Long-term residence in a rural community,
 - 9) Residence in a U.S. territory
 - 10) Residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization), or
 - 11) Membership of another “underserved community” as defined in Executive Order 13985
- Business enterprises which certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas;
- Business enterprises which certify that they will operate a location in a CDFI Investment Area;
- Business enterprises that are located in a CDFI Investment Area

Community Development Financial Institution (CDFI) Investment Area

A geographic unit (or contiguous geographic units), such as a census tract, located within the United States, that meets established criteria. Please contact MT SSBCI 2.0 LPP staff if you would like to confirm if your project is in a CDFI Investment Area.

21. Workflow Flowchart attached (*page 10*)

Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP)					
Business			CDFI or EDO with RLF working with Montana Banks	Department of Commerce	
Start					
↓					
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↓					
Access MT SSBCI 2.0 LPP Application from Website					
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Complete, Print, and Sign Application					
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Submit application with credit underwriting and approval materials to CDFI/RLF		→	Reviews Application for MT SSBCI 2.0 LPP lending criteria		
			↓		
	No	←	Eligible to apply to program		
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	STOP		Yes		
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			Submit Application with CDFI/RLFs credit underwriting and approval materials to MT SSBCI 2.0 LPP (or) Re-submit Application with CDFI/RLFs credit underwriting and approval materials to MT SSBCI 2.0 LPP	→	Receive, Log, and Review for necessary MT SSBCI 2.0 LPP requirements
			↑		↓
			Prepare additional information as required	← Yes ←	Need Additional Information
					↓
					No
					↓
					Prepare materials for MT SSBCI 2.0 LPP review/approval
					↓
				Notified by MT SSBCI 2.0 LPP that loan was not approved	← No ←
				↓	Loan Approved
			Loan Withdrawn	↓	
				Yes	
				↓	
			Review loan documents submitted by lender and acquire required signatures	←	
			↓	Send Commitment Letter to CDFI/RLF outlining conditions for funding	
			Return Commitment Letter assuring compliance and request funds	→	
				Review Commitment Letter to ensure in compliance and then release funds to CDFI/RLF	
				↓	
			Receive funds, transfer funds to primary lender, manage loan, and submit required reports to MT SSBCI 2.0 LPP staff	→	
				Receive required reports and report to US Department of Treasury	

U.S. Department of the Treasury
State Small Business Credit Initiative
Capital Program Policy Guidelines

Revised October 7, 2022¹

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¹ The Capital Program Policy Guidelines were initially released on November 10, 2021 and were revised on October 7, 2022. Appendix 1 summarizes the substantive revisions.

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Section I. Overview

The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the Department of the Treasury (Treasury) that was created to strengthen state programs that support private financing to small businesses.² SSBCI is expected to, in conjunction with new small business financing, create billions of dollars in lending and investments to small businesses that are not getting the support they need to expand and create jobs. SSBCI allows states of the United States, the District of Columbia, territories, eligible municipalities, and Tribal governments (collectively, “jurisdictions”³) the opportunity to build upon or create successful models of small business programs. ARPA provided for a \$6.5 billion main capital allocation, \$1.5 billion allocation for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses), \$1.0 billion incentive allocation for SEDI-owned businesses, \$500 million allocation for very small businesses (VSBs), and \$500 million allocation for technical assistance funding.

Treasury has issued separate guidelines regarding technical assistance and instructions on how to apply. Technical assistance funding is available for each jurisdiction that completes a timely application for an SSBCI capital program in accordance with the deadlines and guidance published by Treasury. Applications for technical assistance will be due in accordance with the deadlines and guidance published by Treasury.

Treasury reserves the right to waive or modify any provision of these guidelines.

Section II. Eligible Programs

SSBCI provides funding for jurisdictions’ small business lending and investment programs. There are two program categories: Capital Access Programs (CAPs) and Other Credit Support Programs (OCSPs).

CAPs provide portfolio insurance to lenders that make small business loans. Portfolio insurance is provided in the form of a separate loan loss reserve fund for each participating financial institution. To enroll a loan in the CAP, both the lender and the borrower must make insurance premium payments to the reserve fund. The jurisdiction must make a matching insurance premium payment to the reserve fund. The jurisdiction’s matching payment to the reserve fund may be made with the jurisdiction’s allocated SSBCI funds.

² The SSBCI provisions are codified at 12 U.S.C. § 5701 *et. seq.*

³ The definition of “State” in the SBJA includes “a municipality of a State of the United States to which the Secretary has given special permission to apply under section 3004(d) [of the SBJA].” Because all states submitted complete applications by the applicable capital program deadline, municipalities are not eligible to apply for SSBCI. Therefore, herein, unless indicated otherwise, a “jurisdiction” means (A) one of the fifty states of the United States; (B) the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands; and (C) a Tribal government, or a group of Tribal governments that jointly apply for an allocation. *See* 12 U.S.C. § 5701(10) and section VI.e of these Guidelines.

OCSPs include other programs that provide support for small business lending and investment that are not CAPs. These programs include collateral support programs, loan participation programs, loan guarantee programs, and other similar programs.⁴ They also include jurisdiction-sponsored equity/venture capital programs, which involve either (i) SSBCI investments in venture capital funds that invest in small businesses or (ii) direct investments of SSBCI funds in small businesses alongside co-investments.⁵ OCSPs also include qualifying loan or swap funding facilities, which are contractual arrangements between a jurisdiction and a private financial entity. Under such facilities, the jurisdiction delivers funds to the private financial entity as collateral; that entity, in turn, provides funding to the jurisdiction. The full amount resulting from the arrangement, less any fees or other costs of the arrangement, is contributed to, or for the account of, an approved program.

Section III. Main Capital Allocation – 12 U.S.C. § 5702(b) and (c)

a. Allocation Formula – 12 U.S.C. § 5702(b)

The SSBCI statute, 12 U.S.C. § 5702(b), sets out a formula for the amount of main capital funds available to jurisdictions.⁶ Pursuant to the statute, Treasury allocated funds to all fifty states along with the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands according to the formula, which takes into account a jurisdiction's job losses in proportion to the aggregate job losses of all jurisdictions. Each state of the United States, the District of Columbia, and territory was guaranteed a minimum allocation of 0.9 percent of the \$6 billion allocation for states, the District of Columbia, and territories. Treasury made a separate allocation to Tribal governments based on Tribal enrollment, with a preliminary minimum allocation of approximately 0.09 percent of the total \$500 million Tribal allocation.⁷

⁴ Collateral support programs help viable businesses that are struggling to get credit because the value of the collateral they hold has fallen and provide banks greater confidence in extending credit to these borrowers. Loan participation programs entail risk sharing among financial institution lenders and the participating jurisdiction.

⁵ "Equity/venture capital programs" refer to the broad category of programs that meet this criteria. Jurisdiction-sponsored equity/venture capital programs typically entail joint public-private investment programs focused on "seeding" small businesses with high-growth-potential. For purposes of SSBCI, the references to the term "venture capital fund" refer more specifically to an entity that meets the U.S. Securities and Exchange Commission (SEC) definition of "venture capital fund" set out at 17 C.F.R. § 275.203(l)-1, as well as any entity that would meet that definition but for the form of the investment of SSBCI funds in the entity, e.g., via a debt instrument (in the latter case, this deviation from the regulatory definition may have implications for the ability of program participants to rely on the SEC's venture capital fund definition and any associated exemption from certain requirements under the Investment Advisers Act of 1940). Co-investments in direct investment programs may come from a venture capital fund or a wider group of investors or funds.

⁶ For ease of reference, the SSBCI website includes information about allocation amounts and allocation methodology for each jurisdiction. Please visit <http://www.treasury.gov/ssbcj> for more details.

⁷ For more information on the Tribal allocation, please see the Tribal allocation methodology publication on Treasury's website.

b. Tranching and Deployment – 12 U.S.C. § 5702(c)(1)

Pursuant to 12 U.S.C. § 5702(c)(1), each jurisdiction that is approved for participation in the SSBCI will receive its allocation of main capital funds in three disbursements as follows: 33 percent, 33 percent, and 34 percent. The transfer of the first 33 percent will occur promptly following the receipt of the fully signed Allocation Agreement.⁸ As a precondition to receipt of the second and third disbursements, the jurisdiction must, among other things, certify to Treasury that the jurisdiction has expended, transferred, or obligated 80 percent or more of the prior disbursement of allocated funds to or for the account of one or more approved programs that have delivered loans or investments to eligible businesses (i.e., it has deployed such funds).⁹ The certification must be signed by an official of the jurisdiction with oversight responsibility for the approved program(s). The following is a description of these requirements.

Funds Expended, Transferred, or Obligated

For purposes of determining whether a jurisdiction has “expended” a prior disbursement of SSBCI funds, Treasury will generally consider funds expended if the expenses have been paid by or are for an approved program. Examples of expended funds include: SSBCI funds that have been disbursed to a lender to cover the federal contribution to a CAP reserve fund; SSBCI funds that have been disbursed to a specific borrower (or disbursed to a specific lender or set aside as part of a commitment to a specific transaction) as part of a loan participation, loan guarantee, collateral support, or direct lending program; SSBCI funds that have been invested in specific small businesses pursuant to an equity/venture capital investment; and SSBCI funds that have been spent for allowable administrative expenses.

For purposes of determining whether a jurisdiction has “transferred” a prior disbursement of SSBCI funds, Treasury will generally consider funds transferred if they have been transferred by the jurisdiction receiving SSBCI funds to the implementing entity, or the contracted entity, that is charged with administering the day-to-day operations of the SSBCI program, as a reimbursement for actual expenses or when there is a clearly documented actual and immediate cash need to fund a loan or investment to an eligible small business or to pay for allowable administrative expenses. The implementing entity is the specific department, agency, or political subdivision of the jurisdiction that has been designated to implement a program under 12 U.S.C. § 5703(b)(1). The term “agency” includes government corporations and other entities authorized or supervised by the jurisdiction. The contracted entity is the entity (i.e., an entity of another jurisdiction, for-profit third-party, or nonprofit third-party) that contracts with the jurisdiction or its implementing entity for the implementation and administration of the SSBCI program under 12 U.S.C. § 5703(c).

⁸ If the jurisdiction plans to use SSBCI funds as collateral for a qualifying loan or swap funding facility, the entire allocation is available to be transferred in a single lump sum.

⁹ As part of this certification, the authorizing official for the participating jurisdiction will be required to certify to Treasury that the participating jurisdiction is in compliance with all terms of the Allocation Agreement, SSBCI Capital Program Policy Guidelines, and the representations and warranties made in the Allocation Agreement. Upon receipt, Treasury will review the request and accompanying certification for completeness. Treasury may ask for records or further information that substantiates any aspect of the participating jurisdiction’s certification.

For purposes of determining whether a jurisdiction has “obligated” a prior disbursement of SSBCI funds, Treasury will generally consider funds obligated if they have been committed to pay for the amounts of orders placed, contracts awarded, goods and services received, and similar transactions during a given period that will require payment by the approved program during the same or a future period. Examples of obligated funds include: SSBCI funds that have been committed, pledged, or otherwise promised, in writing, to a specific borrower as part of a loan participation, collateral support, or direct lending program; SSBCI funds that have been set aside to cover obligations arising from loan guarantees; SSBCI funds that have been committed, pledged, or otherwise promised, in writing, as part of an equity/venture capital investment transaction; and SSBCI funds that have been committed, pledged, or promised, in writing, for allowable administrative expenses (e.g., an executed contract for services).

Delivered Loans or Investments to Eligible Businesses

As noted above, for a jurisdiction to receive a subsequent disbursement, at least 80 percent of its prior disbursement of allocated funds must have been expended, transferred, or obligated *to or for the account of one or more approved programs that have delivered loans or investments to eligible businesses*. Treasury will consider the latter requirement for the prior disbursement to be used for approved programs that have delivered loans or investments to eligible businesses to be satisfied if at least two transactions with eligible small businesses are completed during every 12-month period from such programs’ inception. This latter requirement to receive a subsequent disbursement must be fulfilled in addition to the requirement that funds are expended, transferred, or obligated.

c. Termination of Amounts Not Transferred; Reallocations – 12 U.S.C. § 5702(c)(4)

Any portion of a jurisdiction’s allocation that has not been transferred to the jurisdiction under this section may be deemed to be no longer allocated to the jurisdiction and no longer available to the jurisdiction if:

- The second 1/3 of the jurisdiction’s allocated amount has not been transferred to the jurisdiction before the end of the 3-year period beginning on the date that the jurisdiction is approved for participation in the SSBCI; or
- The last 1/3 of a jurisdiction’s allocated amount has not been transferred to the jurisdiction before the end of the 6-year period beginning on the date that the jurisdiction is approved for participation in the SSBCI.

Any amount that is deemed to be no longer allocated to the jurisdiction and no longer available to the jurisdiction shall be either returned to the general fund of the Treasury or reallocated to other jurisdictions.

Section IV. SEDI-Owned Business Allocations

a. \$1.5 billion Allocation for SEDI-Owned Businesses – 12 U.S.C. § 5702(d)

Allocation Methodology and Disbursement Schedule

The SSBCI statute, 12 U.S.C. § 5702(d), provides that the Secretary shall allocate \$1.5 billion among the jurisdictions based on the needs of SEDI-owned businesses. Treasury will divide the \$1.5 billion into a portion for states of the United States, the District of Columbia, and territories and a portion for Tribal governments in a manner that is consistent with the division of funds under the main capital allocation, referenced in 12 U.S.C. § 5702(b). Treasury has determined that these portions reasonably reflect the needs of SEDI-owned businesses in the respective jurisdictions, because these portions, determined by statute for the main capital allocation, generally reflect small business financing needs in these jurisdictions.

Each state of the United States, the District of Columbia, or territory's share of these jurisdictions' portion of the \$1.5 billion SEDI allocation will be based on the percentage of the jurisdiction's total population residing in Community Development Financial Institution (CDFI) Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), relative to the total population residing in all CDFI Investment Areas.¹⁰ The population in CDFI Investment Areas serves as a proxy for the needs of SEDI-owned businesses because these areas are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses. Each Tribal government's share of the Tribal government portion of the \$1.5 billion SEDI allocation will be determined using the same formula as the main capital allocation, based on enrollment data, except without the minimums.¹¹ Treasury has determined that the use of enrollment data reflects the needs of Tribal SEDI-owned businesses, as Tribal members and communities have faced widespread and long-standing lack of access to capital and investment, such that a population-based approach provides a reasonable proxy for the extent of the needs of these businesses. The allocations are posted on Treasury's website.

Each jurisdiction's SEDI allocation will be transferred in three approximately equal tranches, with 33 percent for the first and second tranche and 34 percent for the third tranche. The first allocation will be disbursed when the jurisdiction is approved for participation in the SSBCI. The second and third disbursements will occur when the jurisdiction certifies that it has deployed 80 percent of its prior tranche of SSBCI funds under the deployment standards set forth in Section III.b above.

¹⁰ The CDFI Fund evaluates Puerto Rico, but not other territories, in identifying CDFI Investment Areas. For purposes of the SSBCI, Treasury has also evaluated American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands and has determined that these territories in their entirety constitute CDFI Investment Areas, because each of these territories has a poverty rate of at least 20 percent. *See* 12 C.F.R. § 1805.201(b)(3)(ii)(D)(1).

¹¹ More information about the Tribal SEDI allocation will be posted on Treasury's website.

“Expended For” Requirement

A jurisdiction’s SEDI allocation must be expended for SEDI-owned businesses. A jurisdiction is not required to establish a separate program for SEDI-owned businesses but must maintain records of the total amount of its SSBCI funds that are expended for SEDI-owned businesses. In light of the fungibility of SSBCI funds, Treasury will deem this “expended for” requirement to be satisfied if an amount of the jurisdiction’s SSBCI funds equivalent to its SEDI allocation is expended for SEDI-owned businesses. For this purpose, SSBCI funds means all SSBCI funds disbursed to the jurisdiction—including the main capital allocation funds, VSB allocation funds, SEDI allocation funds, and SEDI incentive allocation funds—other than technical assistance funds.

Treasury will consider SSBCI funds to have been expended for SEDI-owned businesses if the jurisdiction expends (as defined in Section III.b above) the funds for meeting the needs of SEDI-owned businesses. “Meeting the needs of SEDI-owned businesses” means that the SSBCI funds are expended for loans, investments, or other credit or equity support to:

- (1) business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
 - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
 - gender;
 - veteran status;
 - limited English proficiency;
 - disability;
 - long-term residence in an environment isolated from the mainstream of American society;
 - membership of a federally or state-recognized Indian Tribe;
 - long-term residence in a rural community;
 - residence in a U.S. territory;
 - residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
 - membership of an underserved community (see Executive Order 13985, under which “underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of “equity,” and “equity” is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and

queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality);

- (2) business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii);¹²
- (3) business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii); or
- (4) business enterprises that are located in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).¹³

The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

Certification will be required with regard to items (1) to (3) above. Item (3) is intended to cover a business taking out a loan or investment to build a location in a CDFI Investment Area that the business will operate in the future. With regard to item (4), a jurisdiction may reasonably identify businesses located in CDFI Investment Areas based on the businesses’ addresses from the relevant loan, investment, and credit/equity support applications without additional certification.

Jurisdictions must use their SSBCI funds only for the purposes and activities specified in these guidelines and other SSBCI guidance issued by Treasury, which will be incorporated by reference into the Allocation Agreement. If the amount of a jurisdiction’s SEDI allocation is not expended for SEDI-owned businesses, Treasury may find that the jurisdiction is non-compliant with the Allocation Agreement, in which case Treasury may, in its sole discretion, withhold or reduce the amount of future SSBCI disbursements to the jurisdiction or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

¹² For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of that calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, in order to provide advance notice to jurisdictions. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent. Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area, available at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>.

¹³ See footnote 10.

b. \$1.0 billion Incentive Allocation for SEDI-Owned Businesses – 12 U.S.C. § 5702(e)

Under 12 U.S.C. § 5702(e), Treasury must set aside \$1 billion to increase the amount of SSBCI funds that jurisdictions can obtain, beyond jurisdictions' allocated amounts for the second and third tranches of main capital, for jurisdictions that demonstrate "robust support" for SEDI-owned businesses in the deployment of prior allocation amounts. Of this amount, Treasury will use \$500 million to provide jurisdictions additional funds for each of the second and third tranches of main capital.

Jurisdictions demonstrate "robust support" for SEDI-owned businesses by expending their previously disbursed SSBCI funds for meeting the needs of SEDI-owned businesses. For this purpose, the terms "SSBCI funds," "expend," and "meeting the needs of SEDI-owned businesses" have the same definitions as in Section IV.a above.

For each of the second and third tranches of main capital, Treasury will increase the amount of SSBCI funds that a jurisdiction can obtain using a two-step process:

Step 1:

Each jurisdiction should aspire to expend a certain percentage (the SEDI Objective) of its SSBCI funds that have been expended since the jurisdiction's prior disbursement of main capital allocation, SEDI allocation, and VSB allocation funds for meeting the needs of the SEDI-owned businesses within its jurisdiction. For states of the United States, the District of Columbia, and territories, the SEDI Objective equals the population of the jurisdiction that are residents in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), divided by the total population of the jurisdiction.¹⁴ For Tribal governments, the SEDI Objective is 100 percent. These SEDI Objectives have been established to reflect the needs of SEDI-owned businesses within each type of jurisdiction in a manner that is consistent with the reasons described above regarding these needs with respect to the SEDI allocation.

For each of the second and third tranches of main capital, \$400 million of the \$500 million of additional funds will be available as initial eligible amounts. Each jurisdiction's initial eligible amount will be determined in the same manner as the \$1.5 billion SEDI allocation methodology described above, as that methodology reflects the needs of SEDI-owned businesses. The initial eligible amounts are available on Treasury's website.

When a jurisdiction certifies that it has deployed 80 percent of its prior tranche of disbursed SSBCI funds under Section III.b above, Treasury will calculate the percentage of the jurisdiction's SEDI Objective that the jurisdiction has achieved. The jurisdiction will receive an additional disbursement in an amount equal to such achieved percentage

¹⁴ See footnote 10.

(subject to a limit of 100 percent) multiplied by the jurisdiction’s initial eligible amount.

Step 2:

For each of the second and third tranches of main capital, Treasury will make a second disbursement from these additional funds, totaling \$100 million in the aggregate plus any other residual funds, to jurisdictions that have requested their Step 1 disbursement by the date that Treasury sets for the second disbursement. For the second tranche of main capital, the residual funds will include only initial eligible amounts unachieved by the jurisdictions that have requested their Step 1 disbursement. For the third tranche of main capital, the residual funds will include any remaining (unachieved and un-drawn) amount of the \$400 million for the second tranche of main capital and any remaining (unachieved and un-drawn) amount of the \$400 million for the third tranche of main capital.

Treasury will disburse these funds based on the aforementioned jurisdictions’ relative performance in Step 1. Treasury will provide additional details regarding the methodology and timing for allocating the second disbursements from these additional funds at a later date. The second disbursements within each tranche are not expected to occur before most jurisdictions have requested their first disbursement for such tranche.

Section V. Allocation for VSBs – 12 U.S.C. § 5702(f)

The SSBCI statute requires Treasury to allocate \$500 million to jurisdictions to be expended for VSBs. The allocations for VSBs will be determined according to the same formula as the jurisdiction’s main capital allocation, except without the minimums for the Tribal government portion. Each jurisdiction’s VSB allocation will be transferred in three approximately equal tranches, with 33 percent for the first and second tranche and 34 percent for the third tranche. The first tranche will be disbursed when the jurisdiction is approved for participation in the SSBCI. The second and third tranches will be disbursed when the jurisdiction certifies that it has deployed 80 percent of its prior tranche of disbursed SSBCI funds under Section III.b above.

A jurisdiction’s VSB allocation must be expended for VSBs. A VSB means a business with fewer than 10 employees at the time of the loan, investment, or other credit/equity support and includes independent contractors and sole proprietors. A business that has 10 or more employees following an SSBCI transaction will not be considered a VSB for purposes of subsequent loans or investments.

A jurisdiction is not required to establish a separate program for VSBs but must maintain records of the total amounts of its SSBCI funds expended for VSBs. In light of the fungibility of SSBCI funds, Treasury will deem this “expended for” requirement to be satisfied if an amount of the jurisdiction’s SSBCI funds equivalent to its VSB allocation is expended for VSBs. The term “expended” has the same definition as in Section III.b above. For this purpose, SSBCI funds means all SSBCI funds disbursed to the jurisdiction—including the main capital allocation funds, VSB allocation funds, SEDI allocation funds, and SEDI incentive allocation funds—other than

technical assistance funds.

Jurisdictions must use their SSBCI funds only for the purposes and activities specified in these guidelines and other SSBCI guidance issued by Treasury, which will be incorporated by reference into the Allocation Agreement. If a jurisdiction's VSB allocation is not expended for VSBs, Treasury may find that the jurisdiction is non-compliant with the Allocation Agreement, in which case Treasury may, in its sole discretion, withhold or reduce the amount of future SSBCI disbursements to the jurisdiction, or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

Section VI. Approving Jurisdictions for Participation

a. Designation of Administrative Responsibility – 12 U.S.C. §§ 5703(b)(1) and (b)(2)

Before Treasury approves a jurisdiction for participation in the SSBCI, the applicant must demonstrate that all actions required under the jurisdiction's laws have been taken to delegate administrative responsibility for the program to a designated department, agency, or political subdivision of the jurisdiction (i.e., the implementing entity). The term "agency" includes government corporations and other entities authorized or supervised by the jurisdiction. The applicant is required to submit a letter from the governor of the state or a governing official of the territory, the District of Columbia, or Tribal government designating an implementing entity. The applicant also will be required to submit a short narrative statement describing the legal actions that have been taken to delegate responsibility for the program and attaching any relevant documentation in support of that statement. The documents should describe the authority upon which the designated implementing entity is able to enter into binding agreements on behalf of the jurisdiction with Treasury. This will typically involve discussion of the entity's charter and express authorizations from the jurisdiction to act on its behalf through a state resolution or other instrument. The narrative should discuss the jurisdiction's budget process and any necessary steps for SSBCI funds to be deployed for the uses in the application. In some states, this requires the passage of a budget resolution by the state legislature. An application will not be approved until all legal actions necessary to enable the designated implementing entity to implement the program and participate in the SSBCI have been accomplished and the jurisdiction has provided Treasury with a description of such actions.

b. Applications, Generally – 12 U.S.C. § 5703(b)

Any jurisdiction that establishes a new, or has an existing, CAP or OCSP that meets the SSBCI eligibility criteria may apply for SSBCI funds by accessing the application portal from the SSBCI website at <http://www.treasury.gov/ssbci>. Treasury is available to provide technical assistance to applicants that are in the process of creating or starting programs. The SSBCI statute requires that a CAP or OCSP be fully positioned, within 90 days of the execution of the Allocation Agreement, to act on providing the kind of credit support that the CAP or OCSP was established to provide. Complete applications from states, the District of Columbia, territories,

and Tribal governments must be submitted to Treasury in accordance with the deadlines published by Treasury.

An application for SSBCI funding is not a competitive award process. Treasury will approve applications that satisfy the requirements under the SSBCI statute and applicable program requirements. To expedite processing, applicants should make every effort to ensure that their applications include all applicable supporting documentation.

c. Contractual Arrangements – 12 U.S.C. § 5703(c)

A jurisdiction may have contractual arrangements for the implementation or administration of its capital program with an authorized agent of the jurisdiction, or with an entity selected and supervised by the jurisdiction, including for-profit and non-profit entities (e.g., investment funds, loan funds). To help support the efficacy of small business credit support and investment programs, and to ensure compliance with all applicable legal requirements, Treasury expects participating jurisdictions to promote a fair, competitive, and open selection and contracting process.

The SSBCI application will ask jurisdictions to explain the steps they will take to promote a fair, competitive, and open selection and contracting process. These steps could include application and enforcement of existing procurement and ethics policies of the jurisdiction and new measures the jurisdiction chooses to implement specifically for the SSBCI program. Examples of such policies include limitations on or disclosure of political contributions to officials with authority to select SSBCI contractors; reporting requirements regarding lobbying activity, including lobbying related to the SSBCI contractor selection process or program implementation; and request-for-proposal policies to govern the process for evaluating bids for SSBCI-related contracts.

d. Tribal Governments – 12 U.S.C. §§ 5701(10)(E), 5702(b)(2)(C), 5703(b)-(c)

Under 12 U.S.C. § 5702(b)(2)(C), Tribal governments may apply jointly for funding under the SSBCI. Tribal governments may apply jointly through an organization or other Tribal government representative if each Tribal government applying jointly authorizes the organization or other Tribal government representative to represent the Tribal government for purposes of SSBCI. Any joint application by a third party or Tribal government representative must include documentation that the applicant has been authorized to represent each of the participating Tribal governments. Such documentation must include Tribal resolutions or other actions taken by each participating Tribal government to delegate authority to the applicant. The same approval criteria and program requirements that are applicable to Tribal governments will apply to each joint application by Tribal governments.

A Tribal enterprise may implement and administer SSBCI programs as long as it is an authorized agent of, or entity supervised by, the Tribal government. A “Tribal enterprise” is an entity: (1) that is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or (2) that is owned in part by one or more

Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns. This definition is consistent with the Small Business Administration (SBA) HUBZone definition of a “small business concern” relating to Tribal governments in 15 U.S.C. § 657a(b)(2)(C).

e. Municipalities – 12 U.S.C. § 5703(d)

As noted above, the SSBCI statute allows municipalities to apply directly for SSBCI funding in certain circumstances if the state of the United States does not apply directly. Specifically, the Act provides that Treasury may grant municipalities of a state special permission to apply directly for funding under the SSBCI if: (1) that state did not submit an SSBCI notice of intent to Treasury by May 10, 2021; or (2) that state filed a notice of intent by May 10, 2021 but does not submit a complete application for approval of a state program by 11:59 PM ET on February 11, 2022. Because all states submitted complete applications by the deadline, municipalities are not eligible to apply.

Section VII. Approving CAPs

a. In General

CAPs provide portfolio insurance to lenders that are financial institutions as defined in 12 U.S.C. § 5701(5)¹⁵ and that make small business loans. Portfolio insurance is provided in the form of a separate loan loss reserve fund for each participating financial institution. CAPs are established and administered by each jurisdiction, individually.

Jurisdictions may work together and standardize several program characteristics, consistent with applicable SSBCI program requirements, which would increase uniformity across jurisdictions. For example, jurisdictions could use similar enrollment forms for financial institutions to participate in the program; use similar enrollment forms for each loan; set the same rules for eligible borrowers and uses of loan proceeds; standardize the amount of borrower and lender payments to the CAP reserve fund; establish a uniform form and frequency of reporting from lenders; and use similar forms to document the recovery of any loan losses from the CAP reserve fund. Such standardization could result in savings for financial institutions on staff training, loan operations, recordkeeping, and management expenses. If the programs are standardized across large and small jurisdictions, financial institutions could offer CAPs in all locations with relatively little extra administrative cost.

b. Federal Contribution – 12 U.S.C. § 5704(d)

Under the SSBCI statute, approved CAPs are eligible for federal contributions in an amount equal to the premiums paid by the borrower and the financial institution lender to the

¹⁵ The statutory definition of “financial institution” is any insured depository institution, insured credit union, or CDFI, as each of those terms is defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. § 4702.

reserve fund. This amount is calculated on a loan-by-loan basis. A participating jurisdiction may use the federal contribution to make its contribution to the reserve fund. Accordingly, the federal contribution may be used to match the aggregate borrower/lender contribution at a level of 1:1. The jurisdiction may supplement the federal contribution with jurisdiction funds or private funds, but the federal contribution cannot be used to match any amount in excess of the sum of the borrower and financial institution lender contributions. Federal contributions to CAPs may only be used to pay losses on loans originated and enrolled after the effective date of the jurisdiction's Allocation Agreement. The jurisdiction may allow lenders to use premiums from loans subsequently enrolled in the jurisdiction's SSBCI CAP portfolio to pay prior losses on loans enrolled in the SSBCI CAP portfolio.

c. CAP Experience and Capacity Program Requirement – 12 U.S.C. § 5704(e)(1)

Each jurisdiction should exercise due care to determine that financial institutions participating in the SSBCI possess sufficient commercial lending experience, financial and managerial capacity, and operational skills to meet the objectives of the SSBCI statute. To ensure the federal funds are made broadly available to small businesses, including VSBs and SEDI-owned businesses, each jurisdiction must apply the same standards for participation in its SSBCI programs to all classes of lenders and not restrict any class of financial institutions from participating in the program. In addition, if a CAP allows financial institution lenders to partner with third-party providers (e.g., non-depository CDFIs), the jurisdiction must apply the same standards applicable to the financial institutions to third-party providers. In all cases, loans should comply with the minimum national customer protection standards under Section IX.f below and be offered in a manner that ensures fair access to financial services, fair treatment of customers, and compliance with applicable laws and regulations, including fair lending and consumer protection laws. As required by the SSBCI statute, jurisdictions must consult with the appropriate federal banking agency or, as appropriate, the CDFI Fund, to determine for each financial institution that participates in a CAP that the financial institution has sufficient commercial lending experience and financial and managerial capacity to participate in the CAP. Jurisdictions may also consult with state regulatory or supervisory authorities regarding participating financial institutions, if applicable. The following table lists examples of documents and certifications jurisdictions may use to determine adequacy of a financial institution's lending experience and financial and managerial capacity.

TYPE OF INSTITUTION	RATINGS	PERFORMANCE REPORTS	CERTIFICATIONS
Insured depository institutions (including depository CDFIs)		<ul style="list-style-type: none"> • Uniform Banking Performance Report (UBPR) showing that commercial loans and leases comprise a significant part of the institution's assets. • A UBPR peer group analysis showing that the institution's percentage of non-current loans and leases does not exceed its peer group average (UBPR reports may be obtained at www.ffiec.gov/UBPR.htm). 	Self-certification that the institution is not operating under any formal enforcement action with its primary federal regulator that addresses unsafe or unsound lending practices.
Federally-insured credit unions (including CDFI credit unions)		Financial Performance Reports (FPRs) from the NCUA.	Self-certification that the institution is not operating under any formal enforcement action with its primary federal regulator that addresses unsafe or unsound lending practices.
CDFIs (excluding insured depositories and credit unions)	AERIS rating	<ul style="list-style-type: none"> • Annual report with audited financial statements. • State supervisory or regulatory information. 	

d. Lender Capital at Risk – 12 U.S.C. § 5704(e)(4)

The SSBCI statute, 12 U.S.C. § 5704(e), requires that for any loan enrolled in a CAP, the financial institution lender must have a meaningful amount of its own capital at risk in the loan. Treasury has determined that because of how CAPs operate, each lender has a meaningful amount of its own capital resources at risk. As required by 12 U.S.C. § 5704(e)(5), the borrower and lender together can only contribute up to 7 percent of the loan amount to a reserve fund, and the jurisdiction matches that same contribution with SSBCI funds. At maximum contribution, the reserve fund only has 14 percent of each loan (7 percent from the borrower and lender together, and 7 percent from SSBCI funds), leaving the lender at risk for 86 percent of the loan.

e. Borrower and Loan Size Requirements – 12 U.S.C. § 5704(c)(4)

For a loan to be eligible for enrollment in the CAP, the borrower must have 500 employees or less at the time that the loan is enrolled in the program, and the loan cannot exceed \$5 million.

For purposes of determining a borrower’s eligibility for CAPs, Treasury’s calculation of borrower size is consistent with the SBA’s methodology for calculating the number of employees under 13 C.F.R. § 121.106. In determining a borrower’s number of employees, Treasury counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization, or leasing concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. A borrower’s number of employees includes the employees of its affiliates, as defined in 13 C.F.R. § 121.103. In regard to counting employees, businesses owned and controlled by a Tribal government are not considered affiliates of the Tribal government and are not considered affiliates of other businesses owned by the Tribal government because of their common ownership by the Tribal government or common management, as described in 13 C.F.R. § 121.103(b)(2).

f. Loan Purpose Requirements and Prohibitions – 12 U.S.C. § 5704(e)(7)

As required by 12 U.S.C. § 5704(e)(7), for each loan enrolled in a CAP, the participating jurisdiction must require the financial institution lender to obtain an assurance from each borrower stating that the loan proceeds will not be used for an impermissible loan purpose under the SSBCI program.

Business Purpose Generally – 12 U.S.C. § 5704(e)(7)(A)(i)(I)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will be used for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business’s goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. SSBCI funds may be used to purchase any tangible or intangible assets except goodwill. The term “business purpose” excludes acquiring or holding passive investments in real estate, the purchase of securities, and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended).¹⁶

¹⁶ The Act defines “lobbying activities” as “lobbying contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.”

Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will be used for a business purpose. As noted above under “Business Purpose Generally,” an eligible business purpose under SSBCI includes the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. However, an eligible business purpose excludes acquiring or holding passive investments in real estate. Loan proceeds are used for passive real estate investment purposes when the proceeds of the loan are used to invest in real estate acquired and held primarily for sale, lease, or investment. Passive real estate investment includes most real estate development (including construction) in which the developer does not intend to occupy or actively use the resulting real property.

A small business borrower can deliver the assurance that the loan is not being used for passive real estate if the small business borrower occupies and uses at least a specific percentage of the building; the percentage varies depending on whether the project involves the construction of a new building or renovation of an existing building:

- **Construction of a new building.** If SSBCI-supported loan proceeds are used in the construction of a new building, the small business must occupy and use at least 60 percent of the total rentable property following issuance of an occupancy permit or other similar authorization.
- **Renovation of an existing building.** If SSBCI-supported loan proceeds are used in the acquisition, renovation, or reconstruction of an existing building, the borrower may permanently lease up to 49 percent of the rentable property to one or more tenants, if the small business occupies and uses at least 51 percent of the total rentable property within 12 months following the acquisition, renovation, or reconstruction.

If a small business chooses to lease an allowable portion of the rentable square footage to a tenant, the jurisdiction may rely on lease agreements, blueprints, or similar documentation in assuring the lease of an allowable portion of the rentable square footage is consistent with these guidelines.

SSBCI-supported loan proceeds may not be used to improve or renovate any portion of rentable property that the small business borrower leases to a third party. “Rentable property” means the total square footage of all buildings or facilities used for business operations, which (1) excludes vertical penetrations (e.g., stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors) and all outside areas and (2) includes common areas (e.g., lobbies, passageways, vestibules, and bathrooms).

There are two exceptions to the general prohibition on the use of SSBCI-supported loan proceeds for passive real estate investment. An eligible business purpose may include the financing of real estate investments in either one of the following limited circumstances.

- (1) **Passive company leasing to operating company.** A passive company such as a holding company that acquires real property using an SSBCI-supported loan may

have an eligible business purpose where 100 percent of the rentable property is leased to the passive company's affiliated operating companies that are actively involved in conducting business operations. To meet this exception, the following criteria must also be met:

- The passive company must be an eligible small business using the affiliate and employee definitions described above;
- The operating company must be subject to the same sublease restrictions as the owner affiliate;
- The operating company must be a guarantor or co-borrower on the SSBCI-supported loan to the eligible passive company;
- Both the passive company and the operating company must execute SSBCI borrower use-of-proceeds certifications and sex-offender certifications covering all principals;
- Each natural person holding an ownership interest constituting at least 20 percent of either the passive company or the operating company must provide a personal guarantee for the SSBCI-supported loan; and
- The passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan (which may include options to renew exercisable solely by the operating company).

(2) **Construction loan of \$500,000 or less.** A construction loan with an original principal amount of \$500,000 or less may have an eligible business purpose if:

- the building will not serve as a residence for the owner, their relatives, or affiliates;
- the building will be put into service immediately;
- the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and
- the building has not been and will not be financed by another SSBCI-supported loan.

Under this exception, loans that automatically convert into permanent financing are excluded from the definition of "eligible business purpose," unless the converted loans would no longer rely on SSBCI support. The term "construction loan" means a loan secured by real estate made to finance (1) land development (*e.g.*, the process of

improving land, such as laying sewers or water pipes) preparatory to erecting new structures or (2) the on-site construction of industrial, commercial, residential, or farm buildings. For purposes of this paragraph, “construction” includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

Prohibited Loan Purposes – 12 U.S.C. § 5704(e)(7)(A)(i)(II)

Each financial institution lender must obtain an assurance from the borrower affirming that the loan proceeds will not be used to:

- Repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
- Repay taxes held in trust or escrow (e.g., payroll or sales taxes);
- Reimburse funds owed to any owner, including any equity investment or investment of capital for the business’s continuance; or
- Purchase any portion of the ownership interest of any owner of the business,¹⁷ except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, employee ownership trust, or related vehicle, provided that the transaction results in broad-based employee ownership for employees in the business and the employee stock ownership plan or other employee-owned entity holds a majority interest (on a fully diluted basis) in the business.

Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(i)(III)

Each financial institution lender must obtain an assurance from the borrower affirming that the borrower is not:

- An executive officer, director, or principal shareholder of the financial institution lender;
- A member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or
- A related interest or immediate family member of such an executive officer, director, or principal shareholder of the financial institution lender.

For purposes of these three borrower restrictions, the terms “executive officer,”

¹⁷ This prohibition applies to the acquisition of shares of a company or the partnership interest of a partner when the proceeds of the loan directly supported by SSBCI funds will go to any existing owner or partner.

“director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to a financial institution lender as the relationships described in 12 C.F.R. part 215.

Permissible borrowers may include jurisdiction-designated charitable, religious, or other non-profit or philanthropic institutions; government-owned corporations; consumer and marketing cooperatives; and faith-based organizations, provided the loan is for a “business purpose” as defined above. Permissible borrowers may also include sole proprietors, independent contractors, worker cooperatives, and other employee-owned entities, as well as Tribal enterprises, provided that all applicable program requirements are satisfied.

Additional Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(iv)

Each financial institution lender must obtain an assurance from the borrower affirming that the borrower is not:

- A business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;¹⁸
- A business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;¹⁹
- A business engaged in pyramid sales, where a participant’s primary incentive is based on the sales made by an ever-increasing number of participants;
- A business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business’s intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in SBA Standard

¹⁸ A construction loan permitted under *Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I)* will not be considered a speculative business for purposes of SSBCI.

¹⁹ When a participating jurisdiction makes a loan to an eligible CDFI, the CDFI may re-lend the funds to other entities. Each CDFI re-lending transaction must be eligible and meet all SSBCI program requirements, including obtaining all required assurances and certifications. The participating jurisdiction may include private financing caused by and resulting from the re-lending transaction in the jurisdiction’s private leverage ratio. Similarly, Tribal enterprise lenders may also be permissible borrowers for the purpose of relending, if the re-lending transactions are eligible and meet all SSBCI program requirements, including obtaining all required assurances and certifications.

Operating Procedure 50 10 6;²⁰ or

- A business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business²¹; “gaming activities” for purposes of Tribal SSBCI programs is defined as Class II and Class III gaming under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

Each financial institution lender must also obtain an assurance from the borrower affirming that no principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Lender Assurances – 12 U.S.C. § 5704(e)(7)(A)(ii) and (iii)

Each participating jurisdiction must obtain an assurance from the financial institution lender affirming:

- The SSBCI-supported loan is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender.
- If the SSBCI-supported loan is a refinancing, it complies with all applicable SSBCI restrictions and requirements regarding refinancing and new extensions of credit, including that the SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender.
- No principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a

²⁰ SBA Standard Operating Procedure 50 10 6, Lender and Development Company Loan Programs (effective October 1, 2020) (“Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.”).

²¹ Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for its new gas station, for example, even if the Tribal enterprise’s revenues from gaming were greater than 33 percent.

partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

Lender Assurances: Refinancing and New Extensions of Credit – 12 U.S.C. § 5704(e)(7)(A)(ii)

New Lenders. Under the SSBCI statute, a lender is not prohibited from enrolling or refinancing loans previously made by another, non-affiliated financial institution. However, the purpose of SSBCI is to support small businesses, including by providing new capital. Accordingly, a lender may refinance a borrower’s existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

- The amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;²²
- The transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and
- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

When a participating jurisdiction uses SSBCI funds to support the purchase of a loan from another, non-affiliated financial institution, the jurisdiction must make a determination that the transaction is beneficial to the small business borrower.

New Extensions of Credit by Existing Lenders. Financial institution lenders are generally prohibited from refinancing an existing outstanding balance or previously made loan, line of credit, extension of credit, or other debt owed by a small business borrower already on the books of the same financial institution (or an affiliate) into the SSBCI-supported program. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured²³ loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

²² Requiring a 50 percent increase in the obligation requires lenders to increase their capital at risk by an amount that will generally exceed the value of the SSBCI subsidy, given the 1:1 and 10:1 financing requirements. This promotes the goal that the benefits of SSBCI funding primarily accrue to small businesses rather than to lenders.

²³ A matured loan or line of credit only includes such that have matured according to their terms and does not include a loan or line of credit that has been accelerated to maturity. Transferring an accelerated loan into an SSBCI program does not promote the purpose of expanding small business access to capital and would primarily benefit lenders rather than small businesses.

- The amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;
- The new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and a new approval by the lender;
- The prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and
- Proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

If a participating jurisdiction enrolls a loan that is used to repay principal under a loan previously made by the same financial institution or its affiliate, the participating jurisdiction or the financial institution lender must maintain records showing that these criteria were met. The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an SSBCI approved program and subsequently refinancing the same loan under any approved program.

g. Monitoring the Annual Claims Rate

The claims rate for a CAP reflects the compensation a lender may seek for borrower defaults and, accordingly, the amount of SSBCI subsidy the lender may receive. CAPs are intended to support responsible lending that is beneficial to small businesses and are not intended to subsidize high default rate business models. To ensure CAPs continue to be used consistent with these objectives, jurisdictions must monitor annual CAP claims rates and review lenders whose annual claims rates exceed 6 percent. The claims rate may be measured by either total capital or number of loans in a 12-month period. The jurisdiction may determine to disallow a lender from enrolling any additional CAP loans if the jurisdiction determines the lender's practices do not meet program standards or is using the CAP to offset the costs of high default rate lending.²⁴ Treasury will monitor CAP annual claims rates annually.

Section VIII. Approving OCSPs

a. In General

Under 12 U.S.C. § 5701(12), an OCSP is a program that is not a CAP, that uses public resources to promote private access to credit, and that meets certain eligibility criteria. OCSPs may include loan programs, investment programs, or other credit or equity support programs. OCSPs may include programs that provide support for small business lending and investment such as collateral support programs, loan participation programs, jurisdiction-sponsored

²⁴ At their discretion, jurisdictions may conduct additional reviews of lenders and apply other limits to approved programs and participating lenders.

equity/venture capital programs, loan guarantee programs, or other similar programs. Unlike CAP lenders, OCSF lenders and investors need not be financial institutions as defined above.

In an SSBCI equity/venture capital program, the “investor” can be an entity of the jurisdiction; any private venture capital, seed-stage, mezzanine, or angel fund participating in an approved SSBCI program (but not individual investors in such a fund); or a special-purpose vehicle or entity. The “investee” is the small business that is the end recipient of SSBCI funds, either directly or indirectly through a venture capital fund.

Tribal enterprises may be lenders or investors in an OCSF, if they comply with all applicable program requirements. Any Tribal enterprise acting as a lender or investor should have sufficient lending or investing experience and the financial and managerial capacity to participate in the OCSF.

b. 10:1 Financing – 12 U.S.C. § 5705(c)(2)

As required by 12 U.S.C. § 5705(c)(2), for OCSFs to be eligible for federal funding, a jurisdiction must demonstrate a “reasonable expectation” that, when considered with all other approved programs under the SSBCI, such programs together have the ability to use federal contributions to such programs to generate small business lending and investment at least 10 times the federal contribution amount. As a part of the 10:1 financing requirement, the statute requires SSBCI funds to “cause and result in” private financing. As a part of the application, jurisdictions must describe how their OCSFs will in fact “cause and result in” private financing. For example, for OCSFs involving venture capital funds, jurisdictions may specify such safeguards as limiting investments to anchor investments,²⁵ prohibiting SSBCI participation after a fund’s initial close, or restricting investments in funds for which private capital is likely to be catalyzed by SSBCI participation based on the funds’ age, size, or experience.

Treasury refers to the ratio of small business lending and investment to the federal contribution amount as the “private financing ratio.” Specifically, the private financing ratio is the “private financing” caused by and resulting from the SSBCI investment, divided by the “SSBCI funds used.” These terms are defined below. Jurisdictions must meet an *ex ante* requirement that they demonstrate, at the time they apply for SSBCI funds, a reasonable expectation that their SSBCI programs will achieve a 10:1 private financing ratio. In addition, jurisdictions must fulfill ongoing *ex post* reporting requirements on actual leverage achieved.

For the *ex ante* requirement, jurisdictions must provide to Treasury certain estimates or projections of program parameters at the time they apply for SSBCI funds, such as: funding allocation among various programs (e.g., capital access, equity/venture capital, loan participation, loan guarantee, collateral support); turnover within programs (e.g., average loan tenor); and loss rates.²⁶ The SSBCI application materials will include a template that allows a

²⁵ Anchor investments are meaningful investments made early in the life of the fund that send a strong signal regarding the merits and risk profile of investing in the fund.

²⁶ A loss rate is the face value of defaulted loans less any recovered value, divided by the sum of the original loan amounts.

jurisdiction to input its estimates or projections of program parameters, and that calculates an estimate of the private financing ratio resulting from the jurisdiction's inputs. Subject to Treasury's approval, the jurisdiction may provide its own calculation of the private financing ratio, if the jurisdiction provides Treasury with its calculation and the inputs, so that Treasury can confirm the results. For purposes of *ex ante* projections, Treasury will calculate the private leverage ratio over a 10-year horizon, commencing with the initial deployment of federal funds. That is, the 10-year time horizon is specific to each initial transaction (or, for simplicity, annual group of transactions), not from the initiation of the program. If a jurisdiction knows that it will stop recycling funds after the allocation time period or anytime within the 10-year horizon for a particular program, the jurisdiction should adjust its leverage projections accordingly.

For purposes of calculating and reporting the private financing ratio achieved by SSBCI programs (the *ex post* calculation), records of direct and indirect private financing motivated by federal funds should be maintained and aggregated for the numerator of the private financing ratio. Jurisdictions will be required to provide transaction-level information to Treasury, and Treasury will perform the *ex post* calculation.

"Private financing" means private financing across all approved programs and includes all loans or investments from a private source to an eligible borrower or eligible investee, whether occurring at or subsequent to loan or investment closing (subject to certain restrictions to be set forth in the Allocation Agreement regarding permissible types of subsequent private financing), and whether funded or unfunded. It encompasses equity investments, written commitments of future equity investments, term loans, lines of credit, and any new infusions of cash by the small business owner into the borrower.²⁷ For a Tribal government program, private financing may include Tribal enterprise funds acquired in commerce, provided that the funds do not originate with the state, federal, or Tribal government. Private financing does not include financing provided by tax-credit supported vehicles, such as funds capitalized by the sale of state tax credits.²⁸ A participating jurisdiction may count SBA-guaranteed loans or other financing that is credit-enhanced by federal, state, or local incentives, if (1) the financing is caused by, or is the result of, an SSBCI-supported transaction, (2) the capital comes directly from a private entity, and (3) the lender or investor has at least some of its own capital at risk.

"SSBCI funds used" are SSBCI funds that have been (1) disbursed to a lender to cover the SSBCI contributions to a CAP reserve fund, (2) disbursed or committed to a specific borrower as part of a loan participation, collateral support, or direct lending program, (3) set aside to cover obligations arising from individual loan guarantees, loan participations, or collateral support agreements to specific borrowers, or (4) invested or committed to be invested in specific businesses, pursuant to an equity/venture capital investment. If the aggregate amount

²⁷ When a participating jurisdiction makes a loan to an eligible CDFI, the CDFI may re-lend the funds to other entities. If a CDFI re-lending transaction is eligible and meets all SSBCI program requirements, including obtaining all required assurances and certifications, the participating jurisdiction may include private financing caused by and resulting from the re-lending transaction in the jurisdiction's private leverage ratio.

²⁸ Angel investments (i.e., investments made by generally high net worth individuals in startup businesses) that generate individual tax credits as a result of their investment activity may be considered private capital for purposes of the minimum private leverage test and calculating subsequent private financing.

of these funds exceeds all of the participating jurisdiction's allocated amounts from the main capital, VSB, SEDI, and SEDI incentive allocations (because some of the funds invested have generated program income that has been added to allocated funds), the "SSBCI funds used" means the participating jurisdiction's total allocated amounts. SSBCI funds used are distinguishable from funds considered deployed (i.e., expended, transferred or obligated, and delivered) as described in Section III.b above.

c. 1:1 Financing – 12 U.S.C. § 5705(c)(1)

As required by 12 U.S.C. § 5705(c)(1), each OCSP must "demonstrate that, at a minimum, \$1 of public investment by the State program will cause and result in \$1 of new private credit." Unlike the 10:1 financing expectation described above, this 1:1 financing is an eligibility requirement. As a result, Treasury will only approve OCSPs that demonstrate that the design of the program will meet the 1:1 financing ratio.

For purposes of this requirement, jurisdictions should calculate their "new private credit" (which Treasury refers to as "private financing") for each individual OCSP using the following formula:

- Financing ratio = [total aggregate private financing generated by the individual OCSP] *divided by* [SSBCI funds used by the individual OCSP]
- "Private financing" and "SSBCI funds used" have the same definitions as those set forth in Section VIII.b above.

As noted above, the statute requires SSBCI funds to "cause and result in" 1:1 private financing. Therefore, in the SSBCI application, jurisdictions must describe how their OCSPs will "cause and result in" private financing. For example, for OCSPs involving venture capital funds, jurisdictions may specify that (1) the program will limit investments to anchor investments²⁹ or prohibit SSBCI participation after the initial close of the fund, or (2) the program will only work with funds for which private capital is likely to be catalyzed by SSBCI participation based on the funds' age, size, or experience.

A private investment that occurs prior to the SSBCI investment may count towards the jurisdiction's 1:1 financing ratio when a jurisdiction can document that the forthcoming SSBCI funds were the "cause and result" of the private investment. For example, a private investment that occurs prior to an SSBCI investment may count towards the jurisdiction's private capital ratio if the jurisdiction supplies documentation (e.g., board meeting minutes) evidencing the causal connection between the SSBCI investment and the private investment. In addition, private capital raised within the same funding round as the SSBCI funding may be counted toward the 1:1 financing ratio if a term sheet or similar agreement specifies the inclusion of SSBCI capital and the private financing transaction occurs no earlier than 90 days before the SSBCI

²⁹ Anchor investments are meaningful investments made early in the life of a fund that send a strong signal regarding the merits and risk profile of investing in the fund.

investment.

d. Lender or Investor Capital at Risk – 12 U.S.C. § 5705(c)(3)

OCSPs must mandate that lenders and investors—through which OCSPs provide loans, investments, or other credit or equity support—have “a meaningful amount of their own capital resources at risk.” Treasury has determined that “meaningful amount” differs for various types of lenders and investors, as some will bear risk at the transaction level while others bear pooled risk.

Lenders

Lenders that transact with small businesses and bear the risk of loss in such transactions (e.g., by originating loans supported by collateral support, loan guarantees, loan participations, or other types of credit support) have a meaningful amount of capital resources at risk if they bear 20 percent or more of the risk of loss in any transaction. A borrower’s own funds, including borrower contributions to the transaction (sometimes referred to as borrower equity), do not qualify towards the 20 percent threshold. If such lenders transfer loans to debt investors, then the lenders must retain at least 5 percent of the risk of loss of the transaction.

Debt Investors

Debt investors that originate loans have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with, or junior to, the SSBCI capital in cash flow rights up to the repayment of the SSBCI investment. For these debt investors, the 1:1 financing requirement is met at the fund level.

Debt investors that do not originate loans³⁰ have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital in the same risk layer³¹ as the SSBCI capital is *pari passu* with, or junior to, the SSBCI investment in cash flow rights. For these debt investors, the 1:1 financing requirement is met at the risk layer level.

If the debt investor is a fund or similar entity, the fund or entity manager should have exposure to the risk of its portfolio in a manner that is consistent with industry standards.

To the extent that an OCSP is structured such that a lender transfers a portion of SSBCI-compliant loans to a special-purpose vehicle or other pooled entity funded by SSBCI capital and private capital, the OCSP may satisfy the private capital at risk requirement

³⁰ For example, debt investors that do not originate loans include special-purpose vehicles that issue asset-backed securities.

³¹ Whole loans, pools of loans, or other assets from a lending contract can be placed in a special-purpose vehicle. The vehicle then receives principal and interest payments, or other cash flows, from the underlying loan or other assets. The resulting cash flows are then distributed to different investment tranches in the vehicle (i.e., layers of risk). The sequencing of payments to the various tranches reflects the seniority of each of those tranches. “Risk layer” here refers to the tranche of the asset-backed security in which the SSBCI capital is invested.

by showing that the originating lender will retain at least 20 percent of the risk of loss of each loan at a transaction level, regardless of the structure of the special-purpose vehicle or other pooled entity. Otherwise, the OCSP will be assessed based on the existing standards applicable to debt investors that do not originate loans, as described above.

Equity Investors

Equity investors have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with, or junior to, the SSBCI investment in cash flow rights.

Eligible equity investors that make qualifying investments under the Incubation Funding Model or Early-Stage Investor Model, as defined in Section VIII.i below, have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital is *pari passu* with the SSBCI investment in cash flow rights up to the repayment of the SSBCI investment.

If SSBCI capital is invested through a venture capital fund, the fund or entity manager must have exposure to the risk of its portfolio in a manner that is consistent with industry standards.

e. Borrower/Investee and Loan/Investment Size Requirements – 12 U.S.C. § 5705(c)(4)

OCSPs are required (1) to target an average borrower or investee size of 500 employees or less, (2) not to extend credit or investment support to borrowers or investees that have more than 750 employees, (3) to target support towards loans or investments with an average principal or investment amount of \$5 million or less, and (4) not to provide credit or investment support if a given transaction exceeds \$20 million. For loan programs, (3) and (4) apply to the principal amount of the loan directly supported by SSBCI, plus all other loans for the same loan purpose that close on or about the same date. Direct SSBCI support for a loan includes a guarantee, cash collateral, and loan participation (either purchased participation or companion participation loan). For equity investment programs, (3) and (4) apply to a single investment round that includes an SSBCI-funded investment, including all classes of equity instruments that close on or about the same date. SSBCI support for an investment includes direct equity investments in small businesses made by a jurisdiction or its contractors, as well as investments in small businesses made by venture capital funds in which the jurisdiction invested SSBCI funds. The \$20 million restriction cannot be avoided by dividing a larger loan into smaller loans or by creating separate equity instruments within an investment round. Participating jurisdictions should evaluate transactions that in the aggregate exceed the \$20 million limit and that have substantially similar terms and conditions,³² including documenting the justification for

³² Such transactions may include, but are not limited to, transactions that involve the same or affiliated businesses, single or multiple loans or investments, terms and conditions that provide for cross-collateralization with multiple borrowers, affiliates, or a single borrower and different assets, cross guarantees, or the presence of other substantially similar terms or conditions among the transactions.

participating in any transaction that could reasonably be viewed as exceeding the \$20 million restriction.

The standard for calculating borrower size for CAPs in Section VII.e applies for purposes of calculating the borrower or investee size for OCSFs.

f. Loan/Investment Purpose Requirements and Prohibitions – 12 U.S.C. § 5705(f)

Generally

Pursuant to 12 U.S.C. § 5705(f)(2), Treasury may prescribe limitations and prohibitions on loan purposes or investment purposes for OCSFs. Accordingly, for each loan or investment resulting from an approved OCSF, the participating jurisdiction must require the lenders or investors to obtain an assurance from each borrower or investee stating that the loan or investment proceeds will not be used for an impermissible purpose under the SSBCI program as set forth in the following sections of Section VII.f above:

- *Business Purpose Generally – 12 U.S.C. § 5704(e)(7)(A)(i)(I);*
- *Business Purpose: Passive Real Estate Investment Guidance – 12 U.S.C. § 5704(e)(7)(A)(i)(I);*
- *Prohibited Loan Purposes – 12 U.S.C. § 5704(e)(7)(A)(i)(II);*
- *Additional Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(iv) (except the sex offender certification in the section above applies only to OCSF loan programs; the sex offender certification for equity/venture capital programs is addressed below);*
- *Lender Assurances – 12 U.S.C. § 5704(e)(7)(A)(ii) and (iii); and*
- *Lender Assurances: Refinancing and New Extensions of Credit – 12 U.S.C. § 5704(e)(7)(A)(ii).*

The “lender” requirements in Section VII.f shall apply to OCSF lenders and investors. The “borrower” requirements shall apply to OCSF borrowers and investees. The conflict-of-interest provisions specified in Section VII.f *Borrower Restrictions – 12 U.S.C. § 5704(e)(7)(A)(i)(III)* apply to CAP and OCSF loan programs. Conflict-of-interest provisions applicable to equity/venture capital programs and Tribal SSBCI programs are set forth below.

Equity/Venture Capital Programs: Conflict-of-Interest Standards

Funds from an SSBCI equity/venture capital program must not be used to make an investment in a business in which an SSBCI insider has a personal financial interest. Jurisdictions with such programs should adopt conflict-of-interest policies consistent with the standards set forth in this section.

The following definitions apply to the conflict-of-interest standards for equity/venture capital programs:

- An “SSBCI insider” of an SSBCI equity/venture capital program is a person who, in the 12-month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:
 - Was:
 - a manager or staff member, whether by employment or contract, in the jurisdiction’s SSBCI equity/venture capital program;
 - a government official with direct oversight or jurisdiction over an SSBCI equity/venture capital program, or such an official’s immediate supervisor;
 - a member of the board of directors or similar body for a jurisdiction-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;
 - a member of the board of directors or similar body for an independent non-profit or for-profit entity that operates an SSBCI equity/venture capital program; or
 - an employee, volunteer, or contractor on an investment committee or similar body that recommends SSBCI investments for approval or approves SSBCI investments under the SSBCI equity/venture capital program; or
 - Exercised a controlling influence on jurisdiction decisions regarding:
 - The allocation of SSBCI funds among approved equity/venture capital programs;
 - Eligibility criteria for the SSBCI equity/venture capital programs; or
 - The processes for approving investments of SSBCI funds under the SSBCI equity/venture capital program.
- A “business partner” of an SSBCI insider is a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.
- A “family member” of an SSBCI insider means:
 - Such person’s spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and
 - Any other relatives who live in the same household as the SSBCI insider.
- An “independent non-profit entity” means any non-profit entity that is not sponsored by the jurisdiction.
- A “personal financial interest” means any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that

may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

- A “jurisdiction-sponsored non-profit entity” is a non-profit entity created by legislation to pursue policies of the jurisdiction’s government and over which the jurisdiction’s officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Subject to the exceptions described below, SSBCI funds may not be used by SSBCI equity/venture capital programs to make or support investments in a company or venture capital fund if an SSBCI insider, or a family member or business partner of an SSBCI insider, has a personal financial interest in the company or venture capital fund. A prohibited conflict of interest is deemed to exist even if the conflict is disclosed or the relevant individuals recuse themselves from participating in the investment. Further, accepting a role as an SSBCI insider does not require a person to divest financial interests in a company or venture capital fund resulting from previous employment or personal investment activity. However, if a person is an SSBCI insider, any company or venture capital fund in which the insider has a personal financial interest is prohibited from receiving investments or financial support from SSBCI funds.

Exceptions to the general prohibition are as follows:

- A governmental entity or a jurisdiction-sponsored non-profit entity may use SSBCI funds for follow-on investments in companies or venture capital funds if the entity has an existing ownership or voting interest resulting from a prior investment of SSBCI funds or non-SSBCI funds. Furthermore, in this circumstance, the entity may authorize investments if an SSBCI insider serves on the board of directors of the company or venture capital fund, if an SSBCI insider does not have a personal financial interest in the company or venture capital fund and the entity’s prior financial interest is in compliance with all applicable laws and rules.
- An independent non-profit or for-profit entity managing or investing SSBCI funds for an SSBCI equity/venture capital program is not precluded from authorizing follow-on investments using SSBCI funds in a company or venture capital fund in which the entity previously invested SSBCI funds or the entity has previously appointed a representative to serve on the board of directors in stewardship of the investment. However, such independent non-profit or for-profit entity may not authorize (or seek approval from the participating jurisdiction for) an investment of SSBCI funds in a company or venture capital fund in which the entity holds any type of financial interest resulting from an investment made with non-SSBCI funds.

Equity/Venture Capital Programs: Certification Relating to Sex Offenses

If a business is to receive the benefit of SSBCI funds through an equity/venture capital program, the certification related to sex offenders set forth in Section VII.f above must instead state that no principal of the investor or the investee has been convicted of a sex offense against a

minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. § 16911)). For the purposes of this certification, “principal” is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds 50 percent or more ownership interest of any class of the partnership interests; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 50 percent or more of any class of equity interest in the entity; and if a partnership where the managing partner is a corporation, limited liability company, association, development company, or other entity, each director and each of the five most highly compensated executives or officers of the entity.

Tribal Programs: Conflict-of-Interest Standards

Under a Tribal OCSP program, if a Tribal enterprise lends to or invests in another Tribal enterprise, relationships that would otherwise be prohibited under these guidelines related to conflicts of interest in loan programs and equity/venture capital programs are permitted if such relationships occur by virtue of common Tribal ownership, provided that:

- The lender/investor and borrower/investee certify that the transaction is in accordance with the Tribal conflict-of-interest policy;
- The Tribal conflict-of-interest policy addresses:
 - Conflicts arising from immediate family and self-dealing; and
 - Enforcement mechanisms for violations of the conflict-of-interest policy; and
- The Tribal enterprise lender or investor will publicly disclose its transactions with Tribal enterprise borrowers or investees.

g. Additional Considerations for Approving OCSPs

In determining whether an OCSP is eligible, the SSBCI statute requires Treasury to consider five specific factors related to the proposed OSCP. Following is a discussion of these factors intended to guide jurisdictions in demonstrating that a proposed OCSP meets these standards.

Anticipated Benefits to the Jurisdiction – 12 U.S.C. § 5705(d)(1)

Treasury will consider, when determining OCSP eligibility, the anticipated benefits to the jurisdiction, its businesses, and its residents to be derived from the federal contributions to, or for the account of, the OCSP, including the extent to which resulting small business lending and investment will expand economic opportunities. Jurisdictions should present as part of their SSBCI application the projected loan and investment volumes of their programs, and describe the expected benefits to the jurisdiction, the jurisdiction’s businesses, and the jurisdiction’s residents. In describing expected benefits, jurisdictions should focus on, but not limit their

discussion to, the following measures. Estimates may cover the anticipated allocation time period.

- The projected number and amount of SSBCI-supported small business loans or investments closed through the OCSP, including all forms of financing funded, guaranteed, or insured by OCSPs, including leases, credit lines, and investments.
- The number and types of jobs created, as well as the quality of jobs created (defined as locally appropriate), including the projected permanent, full-time workers hired by small business borrowers or investees as a result of receiving SSBCI-supported small business loans and investments through the OCSP, and an indication of the wage level and benefits relative to local standards.
- The projected increases in tax revenues, including sales, income, or other tax revenues, resulting from SSBCI-supported small business loans and investments through the OCSP. These estimates may include taxes paid by both permanent and temporary workers hired as a result of SSBCI-supported small business loans and investments through the OCSP.
- Long-term economic benefits of the jurisdiction's investments. For example, climate transition investments may result in efficient energy use, sustainable jobs, or economic growth in sustainable manufacturing and industrial decarbonization, sustainable agriculture, bio-materials, and electric vehicles and changing infrastructure. Another example is that investments in areas such as small and mid-size enterprise (SME) manufacturing and supply chain resiliency may result in stronger economic growth, high-quality jobs, and innovation. Also, investments focused on innovation in supply chains of critical products such as semiconductors, critical minerals and materials, and advanced pharmaceuticals may provide long-term national and economic security benefits.
- Other expected benefits from the economic development objectives of the jurisdiction.

OCSP Experience and Capacity – 12 U.S.C. § 5705(d)(2)

Treasury will consider, when determining OCSP eligibility, the operational capacity, skills, and experience of the management team of the OCSP. A jurisdiction can demonstrate these factors with information such as:

- Qualifications and experience of senior management. The OCSP's senior management may include people who have significant credit underwriting or risk-management experience with institutions such as banks, finance companies, rating agencies, or insurance companies.
- Experience of senior management in operating public credit support or capital access programs. The OCSP might employ people with underwriting or credit risk management experience in federal, state, or local small business credit programs (e.g., SBA or state development finance authorities).

- Adoption of industry best practices. The OCSP may demonstrate that it employs industry best practices. The adoption of best practices helps to demonstrate the industry knowledge and sophistication of the OCSP management.

OCSP Capacity to Manage Increases – 12 U.S.C. § 5705(d)(3)

Treasury will consider, when determining OCSP eligibility, the capacity of the OCSP to manage increases in the volume of its small business lending (or investing). This can be demonstrated through:

- Financial strength. An applicant should demonstrate that it possesses adequate financial resources to support the staffing increases and infrastructure improvements needed to undertake a significantly increased number of financing transactions.
- Operational capacity. An applicant should demonstrate that the OCSP has systems, policies, and procedures in place to accommodate a significantly increased transaction volume.

OCSP Accounting and Administrative Controls – 12 U.S.C. § 5705(d)(4)

Treasury will consider, when determining OCSP eligibility, the internal accounting and administrative controls systems of the OCSP, and the extent to which they can provide reasonable assurance that the funds of the jurisdiction’s program are safeguarded against waste, loss, unauthorized use, or misappropriation. This can be demonstrated by:

- Evidence that management conducts, or in the case of a new OCSP, intends to conduct, periodic internal audits.
- A requirement for annual independent audits (including management letters).

OCSP Program Design and Implementation Plan – 12 U.S.C. § 5705(d)(5)

Treasury will consider, when determining OCSP eligibility, the soundness of the program design and implementation plan of the OCSP. This can be demonstrated by:

- For both new and existing OCSPs, the adoption or use of established business models and strategies for managing the risks associated with making, insuring, or guaranteeing small business strategies and models.
- For an existing OCSP, the absence of material weakness or deficiency findings by external auditors. Soundness of program design can also be shown through operating results; for example, a management letter citing no significant operational or financial weaknesses can be employed as evidence of appropriate program design.

h. Relationship to Tax Credit Programs

Fund managers may not combine financing from private tax credit-supported entities (i.e., entities that are funded through the sale of tax credits they received from a state) and SSBCI-supported programs for the same business purpose, or within the same investment or loan fund.³³ However, jurisdiction agencies and non-profit jurisdiction-sponsored entities that receive funding from the sale of tax credits are permitted to combine these two types of funding for their loans and investments. For these entities, the tax credit funds are still not considered private capital.

An SSBCI-supported transaction cannot be used by an entity to increase the pool of funds that generates New Markets Tax Credits or Historic Preservation Tax Credits. If, however, a transaction supported with SSBCI funds meets program requirements, an entity may use SSBCI funds alongside a transaction that generates tax credits.

i. Additional Guidance Regarding Equity/Venture Capital Programs

Multi-Jurisdiction Funds

Jurisdiction-sponsored equity/venture capital programs may participate in multi-jurisdiction fund structures. Multi-jurisdiction funds are funds that can receive SSBCI capital from multiple jurisdictions or invest in ventures across multiple jurisdictions. Multi-jurisdiction funds may set up opportunities to invest in small businesses for more than one SSBCI participating jurisdiction and can then raise outside capital more easily because of the scale of entrepreneurs. In these arrangements, each jurisdiction must have a separate agreement with the fund manager. Jurisdictions can require the fund manager to invest in small businesses within its jurisdiction only. They can also give permission to allow investments in certain out-of-jurisdiction small businesses (see Section IX.c below). Jurisdictions must report on all SSBCI investments to which the jurisdiction's SSBCI capital has exposure, regardless of whether the investment occurs in jurisdiction or out of jurisdiction.

Services to Portfolio Companies³⁴

Venture capital funds offer a variety of services to their portfolio companies (i.e., the potential SSBCI investees). These services can include, for example, financial management, operational guidance, IT consulting, and connecting portfolio companies to potential customers, investors, board members, and officers. These services vary depending on the portfolio company's stage in the venture capital ecosystem. As these services to portfolio companies are a type of equity support, SSBCI funds, out of the federal contribution, may be used to pay for such support up to an annual average of 1.71 percent of the federal contribution to a venture capital

³³ In addition, for purposes of the 10:1 financing ratio and 1:1 financing requirement for OCSPs, financing provided by tax-credit supported vehicles, generally, are not considered private financing. See Section VIII.b.

³⁴ SSBCI capital that is invested in an entity that meets the definition of a venture capital fund in footnote 5 of these guidelines is eligible to be used for payment of the services described in this subsection. This entity will be subject to the 1:1 financing requirement at the fund level.

fund over the life of the jurisdiction’s venture capital program. Treasury established the 1.71 percent average limit based on data on fee benchmarks from venture capital fund contracts covering the operating costs of general partners, under which the median lifetime fees paid to fund managers amounted to an annualized 2.138 percent of the fund size.³⁵ Treasury determined that 80 percent of the 2.138 percent (which equals 1.71 percent) is a reasonable estimate of the percentage of SSBCI funds invested in venture capital funds that would be used, on average, to provide services to portfolio companies, based on data indicating that venture capital fund general partners spent an average of approximately 80 percent of their time engaging with small businesses (which were potential portfolio companies) and relevant networks.³⁶ This equity support is subject to both the 10:1 and 1:1 financing requirements.

In the contractual agreement between a jurisdiction and a venture capital fund, the fund must be required to identify the services to be provided to portfolio companies and annually certify that these services were provided. The agreement between the fund and the portfolio companies should include disclosure of these services offered by the fund manager. Consistent with industry standards on payments of fees to cover these services to portfolio companies, the fund should reimburse the jurisdiction for payments of such services by SSBCI funds before returns are paid to the general or limited partners.

Incubation and Early-Stage Investment Models

In the “Incubation Funding Model,” for venture capital funds that make early-stage qualifying investments³⁷ (as defined below) in businesses, the jurisdiction may offer these venture capital funds a call option to buy the cash flow rights of the SSBCI capital for a predetermined multiple (greater than or equal to 1) of the SSBCI capital based on a negotiated trigger event.

In the “Early-Stage Investor Model,”³⁸ for jurisdictions that use direct investment programs to provide capital directly to early-stage businesses, the jurisdiction may offer early-stage co-investors a call option to purchase SSBCI shares at a price equal to a predetermined multiple (greater than or equal to 1) of the SSBCI capital that is used for qualifying investments based on a negotiated trigger event.

³⁵ Robinson and Sensoy, *Do Private Equity Fund Managers Earn Their Fees? Compensation, Ownership, and Cash Flow Performance*, 2013. The same study found that the average lifetime fee paid to a fund manager was 2.037 percent of the fund size. We choose to use the median lifetime fee paid to fund managers instead of the average, as the median is more representative of fees paid to the fund manager in the majority of funds.

³⁶ Gompers, et al., 2016, “How do Venture Capitalists Make Decisions,” (working paper, Harvard Business School).

³⁷ Early-stage equity investment, including convertible debt funding, is funding intended for companies in the development phase. This stage of financing varies from small funds for companies cultivating ideas or concepts to larger sums for companies looking to grow their products and services.

³⁸ For example, an early-stage investor can be an unaffiliated, private market venture capital fund, professional angel investor, accelerator, charitable foundation, or other professional early-stage investor. A professional angel investor is one who is dedicated to the business, understands how startups work, and can contribute smart capital and relationships to push potential investees to the next stage of maturity. Angel investors are private investors who fund start-up businesses, usually in return for equity in the company. An accelerator is an organization that offers mentorship, capital, and connections to investors and business partners.

For both models, “qualifying investment” means an investment with the following attributes:

- The investment must be the first SSBCI investment in a company, raising early-stage capital, up to \$125,000 per company (with a maximum round of \$375,000);
- The jurisdiction conducts robust due diligence on the venture capital fund or early-stage investor, including (but not be limited to) ensuring that: (1) the investor has experience and a track record in early-stage investing and understands the early-stage investment process; and (2) the investor has a history of directly or indirectly³⁹ providing incubator-like services; and
- For the Incubation Funding Model, the available incubator-like services must be equally accessible to all portfolio companies.

Reporting

When a jurisdiction provides SSBCI capital to a provider (the entity that transacts directly with the business by making an investment supported by an approved SSBCI program), a jurisdiction’s capital must be either (1) held in a separate fund or otherwise separately accounted for, or (2) held in a fund with other investors’ funds, with each investor’s investment accounted for separately. Equity/venture capital programs must be able to trace and report on each investment in a fund’s portfolio that was funded partially or entirely by the SSBCI contribution to the fund. A jurisdiction will be required to report to Treasury on investment performance and other transaction-specific details for each business that received SSBCI capital.

³⁹ These venture capital funds and early-stage investors that make early-stage investments may provide incubator-like services either by themselves or through a partnership with an incubator or another organization that provides similar services to portfolio companies.

Section IX. Other SSBCI Program Requirements

a. Capital Access in Underserved Communities

The SSBCI statute, 12 U.S.C. § 5704(e)(8), requires that a jurisdiction’s application for a CAP must contain a report detailing how the jurisdiction plans to use the federal contributions to the approved program to help provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses (collectively, “underserved communities”). Treasury encourages jurisdictions to consider the following areas when including plans regarding “other underserved communities” in their report: rural communities; communities undergoing economic transitions, including communities impacted by the shift towards a net-zero economy or deindustrialization; and communities surrounding Minority-Serving Institutions.⁴⁰ The SSBCI statute, 12 U.S.C. § 5705(f)(2), mandates that Treasury consider the same eligibility criteria for OCSPs as for CAPs, to the extent the Secretary determines applicable and appropriate. Treasury has determined that a jurisdiction report regarding capital access to underserved communities should also be required in an application for an OCSP.

A jurisdiction’s report should contain information sufficient for Treasury to evaluate whether the jurisdiction’s plans to help provide access to capital for underserved communities are substantive and relevant to local market conditions. An acceptable report will contain plans that describe: (1) how the jurisdiction will provide access to capital for small businesses in underserved communities, and (2) how the jurisdiction will monitor performance relative to the plans in the report.

When describing how the jurisdiction will provide access to capital for small businesses in underserved communities, the jurisdiction may have different strategies for different underserved groups referenced in the SSBCI statute. For example, some jurisdictions may plan to provide access to capital through the design of the program itself (e.g., providing reduced pricing or enhanced risk mitigation as an incentive for certain underserved geographies or populations). Other jurisdictions may plan to provide access to capital through a concerted campaign to disseminate information through organizations that have business relationships with underserved communities (e.g., seminars and one-on-one counseling; advertisements in specialized media; periodic e-mailed newsletters that reach underserved populations). Where relevant, the report should address how the jurisdiction will work with CDFIs and minority depository institutions, as defined in 12 U.S.C. § 5701(17), to reach underserved communities. The report is part of the application that is incorporated by reference in the Allocation Agreement between Treasury and the participating jurisdiction. Further, the report may be made public by Treasury. If Treasury makes the report public, Treasury will withhold information that appears to be personally identifiable information (PII), sensitive information such as commercial

⁴⁰ Minority-serving institutions are institutions of higher education that serve minority populations and include, but are not limited to, Historically Black Colleges and Universities (as defined in 20 U.S.C. § 1061(2)), Hispanic-Serving Institutions (as defined in 20 U.S.C. § 1101a(a)(5)), Tribal Colleges and Universities (as defined in 20 U.S.C. § 1059c(b)(3)), and Asian American and Pacific Islander Serving Institutions (as defined in 20 U.S.C. § 1059g(b)(2)).

or financial information about small businesses, or information that involves privacy, security, and proprietary business interests. Treasury will work with the jurisdiction to seek to protect the confidentiality of such information.

When describing how the jurisdiction will monitor performance relative to the plans in its report, the jurisdiction's report must include a way for the jurisdiction to periodically assess the progress of its plans over the course of the allocation period. In its annual report to Treasury (see Section X below), the jurisdiction will be required to provide a description of any updates to its plan and its progress toward the metrics cited in its own plan.

For example, some applicants may maintain records of their outreach activities (e.g., the number of seminars held and number of businesses that attended). Alternatively, applicants may monitor the loan volume to underserved groups or to low- and moderate-income communities; loan results may be compared to prior years' results, to the region's business demographics, or to private lending in general.

In addition to requiring that jurisdictions present a report with their plans for expanding access to capital for underserved communities, the SSBCI statute also provides an allocation based on the needs of SEDI-owned businesses and an incentive allocation based on jurisdictions' robust support for SEDI-owned businesses (see Section IV above). A jurisdiction's plan for expanding access to capital for underserved communities may include the jurisdiction's plan to expand access to capital for SEDI-owned businesses, but may also be broader to include other underserved communities, as determined by the jurisdiction. The SEDI-owned business allocations described in Section IV will not take into account these reports.

b. Compliance with Civil Rights Requirements

SSBCI capital funds are considered federal financial assistance for purposes of legal requirements related to nondiscrimination and nondiscriminatory use of federal funds, where such laws are applicable to a recipient and any contracted entity operating SSBCI programs on its behalf. These requirements include ensuring that entities receiving federal financial assistance from Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 *et seq.*, and Treasury's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 *et seq.*, and Treasury's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and Treasury's implementing regulations at 31 C.F.R. part 23.

c. In-Jurisdiction and Out-of-Jurisdiction Loans and Investments

SSBCI funds for each jurisdiction are intended to benefit that jurisdiction, its businesses, and its residents. Treasury requires each jurisdiction to use at least 90 percent of its capital

allocation for loans, investments, and other credit or equity support for small businesses located in the jurisdiction.⁴¹ This means that, at most, 10 percent of a jurisdiction’s SSBCI allocation may be used to support loans, investments, or other credit or equity support for out-of-jurisdiction small businesses. For each loan, investment, or other support for small businesses located outside of the jurisdiction, the jurisdiction must provide a reasonable explanation of the benefits of that investment to businesses located in the jurisdiction. For example, such loans, investments, and other support can aid jurisdictions in expanding their economic ecosystem and benefit their residents by bolstering in- jurisdiction economies through, for instance, the creation of, and increase in, demand for in- jurisdiction business products and services.

For SSBCI funds allocated to Tribal governments, in-jurisdiction transactions include the following:

- Transactions with businesses on Tribal lands.
- Transactions with businesses in states where the Tribe is physically located or within which the Tribe exercises jurisdiction. For example, a Tribe located in Montana with Treaty rights in Wyoming can include Montana and Wyoming as “in-jurisdiction.”
- Transactions with Tribal enterprise-operated businesses, businesses owned by Tribal members, and businesses in the states in which Tribal members reside. For example, an Arizona Tribe may have the bulk of its members in a town on the border of Nevada and Arizona. Because the Tribe is exercising jurisdiction over its members in both states, it may invest in both states.

Tribal SSBCI program transactions that do not fall into the above categories constitute out-of- jurisdiction investments, loans, or other credit or equity support subject to the 10 percent restriction on out-of- jurisdiction investments, and must reasonably benefit the Tribal government’s businesses or members.

d. Enrollment of Loans in Loan-Related SSBCI Programs

One loan cannot be enrolled in more than one approved program at the same time. A lender may not divide one loan into multiple agreements or notes, each enrolled in an approved program, for the same loan purpose. If, for example, a borrower receives two loans under separately approved programs, each participating jurisdiction should maintain documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements, copies of checks paid to vendors with the proceeds of the two loans, or a statement signed by the lender or borrower prior to closing the SSBCI-supported transaction indicating the

⁴¹ A business’s location must be consistent with the “Business Street Address” data element in Table 7 of the SSBCI Capital Program Reporting Guidance. For each borrower or investee, the jurisdiction must report on the “[s]treet address of the borrower’s or investee’s main office or location of the borrower or investee that is primarily benefitting from the SSBCI funds. If real estate construction financing is involved, enter the street address of the project.”

two different uses of the two loans.

e. Relationship to SBA Lending Programs and Other Federal Loans

Under the SSBCI Program, eligible CAPs or OCSPs may not enroll any portion of an SBA-guaranteed loan or the unguaranteed portion of any other federal loan without the express, prior written consent of the Treasury.

If a borrower receives a loan guaranteed by the SBA's 7(a) or 504 loan programs or the U.S. Department of Agriculture's Business and Industry (USDA B&I) loan program, SSBCI funds may not be used as credit support to a loan or investment for the same purpose as the SBA-or USDA-guaranteed loan. For example, a borrower may not use a loan guaranteed under SBA's 7(a) program and an SSBCI-supported loan to purchase the same real estate, including land and improvements. In contrast, a borrower may receive two sources of federal support in two separate loans if the proceeds for the two loans are for different purposes. For example, if a borrower receives a loan guaranteed under the SBA 7(a) or 504 program or the USDA B&I program to purchase real estate occupied by the borrower, the borrower also may receive an SSBCI-supported loan to purchase equipment. Jurisdictions must require documentation showing that the borrower used the loan proceeds from the two loans for different purposes. Examples of documentation include the description of the loan purpose in the two loan agreements or promissory notes, copies of checks paid to different vendors from the proceeds from the two loans, or a statement signed by the lender or borrower prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans.

f. Minimum National Customer Protection Standards

SSBCI funds are intended to benefit small businesses by making capital available for lending and investment. To promote program integrity and ensure that SSBCI transactions primarily benefit small businesses, SSBCI programs must conform to the minimum national customer protection standards, which would apply to small businesses that are SSBCI borrowers, set forth herein. Many jurisdictions' programs and program participants (such as financial institutions) are subject to separate state or federal requirements related to customer protection; these standards do not affect a lender's obligation to adhere to those other applicable requirements. In light of the variety of programs and potential lending partners, jurisdictions must ensure programs meet these minimum standards to ensure SSBCI financing supports transactions that are economically beneficial to small businesses.⁴² The following standards are minimum standards, and jurisdictions should consider the credit environment and needs of small businesses in their jurisdiction in determining whether to impose additional standards. For example, jurisdictions may impose lower rates or limits on product types offered as appropriate

⁴² Lenders and borrowers may negotiate transaction terms as long as they are within the parameters established by these minimum standards, any additional requirements of the jurisdiction, and any applicable federal requirements.

to achieve the purposes of the program. State regulatory requirements may also apply and result in additional standards, such as lower rates or limits on permissible terms.

- *Rate cap.* The interest rate for each individual loan, at the time of obligation and throughout the term of the loan, may not exceed the National Credit Union Administration’s (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board.⁴³ The NCUA’s permissible interest rate ceiling supports its mission to protect credit unions and its consumers. In choosing to adopt the NCUA interest rate ceiling, Treasury aims to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them.
- *Exclusion of certain features.* SSBCI-supported transactions may not include any of the following: (1) confessions of judgment;⁴⁴ (2) prepayment or “double-dipping” fees;⁴⁵ or (3) upfront fees or charges paid by the small business, excluding fees to the program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000. Contract clauses requiring confessions of judgment often take away small business borrowers’ legal defenses without any due process and, thus, tend to be harmful to these borrowers. Mechanisms of prepayment and “double-dipping” fees are often used by creditors to hide costs to borrowers and charge fees that can be detrimental to the borrower. By disallowing these mechanisms, Treasury aims to ensure greater transparency for small business borrowers and to ensure that small businesses that participate in SSBCI receive loans that are economically beneficial to them. Treasury’s establishment of the cap on upfront fees or charges also furthers these aims. The 2 percent cap on these fees for loans greater than \$25,000 is based on the SBA’s 2 percent limit on loan closing fees pursuant to 13 C.F.R. § 107.860(c). The \$500 cap on these fees for loans under \$25,000 is reasonable because the fixed underwriting costs per loan often exceed 2 percent of the loan amount for loans under \$25,000. Setting the cap at \$500 for all loan amounts under \$25,000 would likely facilitate lending from financial institutions to very small businesses that need a small loan.

g. Disclosure of Terms

SSBCI-supported transactions must include disclosure by the lender or investor of all key terms in an easy-to understand manner. Such disclosures should include, for example, the loan or investment amount; payment obligation and schedule; any terms giving the lender or investor

⁴³ National Credit Union Administration, Letter to Federal Credit Unions, “Permissible Loan Interest Rate Ceiling Extended,” August 2021. “At the time of obligation” means at the time the loan is made. For example, if the SSBCI-supported loan has a variable interest rate, the interest rate at any point during the life of the loan cannot exceed the NCUA’s interest rate ceiling in effect at the time the loan was made. Any change in the NCUA’s interest rate ceiling after a SSBCI-supported loan is made does not impact the loan.

⁴⁴ A confession of judgment is usually a contractual clause in which the debtor agrees to allow a creditor, upon the nonoccurrence of a payment, to obtain a judgment against the debtor, often without advanced notice or a hearing.

⁴⁵ “Double dipping” occurs when a lender issues new credit to refinance prior credit without forgiving a portion of the fee already paid and results in the borrower paying a fee on top of a fee.

control over the borrower's or investee's cash balances, cash flows or ownership; any conversion rights and future rights to purchase equity; and any fees or extra costs. This minimum standard applies across all SSBCI programs; however, these standards do not supersede disclosure requirements that may apply under other applicable law. All applicable federal and state securities and lending disclosure laws, rules, and regulations continue to apply.

Section X. Reporting

For reporting purposes, SSBCI capital funds are not considered federal financial assistance. The SSBCI statute, 12 U.S.C. § 5702(c)(5), specifically states that capital funds transferred to jurisdictions are not considered federal financial assistance for the purposes of 31 U.S.C. subtitle V. Funds given to provide technical assistance, however, are considered federal financial assistance, and therefore the related reporting requirements, which will be described in the forthcoming technical assistance guidance, will apply to those funds. Treasury has issued reporting requirements related to the demographics of owners of small business that participate in an SSBCI capital or technical assistance program.⁴⁶

Participating jurisdictions are required to submit the following reports to Treasury. Treasury may make information from the reports public. If Treasury decides to make these reports public, Treasury will withhold information that appears to be personally identifiable information (PII), sensitive information such as commercial or financial information about small businesses, or information that involves privacy, security, and proprietary business interests. Treasury will work with jurisdictions to seek to protect the confidentiality of such information.

- *Quarterly reports.* Within 30 days after the end of each quarterly reporting period, the jurisdiction will be required to deliver to Treasury a quarterly report describing the use of SSBCI funds for each approved program on both a quarterly and a cumulative basis, including the total amount of SSBCI funds used for direct and indirect administrative costs, the total amount of SSBCI funds used, the amount of program income generated, and the amount of charge-offs against the federal contributions to the reserve funds set aside for any approved capital program. Additionally, the jurisdiction will identify the contracted entities and amounts of SSBCI funds transferred in the period; the aggregated amount of SSBCI funds deployed by the jurisdiction or contracted entities to support loans to or investments in eligible small businesses; and the aggregate amount of SSBCI funds deployed for allocations related to SEDI-owned businesses and VSBs.
- *Annual reports.* By March 31 of each year, beginning March 31, 2023, the participating jurisdiction will be required to submit to Treasury an annual report for the prior calendar year. This annual report will be required to contain transaction-level data for each loan or investment, including small business characteristics, made with SSBCI funds for that year, and information on subsequent private financing for OCSP loans and investments

⁴⁶ SSBCI Capital Program Reporting Guidance is available at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbc>; State Small Business Credit Initiative; Demographics-Related Reporting Requirements, Department of the Treasury, 87 Federal Register 13628 (March 10, 2022).

made in prior years when required by the SSBCI Allocation Agreement. The annual report will also be required to provide information on any qualifying loan or swap funding facility, if applicable.

- *Performance results.* A summary of the performance results of the participating jurisdiction's allocation is to be submitted with the participating jurisdiction's final annual report.

Section XI. Administrative Costs – 12 U.S.C. § 5702(c)(3)(C)-(D)

SSBCI administrative costs are defined and governed by the Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E. The Uniform Cost Principles contain criteria that must be used to establish chargeable administrative costs and specific information on allowable costs in various cost categories. Administrative costs are capped by statute (see 12 U.S.C. § 5702(c)(3)(C)-(D)). Specifically, for the first tranche, the administrative costs are not to exceed 5 percent of allocated funds, and for the second or third tranche, the administrative costs are not to exceed 3 percent of allocated funds for the respective tranche.

Section XII. Un-enrollment – 12 U.S.C. § 5702(c)(1)(C)

a. Requesting Approval to Replenish and Un-enroll

A participating jurisdiction may wish to un-enroll a particular transaction or use of administrative expenses from its SSBCI program account if (1) the jurisdiction or Treasury identifies a potentially noncompliant use of funds; or (2) the Treasury Office of the Inspector General (OIG) identifies an instance of noncompliance or misuse not characterized as reckless or intentional.

If Treasury identifies a potentially noncompliant use of funds, it will assess relevant facts and applicable program requirements, including these guidelines, the Allocation Agreement, and the National Standards for Compliance and Oversight. The jurisdiction will be afforded an opportunity to provide Treasury additional information that will be used to determine whether a violation of the Allocation Agreement or other program requirements has occurred. The jurisdiction will be given at least 30 days to supply additional information.

The SSBCI statute also requires OIG to audit participating jurisdictions' use of allocated federal funds and states that under the agreement between Treasury and a participating jurisdiction, Treasury "shall recoup any allocated Federal funds transferred to the participating [jurisdiction] if the results of the audit include a finding that there was an intentional or reckless misuse of transferred funds by the [jurisdiction]."⁴⁷

If Treasury determines that SSBCI funds have been used for an impermissible purpose, Treasury may also allow the jurisdiction to replenish its SSBCI program account in the amount

⁴⁷ 12 U.S.C. § 5702(c)(1)(C)(ii).

of the funds found to be misused. In such a case, Treasury may allow the jurisdiction to un-enroll the loan or investment or remove the disallowed administrative expenses from the SSBCI account. Treasury may also exercise other remedies, including reducing the amount of future disbursements.

Treasury's written approval is needed for replenishment and un-enrollment. Note that Treasury's approval of any replenishment and un-enrollment does not preclude OIG from conducting its own review of potential noncompliance issues.

b. Documentation for the Replenishment of Loans and Investments

A jurisdiction must provide Treasury with a written description of each transaction and the justification for a proposed replenishment and un-enrollment. Treasury may provide the jurisdiction with written conditional approval. Once the jurisdiction has replenished its SSBCI program account, the jurisdiction must provide Treasury the following:

- A letter from the jurisdiction to the lender, investor, or third party involved in administration that informs such party that the transaction is no longer enrolled in the SSBCI program, and that SSBCI funds no longer support the transaction. For certain transactions, as determined by Treasury, the jurisdiction must provide evidence that the relevant contract is no longer valid or will not be honored using SSBCI funds;
- Accounting documentation evidencing that the SSBCI program account has been replenished; and
- A certification from the authorized jurisdiction official that explains the reason for un-enrollment of each transaction and states that the jurisdiction has undertaken all necessary actions and transactions to replenish the SSBCI program account.

Appendix 1: Summary of Substantive Revisions

October 7, 2022 Revisions:

- Updated to reflect revised deadlines and reference other SSBCI publications.
- Replaced the term “state” with “jurisdiction” when referring to the full range of SSBCI participants.
- Included a brief description of named OCSPs that are frequently included in SSBCI capital program applications.
- Clarified that certain references to “venture capital programs” includes equity programs other than those involving venture capital funds.
- Defined “venture capital fund.”
- Incorporated loan guarantees as an example of “expended funds” for purposes of SSBCI disbursements.
- Conformed to the interim final rule “State Small Business Credit Initiative; Demographics-Related Reporting Requirements,” Department of the Treasury, 87 Federal Register 13628 (March 10, 2022).
- Provided guidance on CDFI Investment Areas.
- Conformed to the certifications set forth in SSBCI Capital Program Application and the Capital Program Sample Certifications.
- Updated the list of example documents and certifications jurisdictions may use to determine adequacy of a financial institution’s lending experience and financial and managerial capacity.
- Clarified the guidance regarding passive real estate as a business purpose.
- Clarified the types of business ownership purchases that qualify for SSBCI support.
- Clarified that all CDFI relending transactions must comply with all SSBCI program requirements.
- Clarified that a borrower’s or investee’s own funds do not count towards the 20 percent capital at risk threshold.
- Explained the approach for evaluating capital at risk for programs that combine certain lender and debt investor characteristics.
- Clarified that the restriction on extending support to businesses with more than 750 employees applies to investees as well as borrowers.
- Clarified that the \$5 million or less loan transaction target applies to investments as well as loans and that it is calculated consistently with the \$20 million transaction restriction.
- Revised the definition of an “SSBCI insider.”
- Clarified what entities are permitted for payments for services to portfolio companies, consistent with the revised “venture capital fund” definition.
- Clarified the reporting requirements applicable to equity/venture capital programs.
- Clarified that 90 percent of a participating jurisdiction’s allocation must be used to support businesses located (rather than headquartered) in the jurisdiction.
- Clarified that the rate cap requirement applies throughout the term of the loan (rather than only at origination).
- Removed the SF-425 from list of reporting requirements.
- Clarified that the administrative cost caps only apply to allocated funds (and not to program

income).

U.S. Department of the Treasury
State Small Business Credit Initiative (SSBCI)

Frequently Asked Questions

Updated September 27, 2022

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Note: The date listed after each question indicates the date such frequently asked question (FAQ) was added or most recently amended.

GENERAL

1. What are the upcoming SSBCI Capital Program and Technical Assistance (TA) Grant Program deadlines? [3/2/2022, updated 6/22/2022 and 9/27/2022]

- October 31, 2022 at 11:59 pm Eastern Time: Deadline for Tribal governments to initiate and submit their complete SSBCI capital applications. To participate in the SSBCI program, Tribal governments were required to submit a Notice of Intent (NOI) to Treasury by December 11, 2021. A list of Tribal governments that submitted an NOI by this deadline can be found at <https://home.treasury.gov/system/files/136/Tribal-Government-NOI-Submissions.pdf>.
- October 14, 2022 at 11:59 pm Eastern Time: Deadline for states, the District of Columbia, and territories to submit their TA Grant Program applications. The TA Grant Program application template can be found at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci>.
- December 9, 2022 at 11:59 pm Eastern Time: Deadline for Tribal governments to submit their TA Grant Program applications. The TA Grant Program application template can be found at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci>.

2. What is the process for application approval, and when will applications be reviewed? [12/15/2021, updated 6/22/2022]

An application for SSBCI Capital Program funding is not a competitive award process. Treasury will approve applications that satisfy the requirements under the SSBCI statute, Capital Program Policy Guidelines, and all other SSBCI regulations and guidance, including FAQs. To expedite processing, applicants should make every effort to ensure that their applications include all applicable supporting documentation. Treasury will review complete applications in the order in which they are received.

3. Removed on 3/2/2022.

4. How may a jurisdiction amend its programs after Treasury's approval of its application? [12/15/2021, updated 6/22/2022]

For the SSBCI Capital Program, after a jurisdiction's application is approved, the jurisdiction is permitted to submit a request to modify its programming due to a change in the condition (financial or otherwise) or operations of the jurisdiction or a desire to create new programming (modification request). Approval from Treasury in the form of a written amendment to the Allocation Agreement will be required before any such modification may be implemented. A modification request is not considered to be approved until both the jurisdiction's authorized representative and Treasury have executed an amendment to the Allocation Agreement (which will be prepared by Treasury).

**5. When will the SSBCI Technical Assistance Program guidance be published?
[12/15/2021, updated 6/22/2022]**

The SSBCI TA Grant Program Guidelines for the portion of technical assistance funding that will be available directly to eligible jurisdictions were published on April 28, 2022.

The TA Grant Program Guidelines are available on the SSBCI website at

<https://home.treasury.gov/system/files/136/SSBCI-Technical-Assistance-Guidelines-April-2022.pdf>. Treasury intends to publish FAQs for the TA Grant Program.

6. Can a jurisdiction use the same letter of designation for its SSBCI Capital Program application and its SSBCI TA Grant Program application? [9/27/2022]

Yes. Both designations can be in one letter of designation if the letter makes it clear that (1) authority is being designated for both the SSBCI Capital Program and the SSBCI TA Grant Program and (2) all requirements for each designation (as described in the respective applications) are met.

CAPITAL PROGRAM

The following FAQs provide additional guidance regarding the SSBCI Capital Program Policy Guidelines published on November 10, 2021. The questions are categorized by the relevant section of the Capital Program Policy Guidelines.

Section III.b, Main Capital Allocation – Tranching and Deployment

1. Where can jurisdictions deposit and maintain disbursements of allocated funds under the Capital Program? [8/15/2022]

Section 2.3 (“Cash Depositories”) of the Allocation Agreement requires that jurisdictions deposit and maintain disbursements of allocated funds in U.S. government-insured interest-bearing accounts whenever possible.

Under this provision, jurisdictions may invest amounts that would exceed applicable deposit insurance limits in cash and cash equivalents. Cash equivalents are short-term, highly liquid investments that are readily convertible to known amounts of cash and have original maturities of three months or less, such as Treasury bills, commercial paper, and certificates of deposit.

In deciding how to maintain allocated funds, jurisdictions should also consider: (1) the requirement that the jurisdiction be fully positioned to act on providing the kind of credit or equity support that the jurisdiction’s approved program was established to provide (see section 3.4 of the Allocation Agreement); and (2) that interest earned on SSBCI funds not invested or lent to a business counts as program income (see section 3.3 of the Allocation Agreement and section III of the Capital Program Reporting Guidance).

2. What requirements apply to an entity that implements an SSBCI program if that entity does not contract directly with a jurisdiction or its implementing entity? [9/27/2022]

Under 12 U.S.C. § 5703(c), a jurisdiction may be approved for participation in the SSBCI program if it “has contractual arrangements for the implementation and administration of [its] program with . . . an authorized agent of, or entity supervised by, the [jurisdiction], including for-profit and not-for-profit entities.”

Section 3.1 of the Allocation Agreement requires a participating jurisdiction to cause any entities with which it designates or contracts to implement approved programs, including its implementing entity and contracted entities, to comply with the SSBCI statute and Treasury’s SSBCI regulations, guidance, and other requirements.

When a jurisdiction designates an entity to implement an SSBCI capital program, Treasury encourages the jurisdiction or its implementing entity to contract directly with that entity whenever feasible. However, a jurisdiction may indirectly contract with an entity to implement SSBCI capital programs; for example, some states may have legal requirements for the implementing entity to contract with a third party, which then subcontracts with the entity designated to implement an SSBCI capital program. In such cases, section 3.1 of the Allocation Agreement requires the jurisdiction to cause the subcontracted entity to comply with the SSBCI statute and Treasury’s SSBCI regulations, guidance, and other requirements.

Jurisdictions should report the activity of the subcontracted entity as if it were a “contracted entity” under the Capital Program Report Guidance.

Section IV, SEDI-Owned Business Allocations

1. Must eligible jurisdictions establish separate programs for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses)? [3/2/2022]

Eligible jurisdictions are not required to establish separate programs for SEDI-owned businesses. However, eligible jurisdictions must maintain records of the total amount of their SSBCI funds expended for SEDI-owned businesses.

2. How did Treasury identify Community Development Financial Institution (CDFI) Investment Areas, defined in 12 C.F.R. § 1805.201(b)(3)(ii), for purposes of determining the preliminary allocation amounts for the \$1.5 billion SEDI allocation and the initial eligible amounts for the \$1.0 billion SEDI incentive allocation? [3/2/2022]

To determine the amounts in the table with preliminary allocation amounts and initial eligible amounts that Treasury published on its website,¹ Treasury generally used the CDFI Fund’s list of

¹ The table can be found at <https://home.treasury.gov/system/files/256/Updated-Preliminary-Allocations-Table-Nov-2021.pdf>.

Investment Areas that was available in November 2021.² With respect to American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, Treasury has determined that these territories in their entirety constitute CDFI Investment Areas.

3. How does Treasury identify CDFI Investment Areas for purposes of the “expended for” requirement for the \$1.5 billion SEDI allocation and for purposes of qualifying for the initial eligible amounts under the \$1.0 billion SEDI incentive allocation? [3/2/2022]

For purposes of the “expended for” requirement for the \$1.5 billion SEDI allocation and for purposes of qualifying for the initial eligible amounts under the \$1.0 billion SEDI incentive allocation, for each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions. For example, if the CDFI list is updated during calendar year 2022, the previously issued list will be used until December 31, 2022. Treasury will use the updated list beginning on January 1, 2023. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent.

For each transaction, whether the relevant location is in a CDFI Investment Area must be determined immediately before the consummation of the relevant loan, investment, or other credit or equity support-related transaction, at the same time that ownership and control is assessed. A map of CDFI Investment Areas for purposes of SSBCI is available at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>.

4. What point in time is used for the determination of whether the ownership and control of a business qualifies the business as a SEDI-owned business? [3/2/2022]

For each business that receives a loan, investment, or other credit or equity support under the SSBCI, the determination of whether a business is a SEDI-owned business must be based on the ownership and control of the business immediately before the consummation of such transaction.

5. What type of documentation is required to demonstrate that the SSBCI funds have been expended for SEDI-owned businesses? [3/2/2022]

SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and qualifying for funding under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to

² The CDFI Fund’s list of investment areas can be found at <https://www.cdfifund.gov/documents/geographic-reports>.

any of the four groups of businesses set forth in Section IV.a of the Capital Program Policy Guidelines.

Certification is required with regard to groups (1) to (3). In the Capital Program Policy Guidelines, Treasury stated that group (3) is intended to cover a business taking out a loan or investment to build a location in a CDFI Investment Area in the future and that a jurisdiction may reasonably identify businesses located in CDFI Investment Areas in group (4) based on businesses' addresses from the relevant loan, investment, and credit or equity support applications without additional certification. For group (3), Treasury now expands that group to include businesses that take out a loan or make an investment to open or operate a location in a CDFI Investment Area in the future.

For groups (1) to (3), eligible jurisdictions must provide businesses with a form of certification intended to determine the SEDI-owned business status. The certification should be signed by an authorized representative of the business. Businesses must be permitted to identify all the categories in groups (1) to (3) that apply, including all of the subcategories in group (1) that apply. For groups (2) and (3), the certification form must include the address(es) of the residence(s) or location(s) located in CDFI Investment Areas. Treasury will provide a sample certification form that jurisdictions may use for this purpose. For group (1), Treasury will not require verification or documentation other than the self-certification.

6. How was an eligible jurisdiction's initial eligible amount of SEDI incentive funding calculated? [3/2/2022]

As described in Section IV.b of the Capital Program Policy Guidelines, the total of all initial eligible amounts is \$800 million. Of this amount, \$59 million is available to Tribal governments, in proportion to Tribal governments' main capital allocation as a percentage of the main capital allocation for states, the District of Columbia, territories, and Tribal governments. Each Tribal government's initial eligible amount was calculated as described in the Allocation to Tribal Governments, available at <https://home.treasury.gov/system/files/256/Updated-Tribal-Methodology-document-Nov-2021.pdf>.

For other eligible jurisdictions, each jurisdiction's initial eligible amount was calculated as the remaining \$741 million multiplied by the sum of the jurisdiction's population residing in CDFI Investment Areas³ divided by the total population residing in CDFI Investment Areas in all eligible jurisdictions, excluding Tribal governments. These initial eligible amounts are available at <https://home.treasury.gov/system/files/256/Updated-Preliminary-Allocations-Table-Nov-2021.pdf>.

7. How is an eligible jurisdiction's SEDI Objective calculated? [3/2/2022]

For states, the District of Columbia, and territories, the SEDI Objective equals the percentage of the population of the eligible jurisdiction that are residents in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii), divided by the total population of the jurisdiction. These

³ For an explanation of how Treasury identifies CDFI Investment Areas, see FAQ 2 above in this section.

jurisdictions' SEDI Objectives are posted on Treasury's website at <https://home.treasury.gov/system/files/256/SEDI-Objectives-03-02-22.pdf>. For Tribal governments, the SEDI Objective is 100 percent.

8. Why is the SEDI Objective important for eligible jurisdictions? [3/2/2022]

The SEDI Objective establishes a target percentage of the capital allocations under 12 U.S.C. § 5702 that an eligible jurisdiction should strive to deploy to meet the needs of SEDI-owned businesses in the jurisdiction. It provides a benchmark for achieving robust support for deploying capital to meet the needs of SEDI-owned businesses.

9. How can an eligible jurisdiction receive some or all of its initial eligible amount of SEDI incentive funding, and how is this related to an eligible jurisdiction's SEDI Objective? [3/2/2022]

As described in Section IV.b of the Capital Program Policy Guidelines, for an eligible jurisdiction to receive part or all of its initial eligible amount of SEDI incentive funding for each of the second and third tranches of main capital, the jurisdiction must certify to Treasury that it has deployed 80 percent of its prior tranche of SSBCI funds. Treasury will then determine the eligible jurisdiction's success in meeting its SEDI Objective with a multi-step calculation.

First, Treasury will calculate the percentage of funds the jurisdiction has expended (not transferred or obligated) for SEDI-owned businesses since the jurisdiction's previous disbursement of capital. We refer to this percentage as the "percentage of funds expended for SEDI-owned businesses."

Treasury will then measure the percentage of the jurisdiction's SEDI Objective that the jurisdiction has achieved. That calculation is as follows:

SEDI Objective Achieved =

$$\frac{\text{(Percentage of funds expended for SEDI-owned businesses)}}{\text{(SEDI Objective)}}$$

Finally, Treasury will use the calculated SEDI Objective Achieved to calculate the jurisdiction's "SEDI Incentive Disbursement Amount" as follows:

SEDI Incentive Disbursement Amount =

$$\text{SEDI Objective Achieved} * \left(\frac{\text{initial eligible amount}}{2} \right)$$

Following is an example of how the second tranche of an eligible jurisdiction's SEDI Incentive Disbursement Amount would be calculated. Assume the eligible jurisdiction has an initial eligible amount of SEDI incentive funding of \$22 million and a SEDI Objective of 40 percent. At the time of the second disbursement, \$11 million of the initial eligible amount (half of \$22 million) is available if the jurisdiction meets its target by expending 40 percent of its funds for SEDI-owned businesses. Assume the jurisdiction expended \$10 million of its first tranche of its total capital allocation, of which \$3 million (30 percent) was expended for SEDI-owned

businesses. Thus, the SEDI Objective Achieved is equal to 30 percent divided by 40 percent, or 75 percent. The jurisdiction would then receive a SEDI Incentive Disbursement Amount of \$8.25 million (75 percent of \$11,000,000).

Combining all these steps, the calculation is as follows:

SEDI Incentive Disbursement Amount =

$$\left(\frac{30\%}{40\%}\right) * \left(\frac{\$22,000,000.00}{2}\right) = .75 * \$11,000,000 = \mathbf{\$8,250,000}$$

Section VI.d, Approving States for Participation – Tribal Governments

1. For a group of Tribal governments that submit a joint application for SSBCI funding for a capital program to be implemented by a non-Tribal entity, can the non-Tribal entity sign and implement the Allocation Agreement on behalf of the group of Tribal governments? [6/22/2022]

The SSBCI statute provides that a “State” may participate in the SSBCI. The statute defines “State” to include “a Tribal government, or a group of Tribal governments that jointly apply for an allocation” (12 U.S.C. § 5701(10)) and permits Tribal governments to apply jointly (12 U.S.C. § 5702(b)(2)(C)). Section VI.d of the Capital Program Policy Guidelines provides general instructions on how Tribal governments may apply jointly.

As described in the Guidelines, Tribal governments may apply jointly through an organization or other Tribal government representative if each Tribal government applying jointly authorizes the organization or other Tribal government representative to represent the Tribal government for purposes of SSBCI. The Guidelines and Section 5.1 of the capital program application provide additional information on requirements for joint applications.

If a joint application is approved, a non-Tribal entity that has authority to act on behalf of each of the Tribal governments that are jointly applying may sign an Allocation Agreement on behalf of that group of Tribal governments. However, consistent with the statutory requirement that the participating entity is the “group of Tribal governments” – and not a third party – the group of Tribal governments is considered the “Participating Jurisdiction” as that term is used in the Allocation Agreement.

Article V of the Allocation Agreement sets out Treasury’s remedies for events of default under the Allocation Agreement. Section 5.6 of the Allocation Agreement and Section XII of the Guidelines describe the process for un-enrollment of transactions for noncompliant use of funds. Treasury encourages Tribal governments to consider these potential remedies and circumstances as they establish terms under agreements with a non-Tribal entity responsible for implementing an SSBCI capital program. Tribal governments may wish to clearly specify in their agreements with the non-Tribal entity what happens in the event of any of the situations contemplated by Article V of the Allocation Agreement or Section XII of the Guidelines.

If Tribal governments apply jointly using a structure other than designating a non-Tribal entity as their joint implementing entity, Treasury will evaluate those applications based on their structure and may issue additional guidance. Tribal governments considering other structures are encouraged to contact Treasury before submitting an application to discuss their proposed models.

Section VII.f (applicable to CAPs) and Section VIII.f (applicable to OCSPs) – Lender Assurances: Refinancing and New Extensions of Credit – 12 U.S.C. § 5704(e)(7)(A)(ii)

- 1. Can a lender use SSBCI Funds to refinance a pre-existing debt made by another non-affiliated financial institution if the loan documents for the pre-existing debt do not disclose an annual percentage rate (APR)? What can a lender do to fulfill the requirement that the new loan must result in a 30 percent reduction in the fee-adjusted APR for the term of the new debt? [9/27/2022]**

The requirements under “Lender Assurances: Refinancing and New Extensions of Credit” in Section VII.f of the Capital Program Policy Guidelines provide that a lender may refinance a borrower’s existing loan, line of credit, extension of credit, or other debt originally made by another, non-affiliated financial institution only if certain conditions are met, including that “[t]he transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products.”

A lender can satisfy this requirement if the lender is able to estimate in good faith the existing debt’s APR and to document that the APR on the new, refinanced debt meets the APR reduction requirement based on that estimate. For example, a lender may estimate an APR using the existing loan’s interest rate, administrative fees (to the extent known), principal amount, and term.

If the lender calculates the existing debt’s APR in such circumstances, the lender must retain records of its APR calculation, including the methodology and numerical inputs used to calculate the APR of the existing debt and of the new debt, and be able to show that the methodology is standard in the lending industry, appropriate based on the circumstances, and applied consistently for borrowers in similar circumstances.

Section VIII.a, Approving State OCSPs – In General

- 1. The SSBCI Capital Program Policy Guidelines treat OCSPs involving credit/debt differently from equity/venture capital OCSPs, in certain circumstances. How will SSBCI evaluate proposed OCSPs where the investment structure has characteristics of both types of OCSPs? [6/22/2022]**

Following is a description of how Treasury will apply the SSBCI Capital Program Policy Guidelines to two types of investments that have characteristics of OCSPs involving credit/debt and equity/venture capital OCSPs. If jurisdictions propose programs with other characteristics,

Treasury intends to evaluate those programs based on their structure and may provide further guidance.

OCSPs Using Certain Convertible Debt Instruments

Certain proposed SSBCI programs may seek to use SSBCI funds to make investments in businesses using convertible debt instruments that automatically convert into the issuer's capital stock upon the occurrence of the issuer's next priced financing. Consistent with footnote 34 of the Capital Program Policy Guidelines, Treasury intends to evaluate programs that use these instruments under the equity/venture capital OCSP standards in the Guidelines. For reporting purposes, these investments should be treated as equity instruments (see the "convertible debt" and "convertible note" data elements in Table 9 of the SSBCI Capital Program Reporting Guidance).

Debt/Equity Hybrid OCSPs

Certain proposed SSBCI programs may seek to use SSBCI funds to provide debt financing to a small business or venture capital fund in a manner that satisfies two characteristics:

- The SSBCI-supported investment is made by a jurisdiction or jurisdiction-affiliated entity, which is an entity governed by the jurisdiction, and occurs alongside new private capital in the form of an equity investment.
- The SSBCI-supported investment is structured as a debt instrument that has equity-like characteristics (e.g., profit sharing, interest contingent on revenues).

Treasury refers to programs that meet all of the above characteristics as "debt/equity hybrid OCSPs." Treasury intends to evaluate these programs under the equity/venture capital OCSP standards in the Capital Program Policy Guidelines, with the exception of the standard for lender or investor capital at risk (Section VIII.d of the Guidelines). The structure of debt/equity hybrid OCSPs is meaningfully different from the traditional case where an SSBCI investment takes the form of an equity investment and therefore lacks the protections generally associated with a debt instrument, such as rights to scheduled payments and seniority in cash flow rights. Thus, with respect to the lender or investor capital at risk requirement, the standard applicable to debt investors that originate loans will be applicable to a debt/equity hybrid OCSP. For debt/equity hybrid OCSPs, the 1:1 financing requirement described in the Capital Program Policy Guidelines is met at the transaction level if the loan is made directly to a small business, or is met at the fund level if the loan is made to a venture capital fund.

For reporting purposes, debt/equity hybrid OCSPs should be treated as equity programs and should be classified as "Hybrid – other support programs" in Table 3 of the Capital Program Reporting Guidance.

2. Can a jurisdiction make SSBCI-supported investments using a "side car" fund? [6/22/2022]

A side car fund is a fund organized to allow a jurisdiction to participate in the investments of a venture capital fund (the "main fund"), while enabling the jurisdiction not to participate in

certain investments of the main fund that may be prohibited by applicable law or SSBCI program requirements. A side car fund may qualify for SSBCI-supported investment under the Capital Program Policy Guidelines to the same extent as an investment in a main fund if it satisfies the conditions described below, which are intended to ensure that the structure of the investment in the side car is consistent with the main fund in material respects relevant to the SSBCI program requirements.

The side car fund terms should be governed by a written agreement between the SSBCI investor and the general partner of the main fund. The investment must be on substantially similar economic and governance terms as the investments by limited partners in the main fund, except for deviations that are required to address SSBCI program requirements or other legal requirements (but not to achieve a more advantageous economic arrangement for the general partner, a limited partner, or the SSBCI investor).

Except for deviations required to address SSBCI program requirements or other legal requirements, the main fund and the side car fund must jointly participate in each portfolio company investment and on substantially similar terms in proportion to their respective amounts of committed capital. The side car fund must not sell distribute, or otherwise transfer portfolio company securities unless the main fund is engaging or has engaged in a proportionate sale, distribution, or transfer of corresponding securities on substantially similar terms.

If a side car fund complies with these terms, the capital commitments made by the investors in the side car should be treated the same as if they were made in the main fund, and the OCSP 1:1 financing ratio described in Section VIII.c of the Capital Program Policy Guidelines will be calculated as if the commitments were made in the main fund.

Section VIII.c, Approving State OCSPs – 1:1 Financing

1. As a part of the application, eligible jurisdictions must describe how their Other Credit Support Programs (OCSPs) will in fact “cause and result in” private financing. How can an eligible jurisdiction meet this requirement when it plans to work with venture capital funds? [12/15/2021]

As required by 12 U.S.C. § 5705(c)(1), each OCSP must “demonstrate that, at a minimum, \$1 of public investment by the [jurisdiction’s] program will cause and result in \$1 of new private credit.” Each eligible jurisdiction must describe how their OCSPs will “cause and result in” private financing in the SSBCI Capital Program application. For an eligible jurisdiction that plans to work with a venture capital fund, the jurisdiction might, for example, specify that the OCSP meets the requirement because the jurisdiction’s participation in the fund serves as an anchor investment and thus sends a strong signal regarding the merits and risk profile of the fund that encourages other investors to invest in the fund. The jurisdiction might also specify, for instance, that the OCSP has a policy that any contract with a venture capital fund will ensure that the SSBCI investment is catalytic to private financing, based on the fund’s age, size, or experience. An example of a situation where the SSBCI investment might not be catalytic is if it occurs after the venture capital fund’s initial close; if this is the case, then the jurisdiction’s explanation for “cause and result” in the application may address this circumstance.

2. For OCSPs in which the jurisdiction invests in venture capital funds, how is the 1:1 financing requirement measured? [12/15/2021]

The OCSP 1:1 financing requirement must be met at the venture capital fund level. Specifically, private investment in the specific fund must be equal to or greater than the SSBCI investment in that fund. The private investment should constitute “private financing,” as defined in the Capital Program Policy Guidelines in Section VIII.c on 1:1 financing.

Section VIII.d, Approving State OCSPs – Lender or Investor Capital at Risk

1. What is the difference between a “lender” and a “debt investor” in SSBCI? [12/15/2021]

An entity can be a lender or debt investor depending on whether the risk of the loan transactions is borne on a transaction-by-transaction basis or in a pooled manner.

Lenders are entities that bear the risk of loan transactions on a transaction-by-transaction basis. Under SSBCI capital-at-risk guidelines, lenders must bear 20 percent or more of the risk of loss in any loan transaction and must retain at least 5 percent of the risk of loss of the transaction if they transfer the ownership or risk of the lending transactions.

Examples of lenders include, but are not limited to:

- An entity, such as a financial institution, that originates a loan that is:
 - supported by an SSBCI guarantee fund,
 - supported by SSBCI participation in the loan, or
 - supported by SSBCI collateral support or other credit enhancement, for which the entity bears 20 percent or more of the risk of loss of that transaction. For instance, consider a financial institution that makes a \$100 loan, of which the SSBCI program purchases a \$20 participation with no seniority rights. After several years, the loan defaults, and total losses on the loan are \$30, after accounting for amounts already repaid and any recoveries. In this scenario, the SSBCI funds would absorb \$6 in losses, and the financial institution would absorb \$24. This financial institution would be a lender under SSBCI capital-at-risk guidelines because the financial institution bore at least 20 percent of the risk of loss. As another example, consider a financial institution that makes a \$100 loan, of which the SSBCI program purchases a \$20 participation that is subordinate to the financial institution’s interest. After several years, the loan defaults, and total losses on the loan are \$30. In this case, the SSBCI funds would absorb the first \$20 in losses, because it is subordinate, and the lender would absorb the remaining \$10. This financial institution would also be a lender under SSBCI capital-at-risk guidelines because the financial institution bore at least 20 percent of the risk of loss; if the loan was a total loss (i.e., a loss of \$100), then the financial institution would have absorbed more than 20 percent (\$20) in losses.
- An entity that pools capital from the SSBCI investor and capital from private investors (e.g., loan funds) to make loans, but only if the pooling of capital does not result in the

pooling of the risk of the loan transactions. Rather, the contract governing payments to the SSBCI investor and private investors must specify that loss is borne on a transaction-by-transaction basis. For instance, consider a venture debt fund that makes 12 loans of \$100 each. Rather than specifying terms for payment to the fund's private investors based on the pool of losses, the contract specifies that each private investor bears the private investor's pro rata share of the 20 percent of the loss for each of the 12 loans and prohibits compensation for losses from future repayments. Assume that there are losses on 3 of the 12 loans, with losses of \$100, \$50, and \$80, respectively. In this case, each private investor would bear its pro rata share of 20 percent of the first loss (i.e., \$20), 20 percent of the second loss (i.e., \$10), and 20 percent of the third loss (i.e., \$16).

In contrast, debt investors are entities that bear the risk of loan transactions in a pooled manner. Under the SSBCI capital-at-risk guidelines, for debt investors that originate loans, the capital from private investors must be *pari passu* with, or junior to, the SSBCI capital in cash flow rights up to the repayment of the SSBCI investment. For debt investors that do not originate loans, the capital from private investors in the same risk layer as the SSBCI capital must be *pari passu* with, or junior to, the SSBCI investment in cash flow rights.

One example of a debt investor that originates loans is a loan fund originating loans, where the SSBCI investor and private investors participate in the fund and bear the risk of loan transactions on a pooled basis rather than on a transaction-by-transaction basis. In this case, the loan fund may distribute cash flow to its investors in a manner that is not based on losses related to each individual loan.

One example of a debt investor that does not originate loans is a special purpose vehicle (SPV) that securitizes loans obtained from an originating lender, where the SPV packages the loans into asset-backed securities in which an SSBCI investor and private investors invest. In this scenario, the investors bear the risk of loan transactions on a pooled basis, not based on losses related to individual loans held by the SPV.

2. Do lenders need to comply with the capital-at-risk requirement if they subsequently transfer the ownership or risk of the loan to another entity? [12/15/2021]

Lenders may transfer the ownership or risk of a loan to another entity, such as a debt investor. However, lenders must bear 20 percent or more of the risk of loss in each loan at origination and retain at least 5 percent of the risk of loss of each loan after any transfer. If a lender transfers the ownership or risk of a loan, the subsequent entity must comply with the capital-at-risk requirement.

For example, consider a community development financial institution (CDFI) that makes 120 loans and sells the loans to a special purpose vehicle (SPV) while maintaining 5 percent of the risk of loss of each of the 120 loans. The SPV issues two tranches of interests: a junior tranche held by both an SSBCI investor and private-capital investors in equal amounts and on a *pari passu* basis within this tranche, and a senior tranche held only by private-capital investors. In this example, both the CDFI and the SPV are complying with the capital-at-risk requirement.

3. If a lender hires one or more entities to provide services related to SSBCI-supported small business loans on the lender’s behalf, do these entities need to comply with the capital-at-risk requirement? [12/15/2021]

A lender may hire or contract with one or more entities, such as a community development financial institution (CDFI), to provide services, such as assisting a small business in applying for SSBCI-supported loans or servicing such loans, on behalf of the lender. In this scenario, if the hired entity acts on the lender’s behalf and the lender approves the loan and abides by the capital-at-risk requirement, then the hired entity is not considered a lender for purposes of this capital-at-risk requirement. However, if an entity (e.g., a CDFI) is acting separately and making and approving loans, then it must abide by the capital-at-risk requirements.

Section VIII.f, Approving State OCSPs – Loan/Investment Purpose Requirements and Prohibitions

1. Can Tribal governments use SSBCI Capital Program funds to provide investments, loans, or other credit or equity support to Tribal enterprises? [12/15/2021]

For purposes of the SSBCI, a “Tribal enterprise” is an entity: (1) that is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or (2) that is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns.

Tribal enterprises may use SSBCI Capital Program funds to provide investments, loans, or other credit or equity support to other Tribal enterprises if these transactions comply with the SSBCI statute, the Capital Program Policy Guidelines, all other SSBCI regulations and guidance, and the Tribe’s own conflict of interest policy.

Section VIII.i, Approving State OCSPs – Additional Guidance Regarding Equity/Venture Capital Programs

1. How can jurisdictions that contract with venture capital funds use the federal contribution to cover services to portfolio companies? [12/15/2021]

Venture capital funds offer a variety of services to their portfolio companies (i.e., the potential SSBCI investees). These services can include, for example, financial management, operational guidance, IT consulting, transaction consulting, and connecting portfolio companies to potential customers, investors, board members, and officers. These are services that the portfolio companies need to grow their businesses and vary depending on the portfolio company’s stage in the venture capital ecosystem. As these services to portfolio companies are a type of equity support, SSBCI funds, out of the federal contribution, may be used to pay for such support up to an annual average of 1.71 percent of the federal contribution to a venture capital fund over the life of the jurisdiction’s venture capital program.

In the agreement between a jurisdiction and a venture capital fund, the fund must be required to identify the services to be provided to portfolio companies and annually certify that these services were provided. The agreement between the fund and the portfolio companies should include disclosure of these services offered by the fund manager. Consistent with industry standards on payments of fees to cover these services to portfolio companies, the fund should reimburse the jurisdiction for payments of such services covered by SSBCI funds before returns on investment are paid to the general or limited partners.

2. What is the definition of a venture capital fund? [12/15/2021, updated 9/27/2022]

For purposes of SSBCI, a venture capital fund is an entity that meets the Securities and Exchange Commission's (SEC) definition of venture capital fund set out at 17 C.F.R. § 275.203(l)-1 as well as any entity that would meet that definition but for the form of the investment of SSBCI funds in the entity, e.g., via a debt instrument (in the latter case, this deviation from the regulatory definition may have implications for the ability of program participants to rely on the SEC's venture capital fund definition and any associated exemption from certain requirements under the Investment Advisers Act of 1940). For example, entities that receive SSBCI funding via a debt instrument in a debt/equity hybrid OCSP described in FAQ #1 under "Section VIII.a, Approving State OCSPs – In General," will qualify as a "venture capital fund" for purposes of SSBCI, so long as the entities otherwise meet the definition under 17 C.F.R. § 275.203(l)-1.

3. How is the "annual average" calculated for purposes of the limit of 1.71 percent of the federal contribution to a venture capital fund that is allowed to cover services to portfolio companies? [3/2/2022]

Funds from the federal contribution may be used to pay for such support services up to an annual average of 1.71 percent of the federal contribution to a venture capital fund over the life of the jurisdiction's venture capital program (referred to as the "1.71 percent allowance"). The "annual average" is calculated based on the average amount of the federal contribution that is used to cover services to portfolio companies over each year of the life of the venture capital fund, up to a maximum of ten years. Because the 1.71 percent allowance is an average, the fund may in some years use an amount of the federal contribution greater than 1.71 percent to cover services to portfolio companies, so long as in other years the amount used is less than 1.71 percent. Because the annual average is calculated over a period of up to ten years, the maximum expenditure on services to portfolio companies is 17.1 percent of the federal contribution (i.e., 1.71 percent x 10 years). If, however, a fund's life is less than ten years, the annual average for such fund must be calculated based only on the life of that fund. For example, if the life of a fund is only five years, the maximum allowance for such fund is 8.55 percent (i.e., 1.71 percent x 5 years). The percent of the federal contribution that may be used to cover the services to portfolio companies must be set forth in the contract between the SSBCI investor (i.e., the eligible jurisdiction or its contracted entity) and the venture capital fund. The contractual terms should not allow the expenditure to exceed the maximum allowance calculated based on the life of the venture capital fund.

4. In addition to the 1.71 percent allowance for services to portfolio companies, can a jurisdiction also use administrative cost funds for its equity/venture capital programs? [3/2/2022]

As described in Section XI of the Capital Program Policy Guidelines, administrative costs for the main capital allocation are capped at 5 percent of SSBCI funds for the first tranche and 3 percent for each of the second and third tranches. The 1.71 percent allowance applies to the federal contribution, not the administrative cost funds. Jurisdictions may use their administrative cost funds for equity/venture capital programs, including venture capital fund operating expenses, subject to the Uniform Cost Principles in 2 C.F.R. Part 200 Subpart E.

5. What are the benefits of the “Incubation Funding” and “Early-Stage Investment Models”? [3/2/2022]

Under these models described in Section VIII.i of the Capital Program Policy Guidelines, jurisdictions may choose to offer private investors a call option. The call option allows private investors to buy the SSBCI shares or other securities, such as convertible notes, at cost or at a predetermined higher-than-cost multiple. This is possible because under the capital-at-risk standard for these models, the private capital must be *pari passu* with, or junior to, the SSBCI investment in cash flow rights only up to the repayment of the SSBCI investment. A call option that offers an at-cost buyout does so by offering a 1.0X call option for the private investor to acquire the SSBCI shares or other securities at a price per share equal to the amount of the investment. A jurisdiction may also benefit from investment gains by offering a higher-than-cost option (such as 1.5X or 2X).

Jurisdictions can use a call option to incentivize private investors that have experience and a track record in early-stage investing to provide capital alongside jurisdictions to reach underserved entrepreneurs or undertake high-risk opportunities. Furthermore, employing these models can help increase the provision of incubator-like services to early-stage businesses in that jurisdiction to accelerate their growth and decrease their likelihood of failure, fostering job creation and economic development in the jurisdiction.

6. How is the Early-Stage Investment Model different than the Incubation Funding Model? [3/2/2022]

These models are described in Section VIII.i of the Capital Program Policy Guidelines.

The Incubation Funding Model involves an investment program in which the jurisdiction contributes SSBCI capital to a fund. Any fund that provides investment capital to portfolio companies and meets all applicable SSBCI requirements (including the investment size limit, requirement to directly or indirectly provide incubator-like services to all companies in the fund’s portfolio, and the necessary experience and track record in early-stage investing) can qualify under the Incubation Funding Model. Examples of funds that may qualify include seed funds, venture capital funds, accelerators acting as funds, university technology investor office funds, impact investors, or angel structures raising fund-like structures such as angel groups, syndicates, or super-angel funds.

In contrast, the Early-Stage Investment Model involves a direct equity investment program where a jurisdiction's SSBCI funds are co-invested alongside private capital in each qualifying investment.

Under either model, the jurisdiction may offer a call option to the fund (in the Incubation Funding Model) or the private investors (in the Early-Stage Investment Model) to buy the SSBCI shares or other securities, such as convertible notes, at a predetermined price or multiple (greater than or equal to 1).

7. Under the Early-Stage Investment Model and the Incubation Funding Model, the fund or co-investor must have a history of providing “incubator-like services.” What are “incubator-like services”? [3/2/2022]

Incubator-like services are services that are provided to entrepreneurs in the very early stages of business development and are not typical services provided to portfolio companies by most venture capital funds. For example, incubator-like services might include a package of activities such as providing workspaces, networks, and feedback forums, potentially in shared spaces with other entrepreneurs; offering business training programs on accounting, financial statements, use of option pools, and financial projections; giving pre-product feedback on pitch construction, platform choice, engineering, and revenue model types; and providing training to early-stage companies on business formation and employment laws. Incubator-like services may include program-based services typically offered by accelerator programs that are fixed-term or cohort-based to capitalize on economies of scale and build entrepreneurial ecosystems. Incubator-like services may be provided by any entity qualified to perform such services and must be provided consistent with all applicable SSBCI requirements to satisfy the requirement under the Incubation Funding Model or Early-Stage Investment Model.

8. Is the fund or co-investor under the Incubation Funding or Early-Stage Investment Model, respectively, required to provide incubator-like services to startups? [3/2/2022]

A venture capital fund (in the Incubation Fund Model) or a co-investor (in the Early-Stage Investor Model) must provide incubator-like services to investee companies. However, these services may be provided either directly, by the venture capital fund or co-investor, or indirectly, through an incubator or another organization. Under the Incubation Funding Model, the available incubator-like services must be equally accessible to all portfolio companies.

9. What should jurisdictions consider in structuring the call option's price and duration under the Incubation Funding and Early-Stage Investment Models? [3/2/2022]

Under the Incubation Funding and Early-Stage Investment Models, the purpose of the call option to buy the SSBCI shares or other securities, such as convertible notes, is to incentivize private investors that are considering contributing capital to a fund with SSBCI capital, or to co-invest with SSBCI capital, to bear the economic risk of investing in early-stage companies, including start-ups that may need a longer horizon for realizing market or revenue opportunities. Treasury

encourages jurisdictions to consider how to use the option exercise price and duration (i.e., the time period during which the option may be exercised) to effectively create such incentives.

For example, an option duration of three to five years is, in many cases, sufficient to create an incentive for these private investors because the portfolio companies that are most likely to achieve success will have likely raised follow-on rounds of capital at higher valuations by that time, thereby providing the necessary information for the private investors to act, if desired, on the option. However, jurisdictions may also want to consider the sector focus of the fund in determining the option duration, as some sectors require more time for market realization.

Treasury also encourages jurisdictions to consider the incentives created when determining the call option's exercise price. Jurisdictions are not limited to offering the call option to buy the SSBCI shares or other securities, such as convertible notes, at cost. A call option that offers an at-cost buyout does so by offering a 1.0X call option, where 1.0X means that the price for exercising the option (i.e., purchasing the SSBCI shares) is 1.0 times the amount of the initial SSBCI investment. A jurisdiction may want to set a call option exercise price that would imply a return for the jurisdiction if the option is exercised; for example, a 1.5X call option or even higher option exercise price allows the jurisdiction to partake in the upside gains from the investment.

The various ways in which a jurisdiction can choose to structure the call option exercise price and duration can be combined to reflect the jurisdiction's sustainability objectives, the willingness of private investors to take risk, and the expected trigger events. For example, a jurisdiction could offer a 1.0X call option on the jurisdiction's SSBCI investment if the call option is exercised within three years, after which the option increases to 1.5X, and to 2.0X after the fifth anniversary.

10. Is the 1.71 percent allowance for services to portfolio companies in the context of venture capital funds available for debt funds? [9/27/2022]

Because the 1.71 percent allowance for services to portfolio companies is permissible only for funds that meet the definition of a "venture capital fund," debt funds are unlikely to qualify for the 1.71 percent allowance. As noted in FAQ # 2 above in this section, for purposes of SSBCI, a venture capital fund is an entity that meets the SEC's definition of venture capital fund set out at 17 C.F.R. § 275.203(l)-1 as well as any entity that would meet that definition but for the form of the investment of SSBCI funds in the entity. Under 17 C.F.R. § 275.203(l)-1(a)(2), to qualify as a venture capital fund, an entity is subject to certain limitations on its ability to acquire assets other than qualifying equity investments and short-term holdings. Debt funds are unlikely to meet this requirement.

11. Can the 1.71 percent allowance be used to provide services to a small business before the venture capital fund invests in any portfolio companies? [9/27/2022]

If a venture capital fund has not invested in any portfolio companies since the date of the first close of SSBCI capital, the fund must satisfy three criteria to use the 1.71 percent allowance

described in Capital Program Policy Guidelines Section VIII.i, “Additional Guidance Regarding Venture Capital Programs – Services to Portfolio Companies”:

- First, the fund may make payments using the 1.71 percent allowance only within 12 months after the date of the first close of SSBCI capital.
- Second, the fund’s payments using the 1.71 percent allowance before an investment in a portfolio company cannot exceed 3 percent of the federal contribution to the venture capital fund over the 12-month period after the date of the first close of SSBCI capital.
- Third, the fund’s payments must satisfy all the requirements related to the 1.71 percent allowance in the Capital Program Policy Guidelines and all other SSBCI rules and guidance, including FAQs.

The 1.71 percent allowance may be used only for services provided to potential portfolio companies related to the same venture capital fund to which the SSBCI capital will be contributed and cannot be used for services provided before an agreement to contribute SSBCI capital to the venture capital fund is executed. Consistent with industry standards, the venture capital fund should reimburse the jurisdiction for payments for such services before returns are paid to the general or limited partners.

12. What documentation standards apply to the 1.71 percent allowance? [9/27/2022]

As explained in the Capital Program Policy Guidelines, in the contractual agreement between a jurisdiction and a venture capital fund, the fund must be required to identify the services to be provided to portfolio companies and annually certify that these services were provided. The agreement between the venture capital fund and portfolio companies should include disclosure of these services offered by the fund manager.

To support its annual certification of services provided, the venture capital fund should maintain documentation of services provided in line with industry standards, such as periodic reports on portfolio companies provided to private capital limited partners. Jurisdictions should consider adopting best practices to monitor venture capital fund activities in line with industry standards, such as reviewing the venture capital fund’s documentation of services provided.

Section IX.c, Other SSBCI Program Requirements – In-State and Out-of-State Loans and Investments

1. Treasury requires each jurisdiction to use at least 90 percent of its SSBCI Capital Program funding for loans, investments, and other credit or equity support for small businesses headquartered in the jurisdiction. What types of transactions would qualify in this 90-percent funding category for Tribal governments? [12/15/2021]

For Tribal governments, the following types of transactions qualify for purposes of this 90 percent requirement (i.e., qualify as “in-jurisdiction transactions”):

- Transactions with businesses on Tribal lands, which include lands defined in 18 U.S.C. § 1151; Alaska Native regions established pursuant to the Alaska Native Claims

Settlement Act (43 U.S.C. § 1601 *et seq.*); and any land owned by a Tribal government in trust, fee, or restricted fee status.

- Transactions with businesses in states of the United States where the Tribe is physically located or within which the Tribe exercises jurisdiction.
- Transactions with Tribal enterprise-operated businesses, businesses owned by Tribal members, and businesses in states of the United States in which Tribal members reside. For example, a Tribe that is headquartered in Arizona may have most of its members in a town on the border of Nevada and Arizona. Because the Tribe exercises jurisdiction over its members in both states, it may invest in both states.

Tribal SSBCI program transactions that do not fall into the above categories do not qualify as in-jurisdiction transactions and thus are “out-of-jurisdiction transactions.” Up to 10 percent of a Tribal government’s SSBCI funding can be used for out-of-jurisdiction transactions, and for each out-of-jurisdiction transaction, a Tribal government must reasonably explain how the transaction benefits the Tribe’s economy. For example, the Tribal government may explain that the out-of-jurisdiction transaction may create or increase demand for products and services of businesses within the Tribe’s jurisdiction.

Additionally, regardless of whether the Tribal government’s OCSP will involve transactions in or out of the 90-percent funding category, the Tribal government should describe, as part of its SSBCI application, the expected benefits to the Tribe, Tribal businesses, and Tribal members from the OCSP. In the description, the Tribal government should focus on, but not limit its discussion to, the projected number and amount of SSBCI loans or investments closed through the OCSP; the number, types, and quality of jobs created; projected increases in tax revenues resulting through the OCSP; long-term economic benefits of the OCSP’s investments; and other expected benefits from the economic development objectives of the Tribal government. In accordance with 12 U.S.C. § 5705(d)(1), in determining whether an OCSP is eligible for SSBCI, Treasury must consider this information. In recognition of the differential tax status of Tribal enterprises and member businesses, a Tribe may describe how the tax revenue category is applicable or inapplicable for its respective jurisdiction. See Section VIII.g, Approving State OCSPs – Considerations for Approving OCSPs.

Section IX.f, Other SSBCI Program Requirements – Minimum National Customer Protection Standards

- 1. The Capital Program Policy Guidelines state that the interest rate for each SSBCI-supported loan, at the time of obligation, may not exceed the National Credit Union Administration’s (NCUA’s) interest rate ceiling for loans made by federal credit unions. As of what date is the interest rate cap determined? That is, what does “at the time of obligation” mean? [3/2/2022]**

“At the time of obligation” means at the time the loan is made. For example, if the SSBCI-supported loan has a variable interest rate, the interest rate at any point during the life of the loan cannot exceed the NCUA’s interest rate ceiling in effect at the time the loan was made. Any change in the NCUA’s interest rate ceiling after a SSBCI-supported loan is made does not impact the loan. That is, the interest rate on any loan made before a change in the NCUA’s

interest rate ceiling would continue to be capped by the rate ceiling at the time the loan was made, as opposed to being capped by the new rate ceiling. The interest rate on any loan made after the change, however, would be capped by the new rate ceiling rather than the prior rate ceiling.

TECHNCAL ASSISTANCE (TA) GRANT PROGRAM

Section III. Eligible Recipients, Beneficiaries, and TA Providers

1. Can a state participating in the TA Grant Program make a subaward to a political subdivision of that state? [9/21/2022]

Yes. Section III.c, “Eligible TA Providers,” of the TA Grant Program Guidelines specifies that a subrecipient may be an entity of the eligible recipient (e.g., a state entity). For purposes of the TA Grant Program, this includes a city or other entity that is a political subdivision of a state under applicable state law. Under section 3009(e)(1) of the SSBCI statute (12 U.S.C. § 5708(e)(1)), state entities, including political subdivisions, must carry out the state’s technical assistance plan by providing technical assistance to qualifying small businesses directly or contracted with legal, accounting, and financial advisory firms.

2. How does Treasury define a “legal, accounting, or financial advisory firm” for purposes of the TA Grant Program? [9/21/2022]

Section 3009(e) of the SSBCI statute (12 U.S.C. § 5708(e)(1)) specifies that a jurisdiction may provide technical assistance either directly or contracted with legal, accounting, and financial advisory firms. While these terms are not defined in the SSBCI statute, the statutory objective is to provide legal, accounting, and financial advisory services to qualifying small businesses. Thus, the determination of whether an entity is a legal, accounting, or financial advisory firm depends on the extent to which the entity provides legal, accounting, or financial advisory services as described in Section IV of the TA Grant Program Guidelines. In particular, entities must meet at least one of the following criteria:

- a. A primary purpose of the entity or a central part of the entity’s mission is to provide legal, accounting, and/or financial advisory services,
- b. The entity regularly markets or publicizes itself as providing legal, accounting, and/or financial advisory services, or
- c. At least 25% of the entity’s revenues or staff are dedicated to providing legal, accounting, and/or financial advisory services.

These entities may be either nonprofit or for-profit entities, as specified in Section III.c of the TA Grant Program Guidelines.

Recipients should maintain documentation evidencing their determination that each entity with which the recipient contracts to provide services under the TA Grant Program is a legal, accounting, or financial advisory firm. Treasury anticipates that forthcoming TA Grant Program Reporting Guidance will require each recipient to report on each TA provider with which it contracts to provide services under the TA Grant Program and report the recipient’s categorization of the entity as a legal, accounting, or financial advisory firm. In making these determinations, recipients may, but are not required to, require entities to self-certify that they meet the definition set out in this FAQ.

Section VIII. Award Administration Information

1. How will Treasury disburse TA Grant Program funds? Will fixed amount award procedures apply to TA Grant Program awards? [7/25/2022]

Funds for TA Grant Program awards that are \$250,000 or less will be disbursed in full at the time of award issuance. Fixed amount award procedures will apply to awards of \$250,000 or less. Fixed amount awards are defined at 2 C.F.R. § 200.1 and are designed to reduce some of the administrative burden applicable to federal awards while providing for accountability in the form of performance and results. TA Grant Program recipients with awards of \$250,000 or less will not be required to submit a budget and narrative justification with their application or request any post-award budget amendments. TA Grant Program recipients still will be required to submit all other application documents, including a TA plan describing performance goals and benchmarks, and all required reports.

Funds for TA Grant Program awards that exceed \$250,000 will be disbursed in thirds (33 percent, 33 percent, and 34 percent). Fixed amount award procedures will not apply to awards that exceed \$250,000.

U.S. Department of the Treasury
State Small Business Credit Initiative
Capital Program Reporting Guidance

Revised May 25, 2022¹

Section I. Overview

The American Rescue Plan Act of 2021 (ARPA) reauthorized and amended the Small Business Jobs Act of 2010, codified at 12 U.S.C. § 5701 et seq., to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the Department of the Treasury (Treasury) that was created to strengthen capital programs that support private financing to small businesses, including capital access programs (CAPs) and other credit support programs (OCSPs), of eligible jurisdictions (i.e., states, the District of Columbia, territories, Tribal governments, and eligible municipalities).

This Capital Program Reporting Guidance details the reporting and document retention requirements for jurisdictions that receive SSBCI funding (“participating jurisdictions”). Treasury will create an online portal that participating jurisdictions must use to submit reporting data. Treasury will provide more information about the submission format in the coming months. This guidance may be updated periodically. Guidance regarding information that must be submitted at the end of the SSBCI program will be issued in the future. Furthermore, to increase the quality and comparability of the demographic data collected, Treasury has published a sample demographic data collection form that we encourage SSBCI program providers to use.

Section II specifies the deadlines for participating jurisdictions to submit quarterly and annual reports. Section III sets forth definitions of terms used in this guidance. Sections IV and V provide details regarding the information to be reported in quarterly and annual reports, which will support SSBCI implementation, monitoring, and compliance, as well as the assessment of outcomes of SSBCI-supported investments and loans. Section VI specifies additional requirements related to record retention and the frequency of reporting.

Treasury may release public reports or data based on the information reported. In any public report or data, Treasury will, subject to applicable laws and regulations, withhold information that appears to be personally identifiable information (PII) and sensitive information such as commercial or financial information about businesses.

Each participating jurisdiction is responsible for the implementation of its SSBCI programs that have been approved by Treasury (“approved programs”) in accordance with applicable legal, regulatory, and program requirements, including those in the SSBCI statute and Treasury’s

¹ Capital Program Reporting Guidance was initially released on May 9, 2022. It was updated on May 25, 2022 to provide guidance on a required Privacy Notice and Privacy Act Statement, make technical corrections to Tables 1, 3, and 7, clarify that Social Security numbers should not be reported as business EINs, provide a Sample Form for Demographics-Related Data, and reflect Paperwork Reduction Act approval.

SSBCI regulations and guidance. Each participating jurisdiction must submit a certification, using the form in Appendix 1, with every quarterly or annual report, certifying that the information reported is accurate and that the approved programs of the participating jurisdiction are being implemented in accordance with applicable legal, regulatory, and compliance requirements.

Section II. Reporting Deadlines

a. Quarterly Reports

Each participating jurisdiction must submit to Treasury a quarterly report for the first full calendar quarter following the execution of its Allocation Agreement with Treasury and each quarter thereafter. Quarterly reports must be submitted within 30 days after the end of each quarterly reporting period (excluding the quarterly reporting period ending on the expiration date of the Allocation Agreement). Table 1 provides the submission deadlines for the specified reporting periods. The requirement to submit quarterly reports will terminate on the first March 31 to occur after five complete 12-month periods after the jurisdiction is approved by Treasury to be a participating jurisdiction. Under current law, the last quarterly report is due January 30, 2028; however, if the reporting requirement is extended by a future federal statute, then the extended expiration date shall automatically apply without further action by Treasury.

Table 1. Quarterly Report Deadlines

Reporting Period	Submission Deadline
July 1, 2022 to September 30, 2022	October 30, 2022
October 1, 2022 to December 31, 2023	January 30, 2023
January 1, 2023 to March 31, 2023	April 30, 2023
April 1, 2023 to June 30, 2023	July 30, 2023
July 1, 2023 to September 30, 2023	October 30, 2023
October 1, 2023 to December 31, 2023	January 30, 2024
January 1, 2024 to March 31, 2024	April 30, 2024
April 1, 2024 to June 30, 2024	July 30, 2024
July 1, 2024 to September 30, 2024	October 30, 2024
October 1, 2024 to December 31, 2024	January 30, 2025
January 1, 2025 to March 31, 2025	April 30, 2025
April 1, 2025 to June 30, 2025	July 30, 2025
July 1, 2025 to September 30, 2025	October 30, 2025
October 1, 2025 to December 31, 2025	January 30, 2026
January 1, 2026 to March 31, 2026	April 30, 2026
April 1, 2026 to June 30, 2026	July 30, 2026
July 1, 2026 to September 30, 2026	October 30, 2026
October 1, 2026 to December 31, 2026	January 30, 2027
January 1, 2027 to March 31, 2027	April 30, 2027
April 1, 2027 to June 30, 2027	July 30, 2027
July 1, 2027 to September 30, 2027	October 30, 2027

Reporting Period	Submission Deadline
October 1, 2027 to December 31, 2027	January 30, 2028

b. Annual Reports

Starting in 2023, each participating jurisdiction must submit to Treasury an annual report for each calendar year by March 31 of the following year. Table 2 provides the submission deadlines for the specified reporting periods. The requirement to submit annual reports will terminate on the first March 31 to occur after five complete 12-month periods after the jurisdiction is approved by Treasury to be a participating jurisdiction. If the reporting requirement is extended beyond the initial expiration date by a future federal statute, then the extended expiration date shall automatically apply without further action by Treasury.

Table 2. Annual Report Deadlines

Reporting Period	Submission Deadline
January 1, 2022 to December 31, 2022	March 31, 2023
January 1, 2023 to December 31, 2023	March 31, 2024
January 1, 2024 to December 31, 2024	March 31, 2025
January 1, 2025 to December 31, 2025	March 31, 2026
January 1, 2026 to December 31, 2026	March 31, 2027
January 1, 2027 to December 31, 2027	March 31, 2028

Section III. Definitions

The following definitions apply in this Reporting Guidance.

Administrative costs. As discussed in Section XI of the SSBCI Capital Program Policy Guidelines,² SSBCI administrative costs are defined and governed by the Cost Principles of the OMB Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (*see* Subpart E of 2 C.F.R. Part 200). The Cost Principles contain criteria that must be used to establish chargeable administrative costs and specific information on allowable costs in various cost categories. Pursuant to 2 C.F.R. § 200.405, administrative costs may be direct or indirect.

Allocated funds. All the federal funds that are awarded to the participating jurisdiction pursuant to 12 U.S.C. § 5702.

Contracted entity. An entity that has a contractual arrangement (including through a memorandum of understanding or other agreement) with the participating jurisdiction or the participating jurisdiction’s implementing entity for the implementation or administration of its capital program. This entity may be an authorized agent of the participating jurisdiction (including an entity or agency of the participating jurisdiction), or an entity selected and supervised by the participating jurisdiction (including an entity of another jurisdiction, a

² Available at <https://home.treasury.gov/system/files/256/SSBCI-Capital-Program-Policy-Guidelines-November-2021.pdf>.

nonprofit third-party, or a for-profit third-party such as an investment fund or loan fund). The contracted entity may be the entity that operates the SSBCI program.

Controlling influence over a business. Having the power to control, manage, or direct the business. A person is presumed to have a controlling influence over a business if the person is a senior executive officer or senior manager of the business (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer), or any other individual who regularly performs similar functions.

Costs of program services. This is the costs of the services provided to a business that are discussed in Section VIII.i of the Capital Program Policy Guidelines under “Services to Portfolio Companies.”

Expended, obligated, or transferred. Funds are considered “expended” if the expenses have been paid by, or are for, an approved state program. Examples of expended funds include: SSBCI funds that have been disbursed to a lender to cover the federal contribution to a CAP reserve fund; SSBCI funds that have been disbursed to a specific borrower (or disbursed to a specific lender as part of a commitment to a specific transaction) as part of a loan participation, collateral support, or direct lending program; SSBCI funds that have been invested in specific small businesses pursuant to a venture capital investment; and SSBCI funds that have been spent for allowable administrative expenses. Funds are considered “obligated” if they have been committed in writing to pay for the amounts of orders placed, contracts awarded, goods and services received, and similar transactions during a given period that will require payment by the approved state program during the same or a future period. Examples of obligated funds include: SSBCI funds that have been committed, pledged, or otherwise promised, in writing, to a specific borrower as part of a loan participation, collateral support, or direct lending program; SSBCI funds that have been set aside to cover obligations arising from loan guarantees; SSBCI funds that have been committed, pledged, or otherwise promised, in writing, as part of a venture capital investment transaction; and SSBCI funds that have been committed, pledged, or promised, in writing, for allowable administrative expenses (e.g., an executed contract for services). Funds are considered “transferred” if they have been transferred by the state receiving SSBCI funds to the implementing entity, or the contracted entity, that is charged with administering the day-to-day operations of the SSBCI program, as a reimbursement for actual expenses or when there is a clearly documented actual and immediate cash need to fund a loan or investment to an eligible small business or to pay for allowable administrative expenses.

Financial institution. Any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. § 4702).

Implementing entity. The specific department, agency, or political subdivision of the participating jurisdiction that has been designated to accept the SSBCI allocation on behalf of the participating jurisdiction. The term “agency” includes government corporations and other entities authorized or supervised by the participating jurisdiction. The implementing entity may be the entity that operates the SSBCI program.

Minority individual. A natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups.

Minority-owned or controlled business. A business that:

- (1) if privately owned, 51 percent or more is owned by minority individuals;
- (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or
- (4) one or more minority individuals have the power to exercise a controlling influence over the business.

Principal owner. A natural person who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

Program income. This is gross income received by the participating jurisdiction that is directly generated by an SSBCI-supported activity or earned as a result of an SSBCI allocation during the SSBCI program period. Program income includes, but is not limited to, income from: fees for services performed that were funded or supported with SSBCI funds, interest earned on loans made using SSBCI funds, interest on SSBCI funds not invested or lent to a business, and returns on SSBCI-supported equity investments. Program income does not include repayment of principal or return of invested capital.

Provider. The entity that transacts directly with the business by making a loan or investment supported by an approved SSBCI program. For loan programs (e.g., loan participation, loan guarantee, and collateral support programs; CAPS; and programs involving other credit support), the provider is the lender whose loan is supported by SSBCI funds. For fund investment programs, the provider is the fund that invests SSBCI funds and private capital in a business. For direct investment programs, the provider is the implementing entity or contracted entity that invests SSBCI funds in a business.

Recycled funds. Funds that (1) come to the participating jurisdiction in the form of program income, returned program services costs, repayment of principal, or return of invested capital (i.e., funds that have been previously loaned or invested), and (2) are expended, obligated, or transferred by the participating jurisdiction on new loans, investments, or other credit equity support.

SEDI demographics-related business. A business that certifies that it is owned and controlled by individuals who have had their access to credit on reasonable terms diminished compared to others in comparable economic circumstances, due to their (1) membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society, (2) gender, (3) veteran status, (4) limited English proficiency, (5) disability, (6) long-term residence in an environment isolated from the mainstream of American society, (7) membership of a Federally

or state-recognized Indian Tribe, (8) long-term residence in a rural community, (9) residence in a U.S. territory, (10) residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization), or (11) membership of an “underserved community.” Underserved communities are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. For purposes of this definition, a business is “owned and controlled” by applicable individuals:

- (1) If privately owned, 51 percent or more is owned by such individuals;
- (2) If publicly owned, 51 percent more or of the stock is owned by such individuals; and
- (3) In the case of a mutual institution, if a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

SSBCI funds. The sum of allocated funds and recycled funds.

Veteran-owned or controlled business. A business that:

- (1) if privately owned, 51 percent or more is owned by veterans;
- (2) if publicly owned, 51 percent or more of the stock is owned by veterans;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or
- (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.

Women-owned or controlled business. A business that:

- (1) if privately owned, 51 percent or more is owned by females;
- (2) if publicly owned, 51 percent or more of the stock is owned by females;
- (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or
- (4) one or more individuals who are females have the power to exercise a controlling influence over the business.

Section IV. Quarterly Reporting

As described below, participating jurisdictions must provide two categories of information in the quarterly reports: (1) basic program information and (2) program-level information on the use of SSBCI funds.

a. Basic Program Information in Quarterly Reports

For each of the participating jurisdiction’s approved SSBCI programs, the participating jurisdiction must provide the information listed in Table 3.

Table 3. Basic Program Information in Quarterly Reports

Data Element	Description
Approved Program Name	Confirm the name of each approved program.
Program Type	Confirm the program type of each approved program, as one of the following: -Credit – Loan participation program -Credit – Loan guarantee program -Credit – Collateral support program -Credit – Capital access program -Credit – Debt fund investment program -Credit – Other support program -Equity – Fund investment program -Equity – Direct investment program -Equity – Other support program -Hybrid – Other support program
Primary Program Administrator	Confirm the name of the entity primarily responsible for administering each approved program.

b. Program-Level Information on the Use of SSBCI Funds in Quarterly Reports

For each of the participating jurisdiction’s approved SSBCI programs, the participating jurisdiction must provide the information listed in Table 4. The participating jurisdiction should provide additional descriptions as needed to help Treasury understand the reported information.

Table 4. Program-Level Information on the Use of SSBCI Funds in Quarterly Reports

Data Element	Description
Approved Program Name	Select the name of each approved program.
Program Total Allocated Funds Expended, Obligated, or Transferred (EOT)	Dollar amount of allocated funds EOT.
Program Allocated Funds EOT for Direct Administrative Costs	Dollar amount of allocated funds EOT for direct administrative costs.
Program Allocated Funds EOT for Indirect Administrative Costs	Dollar amount of allocated funds EOT for indirect administrative costs.

Data Element	Description
Program Total Recycled Funds EOT	Dollar amount of recycled funds EOT.
Contracted Entity Funding	Dollar amount of SSBCI funds budgeted by the participating jurisdiction to each contracted entity.
Program Income	Dollar amount of program income earned.
CAP Charge-offs This field only appears if the program is a CAP.	Dollar amount of SSBCI funds used for charge-offs against federal contributions to CAP reserve funds.
Additional Information	Text field for any additional clarifications, descriptions, or information.

Section V. Annual Reporting

Participating jurisdictions must provide various categories of information in annual reports. Table 5 indicates the frequency of reporting for each category.

Table 5. Annual Report Information and Frequency

Category of Information	Reporting Frequency
Providers in an approved program (see Table 6 below)	Data only must be reported one time for each provider (unless there are updates to previously reported information), except that allocated funds expended for costs of program services must be reported on an annual basis.
Transactions (see Table 7 below)	Data must be reported only one time for each SSBCI-supported loan or investment.
Transaction terms (see Tables 8 and 9 below)	Data must be reported only one time for each SSBCI-supported loan or investment.
Loan or investment performance (see Table 10 below)	Data must be reported annually for each SSBCI-supported loan or investment, if applicable.
Borrower/Investee Data (see Table 11 below)	Data should be reported annually after the closing of each SSBCI-supported loan or investment, if available.

In addition, each participating jurisdiction must provide a concise narrative for each approved program containing program-level updates on the progress the participating jurisdiction made on the plan it submitted with its SSBCI application on how the participating jurisdiction would use the federal contribution to the approved program to help provide access to capital for small businesses in underserved communities.³ The participating jurisdiction must also include any updates regarding the anticipated benefits to the jurisdiction from the approved program that were previously described in its application.⁴ Finally, the participating jurisdiction must provide

³ For more information on this requirement, see Section IX.a of the Capital Program Policy Guidelines.

⁴ For more information on this requirement, see Section VIII.g of the Capital Program Policy Guidelines.

an annual update of how the participating jurisdiction intends to apportion its allocation among its approved programs.

a. Information about Providers in an Approved Program

Table 6 lists the data elements that the participating jurisdiction must report for each provider in an approved program. All data elements in Table 6, except for allocated funds expended for costs of program services (the last item listed in Table 6), only need to be reported once and then updated in subsequent annual reports only if there are changes.

Table 6. Data Elements for Each Provider in an Approved Program⁵

Data Element	Description
Approved Program Name	Select the name of each approved program.
Provider	Enter the name of the provider.
Provider EIN	Provider's employer identification number (EIN) or tax ID number.

⁵ Note that an entity that is a provider may participate in more than one program of a participating jurisdiction or in programs of two or more participating jurisdictions. Examples might include lenders that participate both in a jurisdiction's loan participation program and the jurisdiction's loan guarantee program, or a venture capital fund that participates in programs of two different jurisdictions. In these cases, the entity (in these examples, the lender or venture capital fund) would have multiple provider records, one for each approved program of a participating jurisdiction that the entity serves as a provider.

Data Element	Description
Provider Regulatory ID	<p>For providers whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC), provide the provider’s RSSD ID.</p> <p>For federally insured credit unions, provide the provider’s charter number from the National Credit Union Administration (NCUA).</p> <p>For Community Development Financial Institutions (CDFIs), provide the provider’s CDFI certification number.</p> <p>For fund managers registered as investment advisers with the Securities and Exchange Commission (SEC), provide the provider’s SEC registration number.</p> <p>For fund managers registered with the jurisdiction itself, provide the provider’s registration number from the jurisdiction.</p> <p>If none of the above regulatory IDs apply, but another regulatory ID applies, respond “Other.”</p> <p>If no regulatory ID number applies, respond “None.”</p> <p>If a provider has multiple regulatory IDs, the participating jurisdiction must provide at least one of these regulatory IDs and may provide additional regulatory IDs.</p>
Other Provider ID	Text field for a description if the participating jurisdiction responded “Other” for the data element “Provider Regulatory ID.”

Data Element	Description
Provider Type	Indicate what type of entity the provider is (if multiple types apply, choose the one that best describes the provider's role in the program): -CDFI bank, thrift, credit union, or depository institution holding company -Non-CDFI community bank -Other bank, thrift, or depository institution holding company -CDFI loan fund -Non-CDFI credit union -Nonbank lender or nonbank payment services provider -Non-CDFI debt or loan fund -Growth equity capital fund -Angel investor or angel fund -Accelerator or incubator fund -For-profit venture capital fund -Nonprofit venture capital fund or venture/entrepreneurial development organization -Corporate venture capital fund -CDFI venture capital fund -University/technology transfer office -Other
Other Provider Type	Text field for a description if the participating jurisdiction responded "Other" for the data element "Provider Type."
Minority Depository Institution	Indicate whether the provider is a Minority Depository Institution. -Yes -No
Fund as Source of Private Capital	Indicate whether the provider is a fund that is the primary source of private capital for the purpose of meeting the 1:1 financing requirement as described in Section VIII.c of the Capital Program Policy Guidelines. -Yes -No
Provider as Source of Private Capital	If the provider is not a fund, indicate whether the provider is the primary source of private capital for the purpose of meeting the 1:1 financing requirement as described in Section VIII.c of the Capital Program Policy Guidelines. -Yes -No
Target Fund Size	If the provider is a fund, provide the target total fund size including SSBCI funds and other capital.

Data Element	Description
Incubation and Early-Stage Investment Call Option	If the provider is an equity program, indicate whether a call option is offered under the Incubation or Early-Stage Investment Model described in Section VIII.i of the Capital Program Policy Guidelines. -Yes -No
Allocated Funds Expended for Costs of Program Services	If the provider is a venture capital fund, specify the annual dollar amount of allocated funds expended by the fund for services to portfolio companies. This data element is reported on an annual basis.

b. SSBCI-Supported Loan and Investment Information

Table 7 lists the data elements that the participating jurisdiction must report for each SSBCI-supported loan or investment. Table 7 includes, among other items, demographics-related information satisfying the requirements in the SSBCI Interim Final Rule.⁶ Tables 8 and 9 list data elements on transaction terms for credit programs and equity programs, respectively.

Each participating jurisdiction must report the data elements in Table 7 and in either Table 8 or 9 for each SSBCI-supported loan or investment that received a disbursement from the provider to the business during the applicable annual reporting period. All data elements in Tables 7, 8, and 9 only need to be reported once. Participating jurisdictions must provide a Privacy Notice and Privacy Act Statement (see Appendix 2) to those from whom they collect data, or cause the entities that collect this data directly to do the same.

The demographics-related data elements may only be collected and used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third-parties). The demographics-related information must not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements). Participating jurisdictions must establish processes to inform small businesses of this limited usage when these data elements are collected. Each participating jurisdiction shall establish data privacy and security requirements for the demographic-related information described in Table 7 that include appropriate measures to ensure that the privacy of the individuals is protected. SSBCI is providing a sample demographic data collection form that can be used to collect these data elements, with instructions for how the sample form should be used (see Appendix 3). This sample form will be a useful tool for participating jurisdictions.

Table 7. SSBCI-Supported Loan and Investment Information for All Programs

Data Element	Definition
Provider	Select name of the provider.

⁶ State Small Business Credit Initiative; Demographics-Related Reporting Requirements, Department of the Treasury, 87 Federal Register 13628 (March 10, 2022).

Data Element	Definition
Approved Program Name	Select the name of the approved program.
Unique Transaction ID	Alphanumeric or numeric code that is unique to each transaction.
Business Name	Name of the borrower or investee.
Business EIN	EIN of the borrower or investee. Do not provide a business EIN if it is a Social Security number.
Business Street Address	Street address of the borrower or investee's main office or location of the borrower or investee that is primarily benefitting from the SSBCI funds. If real estate construction financing is involved, enter the street address of the project.
Business City	City of the borrower or investee.
Business State	State of the borrower or investee.
Business Zip Code	Zip code of the borrower or investee.
NAICS Code	2017 North American Industry Classification System (NAICS) codes for the borrower's or investee's industry.
Year Business Opened	Year in which the borrower or investee commenced operations.
Form of Business Organization	Legal entity type of the borrower or investee: -Any organizational form that is a nonprofit entity -Sole proprietor/independent contractor -Partnership -Limited liability company -Corporation -Worker cooperative or other employee-owned entity -Tribal enterprise -Tribal member-owned business -Other
Other Type of Business Receiving SSBCI Funds	Text field for a description if selected "Other" in the data element "Form of Business Organization."
Tribal Government Program Transaction Type This field only appears if the participating jurisdiction is a Tribal government.	Type of Tribal government program transaction. Select all that apply: -In-jurisdiction transaction with business on Tribal lands -In-jurisdiction transaction with business in states where the Tribe is physically located or within which the Tribe exercises jurisdiction -In-jurisdiction transaction with Tribal enterprise-operated business, business owned by Tribal members, or business in a state in which Tribal members reside -Out-of-jurisdiction transaction – Transaction that does not fit into any of the categories above

Data Element	Definition
<p>Primary Transaction Source of Private Capital</p> <p>This field only appears if response was “No” to both data element “Fund as Source of Private Capital” and to “Provider as Source of Private Capital” in Table 6.</p>	<p>Indicate the primary source of private capital to the business for the purpose of meeting the 1:1 financing requirement as described in Section VIII.c of the Capital Program Policy Guidelines:</p> <ul style="list-style-type: none"> -CDFI bank, thrift, credit union, or depository institution holding company -Non-CDFI Community bank -Other bank, thrift, or depository institution holding company -CDFI loan fund -Non-CDFI credit union -Nonbank lender or nonbank payment services provider -Non-CDFI debt or loan fund -Growth equity capital fund -Angel investor or angel fund -Accelerator or incubator fund -For-profit venture capital fund -Nonprofit venture capital fund or venture/entrepreneurial development organization -Corporate venture capital fund -CDFI venture capital fund -Tribal enterprise new funds -Other for-profit investor -Other non-profit investor

Data Element	Definition
<p>Secondary Transaction Source of Private Capital</p> <p>This field only appears if response was “No” to both “Fund as Source of Private Capital” and to “Provider as Source of Private Capital.”</p>	<p>Indicate the secondary sources of private capital to the business for the purpose of meeting the 1:1 financing requirement as described in Section VIII.c of the Capital Program Policy Guidelines. Select all that apply:</p> <ul style="list-style-type: none"> -CDFI bank, thrift, credit union, or depository institution holding company -Community bank -Non-CDFI bank, thrift, or depository institution holding company -CDFI loan fund -Non-CDFI credit union -Nonbank lender or nonbank payment services provider - Non-CDFI debt or loan fund -Growth equity capital fund -Angel investor or angel fund -Accelerator or incubator fund -For-profit venture capital fund -Nonprofit venture capital fund or venture/entrepreneurial development organization -Corporate venture capital fund -CDFI venture capital fund -Tribal enterprise new funds -Other for-profit investor -Other non-profit investor

Data Element	Definition
Primary Purpose of the Loan or Investment	<p>Indicate the primary purpose of the SSBCI-supported loan or investment that the borrower or investee obtained:</p> <ul style="list-style-type: none"> -Marketing, market research, and commercialization expenses -Research and development -Technology integration in physical production, e.g., manufacturing or supply chain -Technology integration of nonphysical production, e.g., accounting, customers -Acquire land -Purchase existing building -Convert, expand, or renovate buildings – energy efficiency -Convert, expand, or renovate buildings – other -Construct new buildings -Acquire and install fixed assets -Acquire inventory -Purchase supplies and raw materials -Leasehold improvements -Working capital – wages, salaries, and benefits of employees -Working capital – other -Refinance outstanding debt -Support employee stock ownership plan (ESOP) transactions -Other
Purpose of the Loan or Investment – Other	Text field for description if selected “Other” in the data element “Primary Purpose of the Loan or Investment.”

Data Element	Definition
Secondary Purpose of the Loan or Investment	<p>Indicate the secondary purpose of the SSBCI-supported loan or investment that the borrower or investee obtained. Select all that apply:</p> <ul style="list-style-type: none"> -Marketing, market research, and commercialization expenses -Research and development -Technology integration in physical production, e.g., manufacturing or supply chain -Technology integration of nonphysical production, e.g., accounting, customers -Acquire land -Purchase existing building -Convert, expand, or renovate buildings – energy efficiency -Convert, expand, or renovate buildings – other -Construct new buildings -Acquire and install fixed assets -Acquire inventory -Purchase supplies and raw materials -Leasehold improvements -Working capital – wages, salaries, and benefits of employees -Working capital – other -Refinance outstanding debt -Support employee stock ownership plan (ESOP) transactions -Other
Secondary Purpose of the Loan or Investment – Other	Text field for description if selected “Other” in the data element “Secondary Purpose of the Loan or Investment.”
Climate-aligned Investment	<p>Indicate whether the SSBCI-supported loan or investment supports a business that makes climate-aligned investments. Climate-aligned investments may reduce greenhouse gas emissions or promote adaptation to climate change or energy transitions. This could be either in the business’s activities (including its production processes and use of energy, inputs, supply chain services, and/or actions to increase resiliency) or by supplying products and services that contribute to lower emissions. Climate-aligned investments can include investment supporting weatherization; energy-efficient prefabrication or manufacturing; supply chain use, processes or production resulting in lower emissions; energy site transitions; sustainable and/or climate-smart agriculture and forestry; renewable energy development or implementation (including wind, solar, hydroelectric, biomass, geothermal, and other low-carbon technologies); electric vehicle innovation or use; and other investments that aim to build climate resilience, support adaptation to extreme weather and climate events, and/or mitigate climate change.</p> <ul style="list-style-type: none"> -Yes -No

Data Element	Definition
Energy- or Climate-Impacted Communities	<p>Indicate whether the SSBCI-supported loan or investment supports a small business in a community facing local job losses or business revenue declines due to physical or transition impacts from climate change, including shifts in energy production. Examples of such local job loss or revenue declines include declines due to changes in the economics of producing certain agriculture or foods, other natural resource goods, chemical inputs, manufactured products, or service sector outputs due to acute or chronic climate impacts, costs, regulations, or shifts in demand. Examples of shifts in energy production include any transition away from fossil fuel extraction, refining, or fossil-based energy generation in the oil, gas, and/or coal sector.</p> <p>-Yes -No</p>
Disbursement Date	Date that the funds for the SSBCI-supported loan or investment were disbursed from the provider to the borrower or investee.
Loan or Investment Transaction Amount	<p>Dollar amount that was disbursed from the provider to the business for the SSBCI-supported loan or investment, including SSBCI funds and private capital.</p> <p>Do not include any amounts reported under “Concurrent Private Financing” that are associated with, but separate from, the SSBCI-supported loan or investment.</p>
Allocated Funds Expended or Set Aside for Guarantees or Collateral Support Obligations	<p>For loan participation programs, dollar amount of allocated funds expended for the approved program’s participation in the loan.</p> <p>For loan guarantee programs, dollar amount of allocated funds set aside to cover the guarantee amount of commitment.</p> <p>For collateral support programs, dollar amount of allocated funds set aside to cover the collateral support obligation.</p> <p>For CAPs, dollar amount of allocated funds expended as the approved program’s contribution to the CAP reserve fund.</p> <p>For direct investment programs, dollar amount of allocated funds invested directly in a business.</p> <p>For fund investment programs, dollar amount of allocated funds invested directly in a business through a fund in which the participating jurisdiction has invested allocated funds.</p>

Data Element	Definition
Recycled Funds Expended or Set Aside for Guarantees or Collateral Support Obligations	<p>For loan participation programs, dollar amount of recycled funds expended for the approved program's participation in the loan.</p> <p>For loan guarantee programs, dollar amount of recycled funds set aside to cover the guarantee amount of commitment.</p> <p>For collateral support programs, dollar amount of recycled funds set aside to cover the collateral support obligation.</p> <p>For CAPs, dollar amount of recycled funds expended as the approved program's contribution to the CAP reserve fund.</p> <p>For direct investment programs, dollar amount of recycled funds invested directly in a business.</p> <p>For fund investment programs, dollar amount of recycled funds invested directly in a business through a fund in which the participating jurisdiction has invested recycled funds.</p>
Additional Government Funds	Dollar amount of other funding from other public or government sources invested at the same time as the SSBCI-supported loan or investment.
Concurrent Private Financing	Dollar amount of any private financing that was caused by or resulted from the SSBCI-supported loan or investment and that occurred at or around the same time as the SSBCI-supported loan or investment.
Business Revenue	Borrower's or investee's annual gross revenues for the fiscal or calendar year prior to the closing of the loan or investment. This may be the most recent year for which taxes were filed.
Business Net Income	Borrower's or investee's net income for the fiscal or calendar year prior to the closing of the loan or investment. This may be the most recent year for which taxes were filed.
Full-Time Equivalent Employees	<p>Borrower's or investee's full-time equivalent employees (FTEs), rounded to the nearest whole number, at the time of the closing of the SSBCI-supported loan or investment. This is determined by adding the number of full-time employees and number of part-time and seasonal employees as a fraction of a full-time employee.</p> <p>For example, if a business has 100 employees working full-time (assume a full-time week of 40 hours) and 50 employees working 20 hours per week, the total number of FTEs would be 125. For seasonal employees, the FTE count is based on a 2,080-hour year, so that an employee who works 520 hours per year counts as 0.25 FTEs.</p>

Data Element	Definition
Expected Jobs Created	Number of full-time, part-time, and temporary jobs expected to be created as a direct result of the SSBCI-supported loan or investment within two years from the date of the loan or investment closing.
Expected Jobs Retained	Number of full-time, part-time, and temporary job losses averted as a direct result of the SSBCI-supported loan or investment (not including jobs that were not at risk of being lost).
Self-certified SEDI Owned and Controlled in CDFI Investment Area	Indicate whether the borrower or investee certified that it is owned and controlled by individuals whose residences are in CDFI Investment Areas. -Self-certified -The business did not certify
Self-certified SEDI Future Location in CDFI Investment Area	Indicate whether the borrower or investee certified that it will operate a future location in a CDFI Investment Area. -Self-certified -The business did not certify
SEDI Status by Business Address in CDFI Investment Area	Indicate whether the borrower or investee is located in a CDFI Investment Area, as evidenced by the business address. -Yes -No
Self-Certified SEDI Demographics-Related Business Status	Indicate whether the business self-certified that it is a SEDI demographics-related business. Select which one or more of the categories that apply: -Self-certified due to membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society -Self-certified due to gender -Self-certified due to veteran status -Self-certified due to limited English proficiency -Self-certified due to disability -Self-certified due to long-term residence in an environment isolated from the mainstream of American society -Self-certified due to membership of a Federally or state-recognized Indian Tribe -Self-certified due to long-term residence in a rural community -Self-certified due to residence in a U.S. territory -Self-certified due to residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization) -Self-certified due to membership of an “underserved community” as defined in Executive Order 13985 (see the definition of “SEDI-owned and controlled business in Section II above) -The business did not certify

Data Element	Definition
Minority-Owned or Controlled Business Status	Indicate whether the business is a minority-owned or controlled business: -Yes -No -Prefer not to respond -The business did not answer
Women-Owned or Controlled Business Status	Indicate whether the business is a women-owned or controlled business: -Yes -No -Prefer not to respond -The business did not answer
Veteran-Owned or Controlled Business Status	Indicate whether the business is a veteran-owned or controlled business: -Yes -No -Prefer not to respond -The business did not answer
Race of Principal Owners	For each principal owner of the business, indicate the one or more race categories with which the principal owner identifies: -American Indian or Alaska Native -Asian --Indian --Chinese --Filipino --Japanese --Korean --Vietnamese --Asian (Other) -Black or African American -Native Hawaiian or Other Pacific Islander --Guamanian or Chamorro --Native Hawaiian --Samoan --Pacific Islander (Other) -White -Prefer not to respond -The business did not answer
Ethnicity of Principal Owners	For each principal owner of the business, indicate which of the following ethnicity categories the principal owner identifies with: -Hispanic or Latino/a -Not Hispanic or Latino/a -Prefer not to respond -The business did not answer

Data Element	Definition
Middle Eastern or North African Ancestry of Principal Owners	For each principal owner of the business, indicate which of the following ancestry categories the principal owner identifies with: -Middle Eastern or North African -Not Middle Eastern or North African -Prefer not to respond -The business did not answer
Gender of Principal Owners	For each principal owner of the business, indicate which one of the following gender categories the principal owner identifies with: -Female -Male -Nonbinary -Prefer to self-describe -Prefer not to respond -The business did not answer
Gender of Principal Owners – Self-Identification	Text field for description if selected “Prefer to self-describe” in the data element “Gender of Principal Owners.”
Sexual Orientation of Principal Owners	For each principal owner of the business, indicate which one of the following sexual orientation categories the principal owner identifies with: -Gay or lesbian -Bisexual -Straight, that is, not gay, lesbian, or bisexual -Something else -Prefer not to respond -The business did not answer
Veteran Status of Principal Owners	For each principal owner of the business, indicate which of the following categories the principal owner identifies with: -Veteran -Non-veteran -Prefer not to respond -The business did not answer

Table 8. Transaction Terms Specific to Credit Programs

Data Element	Definition
Unique Transaction ID	Alphanumeric or numeric code that is unique to each transaction.
Loan Type	Type of loan: -Term with a specified repayment schedule and a fixed or floating interest rate -Revenue-based, income-based, or other performance-contingent payments -Line of credit -Bridge, venture debt or other debt whose repayment is contingent on event (with or without interim interest payments) -Other

Data Element	Definition
Other Loan Type	Text field for description if selected “Other” in the data element “Loan Type.”
Loan Term	Duration of the loan term in months. Provide an estimate if repayment depends on the borrower’s revenue or performance activity.
Loan APR	Annual percentage rate (APR) charged to the borrower. The APR is the yearly interest calculated from a sum that's charged to borrowers, including fees.
Interest Rate Variability	Variability of interest rate: -Fixed interest rate -Adjustable interest rate -Both a fixed interest rate and an adjustable interest rate
Other Repayment Terms	Text field for description of material terms (e.g., percentage of monthly revenues) if the loan is revenue-based or performance-based.
Maximum Interest Rate	Maximum interest rate permitted under the loan (not including fees, penalty interest, or other charges).
Total Origination Charges	Total dollar amount of charges imposed directly or indirectly by the provider at or before origination as an incident to or a condition of the extension of credit, including charges paid by the borrower at or before origination or that are financed. Charges that are imposed indirectly by the provider include charges by a third party that may pass through the provider to the borrower or that are billed separately.

Table 9. Transaction Terms Specific to Equity Programs

Data Element	Definition
Unique Transaction ID	Alphanumeric or numeric code that is unique to each transaction.
Stage of Investment	Stage of the business on the transaction date for all equity investments: -Pre-Seed – developing technology or business model for product/service -Seed – proof-of-concept and developed business model -Early Stage – product/service launch and market traction -Later Stage – scale-up operations and growing revenue -Growth Equity – mature business seeking growth opportunities -Other

Data Element	Definition
Security Type	Type of security purchased: -Common stock -Preferred stock -Convertible debt (debt with automatic conversion to equity in a qualified priced round) -Standard agreement for future equity (SAFE) or other unpriced equity-like securities -Other
Other Security Offered	Text field for description if selected “Other” in the data element “Security Type.”
SSBCI Ownership Percentage This field only appears if common stock or preferred stock.	For direct investment programs, the percentage of equity ownership of the business on a fully diluted basis acquired using SSBCI funds. For fund investment programs, the implied percent of equity ownership of the business on a fully diluted basis that is calculated, for example by multiplying the percent of the SSBCI funds investment in an equity fund times the percent of the business which the equity fund owns after the transaction, or by some other method. The participating jurisdiction selects one: -0% to 5% -5% to 10% -10% to 20% -20% to 50% -Greater than 50%
Conversion Discount This field only appears if convertible note, SAFE or other unpriced equity-like securities.	Percentage reduction on the price of equity shares at which the convertible note investors’ claim converts to equity relative to the next qualified priced round.
Valuation Cap This field only appears if convertible note, SAFE or other unpriced equity-like securities.	Imposed maximum valuation of the business used to price the SSBCI investment for conversion into equity shares at the next qualified priced round.
Type of Valuation Cap This field only appears if convertible note, SAFE or other unpriced equity-like securities.	Indicate whether the valuation cap is pre-money or post-money. -Pre-money -Post-money

c. SSBCI-Supported Loan and Investment Performance Information

Table 10 lists additional data that each participating jurisdiction must report for each SSBCI-supported loan or investment. The data specified in Table 10 must be reported in the annual report, if applicable, for an SSBCI-supported loan or investment. The purpose of this information is to understand how the loan or investment performed and affected the business.

As shown in Table 10, subsequent private financing caused by, or resulting from, the initial SSBCI-supported OCSP financing must be reported. Subsequent financing is considered to be caused by, or resulting from, the initial SSBCI-supported OCSP financing when such OCSP financing increases the current and future creditworthiness of a business. This nexus between the initial SSBCI-supported loan or investment and subsequent private financing occurs only when such loan or investment is a form of subordinated, mezzanine, or equity financing—in other words, a form of financing that strengthens the business’s balance sheet. If there is no such nexus, then no subsequent private financing is reported.

Participating jurisdictions report subsequent private financing until (1) the completion of the contract, default or business failure, an exit event, or other event that ends the lending or investment relationship, or (2) the end of the SSBCI program reporting requirements.

Table 10. Information on SSBCI-Supported Loan or Investment Performance

Data Element	Definition
Unique Transaction ID	Alphanumeric or numeric code that is unique to each transaction.
Subsequent Private Financing	Total dollar amount of private financing received after closing of the loan or investment that is caused by, or resulting from, the initial SSBCI-supported loan or investment.
SSBCI Funds Lost	Dollar amount of SSBCI funds that were lost (by the jurisdiction) due to loan default or loss of investment (i.e., an investment is written off).
Equity Investment Gains	Dollar amount of any gains returned to the jurisdiction (as the SSBCI investor/lender) above the amount of invested SSBCI capital.

Table 11 lists additional data that participating jurisdictions should collect from the borrower or investee annually after the closing of each SSBCI-supported loan or investment, if available. The data specified in Table 11 should be reported in each annual report, if available.

Table 11. Borrower/Investee Data

Data Element	Definition
Business Revenue	Borrower’s or investee’s annual gross revenues for its most recent fiscal or calendar year. This may be the most recent year for which taxes were filed. There will be an option to report that the information is not available.

Data Element	Definition
Business Net Income	Borrower's or investee's net income for its most recent fiscal or calendar year. This may be the most recent year for which taxes were filed. There will be an option to report that the information is not available.
Year of Reported Business Revenue and/or Net Income	Fiscal or calendar year of the data reported for Business Revenue and/or Business Net Income.

Section VI. Record Retention and Increase of Frequency and Scope of Reporting

Before providing funding to a private entity using SSBCI funds, each participating jurisdiction must obtain the following:

- The written agreement of the private entity, including any financial institution, to make available to the Treasury Inspector General and the Government Accountability Office all books and records related to the use of the SSBCI funds, subject to applicable privacy laws, including but not limited to 12 U.S.C. § 3401 *et seq.*, including detailed loan and investment records, as applicable;
- A certification from the private entity, if it is a financial institution, that the private entity is in compliance with the requirements of 31 C.F.R. § 1020.220, regarding customer identification programs; and
- A certification from the private entity, including any financial institution, that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

Treasury will apply record retention principles that are consistent with the approach set forth in 2 C.F.R. § 200.334. Each participating jurisdiction must retain all financial records, supporting documents, statistical records, and all other records pertinent to its SSBCI allocation for a period of three years from the date of submission of the final quarterly report under Section II.a, except as otherwise provided in 2 C.F.R. § 200.334. Treasury, the Treasury Inspector General, the Government Accountability Office, or any of their duly authorized representatives have the right of timely and unrestricted access to any books, documents, papers, or other records of the participating jurisdiction that are pertinent to the participating jurisdiction's allocation, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the participating jurisdiction's personnel for the purpose of interviews and discussion related to such documents. This right of access will last as long as records are required to be retained, except that Treasury's right of access expires on the date that is 180 days after the end of the period of performance for the participating jurisdiction's SSBCI funds.

Treasury may unilaterally increase the frequency and the scope of a participating jurisdiction's reporting requirements if Treasury finds the participating jurisdiction to be a high-risk jurisdiction. To determine whether a participating jurisdiction is a high-risk jurisdiction, Treasury will apply a risk evaluation approach that is consistent with the principles set forth in 2 C.F.R. § 200.206. Treasury may find a participating jurisdiction to be a high-risk jurisdiction

prior to the jurisdiction's receipt of allocated funds or after the participating jurisdiction receives its allocated funds.

Because participating jurisdictions and their contracted entities will be receiving sensitive information, Treasury strongly encourages participating jurisdictions and their contracted entities to establish robust protections against data breaches and misuse and to comply with all applicable privacy laws.

Paperwork Reduction Act Notice - OMB Control Number 1505-0227

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix 1.
Certification Required with SSBCI Quarterly and Annual Reports

The undersigned, on behalf of the participating jurisdiction specified below, hereby makes the following certifications as of the date of this certification:

1. The information, certifications, attachments, and other information provided by the participating jurisdiction specified below to the U.S. Department of the Treasury related to the State Small Business Credit Initiative (SSBCI) are true and correct and do not contain any materially false, fictitious, or fraudulent statement, nor any concealment or omission of any material fact;
2. SSBCI funds continue to be available and legally committed to contributions by the participating jurisdiction to, or for the account of, approved programs, less any amount that has already been contributed by the participating jurisdiction to, or for the account of, approved programs subsequent to the participating jurisdiction being approved for participation in the SSBCI;
3. The participating jurisdiction is implementing its approved SSBCI program or programs in accordance with all applicable legal, regulatory, and program requirements, including the SSBCI statute (12 U.S.C. § 5701 *et seq.*) and the U.S. Department of the Treasury's SSBCI regulations and guidance to the best of the undersigned's knowledge; and
4. The undersigned has authority to execute and deliver this certification on behalf of the participating jurisdiction.

IN WITNESS WHEREOF, this certificate has been duly executed and delivered as of the [] day of [], 202[].

[Name of Participating Jurisdiction]

By: _____

Name:

Title:

Appendix 2.
SSBCI Privacy Notice and Privacy Act Statement

Privacy Notice:

Information from this collection will be shared with the U.S. Department of the Treasury (Treasury). Treasury has published a Privacy and Civil Liberties Impact Assessment that describes what Treasury will do with the information your business provides in this application. It can be found on the Treasury [website](#). If you have any questions about this document, please email Privacy@Treasury.gov.

Privacy Act Statement for Sole Proprietorships:

The Privacy Act of 1974 (Privacy Act) protects certain information that the federal government has about “individuals” (United States citizens and lawfully admitted permanent residents). The Privacy Act does not generally apply to businesses, but some federal courts have found that this law applies to sole proprietors (they are deemed “individuals” under the Privacy Act). If you, as the applicant, are a sole proprietor, you may have rights under the Privacy Act.

Authority: Small Business Jobs Act of 2010 (SBJA), Title III, 12 U.S.C. § 5701 et seq., *as amended by* the American Rescue Plan Act of 2021 (ARPA), section 3301; Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 25, 2021); and Interim Final Rule, State Small Business Credit Initiative; Demographics-Related Reporting Requirements, 87 Fed. Reg. 13628 (March 10, 2022).

Purpose: Information from this collection will be shared with Treasury. This information will be shared with Treasury so it can conduct oversight to ensure compliance with federal law, including requirements related to nondiscrimination and nondiscriminatory uses of federal funds. Treasury also receives this information (including any demographic information provided) to comply with reporting requirements under the authorities listed above and to advance fairness and opportunity in underserved communities in the allocation of federal resources.

Routine Uses: The information you furnish may be shared in accordance with the routine uses outlined in Treasury .013, Department of the Treasury Civil Rights Complaints and Compliance Review Files; Treasury .015, General Information Technology Access Account Records; and Treasury .017, Correspondence and Contact Information. For example, one routine use under Treasury .013 is to disclose pertinent information to appropriate agencies when Treasury becomes aware of a potential violation of civil or criminal law. Under this routine use, Treasury may disclose demographic information to the appropriate agencies if Treasury becomes aware of a violation of applicable antidiscrimination laws. More information about this and other routine uses can be found in the System of Records Notices (SORNs) listed above, which are posted on Treasury’s [website](#).

Disclosure: Providing this information is voluntary. However, failure to furnish the requested information (except for the demographic information) may result in the denial of your application. Providing demographic information is optional. If you decline to provide this information, it will not adversely affect your application.

Appendix 3.
SSBCI Sample Form for Demographics-Related Data

This sample form may be used by a participating jurisdiction and/or its providers to obtain demographics-related data. This sample form is provided for illustrative purposes as a tool for participating jurisdictions. Participating jurisdictions may adopt their own form, provided that it complies with all SSBCI requirements.

Legal name of borrower or investee: _____

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, “participating jurisdictions”). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity.

Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information, or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application.

The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury’s implementing regulations at 31 C.F.R. part 23.

If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at crcomplaints@treasury.gov.

PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Applicants are encouraged to answer all of the questions below.

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

1. Minority-owned or controlled business status			
For purposes of this form, <u>minority individual</u> means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups.			
For purposes of this form, an applicant is a <u>minority-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by minority individuals; (2) if publicly owned, 51 percent or more of the stock is owned by minority individuals; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or (4) one or more minority individuals have the power to exercise a controlling influence over the business.			
Is the applicant a minority-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
2. Women-owned or controlled business status			
For purposes of this form, an applicant is a <u>women-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by females; (2) if publicly owned, 51 percent or more of the stock is owned by females; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or (4) one or more individuals who are females have the power to exercise a controlling influence over the business.			
Is the applicant a women-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
3. Veteran-owned or controlled business status			
For purposes of this form, an applicant is a <u>veteran-owned or controlled business</u> if the business meets one or more of the following: (1) if privately owned, 51 percent or more is owned by veterans; (2) if publicly owned, 51 percent or more of the stock is owned by veterans; (3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or (4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.			
Is the applicant a veteran-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond

Each principal owner of the applicant is encouraged to answer the questions below.

This information is being collected to help ensure that communities’ small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

For purposes of this form, a principal owner of the applicant is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the applicant, indicate which of the following categories the principal owner identifies with. Submit a separate copy of this table for each principal owner of the applicant (up to four).

1. Ethnicity <input type="checkbox"/> Hispanic or Latino/a <input type="checkbox"/> Prefer not to respond		<input type="checkbox"/> Not Hispanic or Latino/a			
2. Race (select all that apply) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Indian <input type="checkbox"/> Chinese <input type="checkbox"/> Filipino <input type="checkbox"/> Japanese <input type="checkbox"/> Korean <input type="checkbox"/> Vietnamese <input type="checkbox"/> Asian (Other)				<input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Samoan <input type="checkbox"/> Pacific Islander (Other) <input type="checkbox"/> White <input type="checkbox"/> Prefer not to respond	
3. Middle Eastern or North African Ancestry <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Prefer not to respond				<input type="checkbox"/> Not Middle Eastern or North African	
4. Gender <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Nonbinary <input type="checkbox"/> Prefer to self-describe: _____ <input type="checkbox"/> Prefer not to respond		5. Sexual Orientation <input type="checkbox"/> Gay or lesbian <input type="checkbox"/> Bisexual <input type="checkbox"/> Straight, that is, not gay, lesbian, or bisexual <input type="checkbox"/> Something else <input type="checkbox"/> Prefer not to respond			
6. Veteran Status <input type="checkbox"/> Veteran <input type="checkbox"/> Prefer not to respond				<input type="checkbox"/> Non-veteran	

**Montana State Small Business Credit Initiative 2.0 Loan Participation Program
(MT SSBCI 2.0 LPP)
Request to become an approved Participating CDFI/RLF**

MT SSBCI 2.0 LLP
Montana Department of Commerce
PO Box 200505
Helena MT 59620-0505

Month Day, Year

MT SSBCI 2.0 LPP Staff,

I certify that I am authorized on behalf of _____ **Organization** _____ to submit this Request to become an approved CDFI/RLF to participate in the MT SSBCI 2.0 LPP.

_____ **Organization** _____ certifies that it has the experience and capacity to underwrite and service loans, by submitting the following materials with this request:

- A copy of the most recent audited financial statements
- A copy of the most recent Quarterly Balance Sheet and Profit and Loss Statement
- Loan Portfolio information as of the most recent Quarterly Financial statements:
 - The balance of the loan portfolios
 - The total number of outstanding loans
 - The total dollar amount of outstanding loans
 - An Aging Report listing the number of past due loans
 - An Aging Report listing the dollar amount of past due loans
- The total number of staff employed
- The total number of staff employed whose work involves the management of loan programs

(**Name**) will be our main point of contact for the purpose of the application process and operation and management of our component of the MT SSBCI 2.0 LPP.

- Mailing Address
- Phone Number
- Email Address

Thank you for the opportunity to participate in the **MT SSBCI 2.0 LPP**.

Sincerely,

Your Name

Your Title

**MONTANA STATE SMALL BUSINESS CREDIT INITIATIVE 2.0
LOAN PARTICIPATION PROGRAM (MT SSBCI 2.0 LPP)
CDFI/RLF LOAN SERVICING AGREEMENT**

THIS AGREEMENT, effective September 1, 2022, is made by and between the Montana Department of Commerce (hereinafter referred to as the “Department”), a State agency, and _____ (hereinafter referred to as the “CDFI/RLF”).

WITNESSETH

WHEREAS, the Department is an agency of the State of Montana; and

WHEREAS, the Department, in fulfilling its responsibility to administer the Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP), has adopted a Policy to implement the MT SSBCI 2.0 LPP, through which program the Department will participate with approved CDFI/RLF’s to make financing available to Montana businesses; and

WHEREAS, the CDFI/RLF is an approved participating CDFI/RLF for purposes of the MT SSBCI 2.0 LPP; and

WHEREAS, The CDFI/RLF is a _____ duly organized and existing under the laws of _____; and with its principal office at _____; and

WHEREAS, the Lender has offered the CDFI/RLF an opportunity to participate in certain MT SSBCI 2.0 LPP loans secured on real property and/or security interests in tangible personal property and the CDFI/RLF has evidenced an interest in acquiring a participating interest in such loans and the collateral security for said loans; and

WHEREAS, the CDFI/RLF and the MT SSBCI 2.0 LPP agree that if the CDFI/RLF decides to participate in a Loan offered by the Lender such participation shall be upon the terms and conditions set forth herein; and

WHEREAS, the CDFI/RLF and the Department are both authorized to enter into this Agreement for the purpose of defining each party’s rights and obligations under the MT SSBCI 2.0 LPP;

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree, and covenant as follows:

Section 1.0 Definitions The following words and terms have the following respective meanings:

- 1) “Act” means The American Rescue Plan Act of 2021 (ARPA) that reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic

effects of the COVID-19 pandemic. SSBCI provisions are codified at 12 U.S.C. § 5701 *et seq.*

- 2) "Borrower" means the person or entity to whom a Participation Loan is made by the Lender.
- 3) "CDFI/RLF" means the approved Community Development Financial Institutions (CDFI) and Economic Development Organizations (RLF) authorized to utilize the MT SSBCI 2.0 LPP loan funds to facilitate a participation in a Lender loan.
- 4) "Collateral" means the property, which is or at any time becomes subject to a Security Agreement.
- 5) "Commitment Letter" means that written document, originated by the MT SSBCI 2.0 LPP specifying the terms and conditions under which the CDFI/RLF will participate in a specific loan with the Lender.
- 6) "Lender" means an institution issuing the loan in which the approved CDFI/RLF will facilitate the use of MT SSBCI 2.0 LPP loan funds through a participation in said loan.
- 7) "Loan Agreement" means the loan agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.
- 8) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, UCC Financing Statements, ALTA Extended Mortgagee Title Insurance and other documents and instruments evidencing, securing, guaranteeing, or otherwise pertaining to a Participation Loan.
- 9) "MT SSBCI 2.0 Loan Participation Program Policy" means that written document, approved by the Department, identifying the guidelines under which the MT SSBCI 2.0 LPP will consider issuing a Commitment Letter.
- 10) "Note" means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee, and setting forth the terms of the obligation, in a form acceptable to the MT SSBCI 2.0 LPP.
- 11) "Participation Certificate" means the certificate, substantially in the form of Exhibit A hereto, executed by the Lender and accepted in writing by the CDFI/RLF setting forth the amount of a Participation Loan, the Lender's and the CDFI/RLF's respective shares thereof, the respective interest rates applicable thereto and the Lender's service fee.
- 12) "Participation Loan" means any loan in which a Participation Certificate has been issued by the Lender and accepted in writing by the CDFI/RLF.
- 13) "Participation", "Participation Percentage", "Participation Interest" or words of like import mean the MT SSBCI 2.0 LPP's undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.
- 14) "Project" means the land, building, equipment, fixtures, furnishings, and personal property or any one or more of the foregoing financed by a Participation Loan.
- 15) "Security Agreement" means an agreement granting a lien or security interest in real or personal property as security for a Participation Loan whether in the form of a mortgage, deed of trust, trust indenture, security agreement or other instrument.
- 16) "Tangible Personal Property" means all equipment, machinery and personal property that may or may not be a part of a Project.

Section 1.1 Exhibits Attached to and by reference made a part of this Agreement are: Exhibit A, the form of the Participation Certificate, and, Exhibit B, the form of the Participation Report.

Section 1.2 Rules of Interpretation This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana and venue therefore shall be in the First Judicial District in Lewis and Clark County.

Section 2.0 Purpose This Agreement shall govern the rights, interests, and obligations of the CDFI/RLF and the Department with respect to the MT SSBCI 2.0 LPP. The Agreement shall also govern the servicing obligations of the CDFI/RLF with respect to Participation Loans.

Section 2.1 Processing of Participation Loan The MT SSBCI 2.0 LPP shall not in any event take part in or be responsible for the negotiations with the Borrower leading to the consummation or Participation of a loan, unless requested by the Lender and in the presence of the Lender.

Section 3.0 Submission of Information The Lender shall provide the MT SSBCI 2.0 LPP through the CDFI/RLF, with sufficient information to enable MT SSBCI 2.0 LPP to determine whether the loans offered for Participation conform to the policies, rules, and regulations of the MT SSBCI 2.0 LPP.

Section 3.1 Requirement of Loan

(1) Any loan to be participated in by the MT SSBCI 2.0 LPP shall be evidenced by a Note and a Loan Agreement (if required by the Lender or the MT SSBCI 2.0 LPP) executed by the Borrower and the Lender in the form approved by the MT SSBCI 2.0 LPP. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall record appropriate Security Agreements including but not limited to those specified hereafter in a form approved by the MT SSBCI 2.0 LPP:

- (a) If the Project includes real property or buildings, an appropriate Security Agreement granting a lien thereon and a mortgagee's title insurance policy in the current form of American Land Title Association (ALTA) Loan Policy with Extended Coverage, or equivalent, including mechanics' lien and (if available) zoning coverage, issued by a title company satisfactory to the MT SSBCI 2.0 LPP, insuring in the amount of such loan the Lender's interest under the Security Agreement as the holder of the mortgage lien of record on such real property, subject to only such exceptions as are acceptable to the MT SSBCI 2.0 LPP;
- (b) If the Project involves the Borrower having an interest as lessor or as lessee under one or more leases of real, personal or mixed property, an assignment of the Borrower's interest in such leases;
- (c) UCC financing statements are required to perfect a security interest in the Collateral; and
- (d) Such other appropriate instruments as required by the MT SSBCI 2.0 LPP.

(2) Any loan must contain a Due on Sale provision in the Loan Documents that all principal and interest payments due under such loan may be accelerated if the Borrower rents, sells or otherwise transfers an interest in the property, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made.

(3) Any loan must not contain a Future Advance clause.

(4) Any loan must not contain a Cross Collateral clause associated with other Lender loans.

Section 3.2 Commitment to Participate Upon approval by the MT SSBCI 2.0 LPP of an application submitted by the Lender through the CDFI/RLF to the MT SSBCI 2.0 LPP in accordance with the MT SSBCI 2.0 LPP Policy, the MT SSBCI 2.0 LPP shall issue to a Commitment Letter to the Lender setting forth the terms and conditions under which it will participate in a loan. The MT SSBCI 2.0 LPP will ACH to the CDFI/RLF an amount equal to 100 percent of the CDFI/RLF's Participation Interest as first set forth in the Commitment Letter. These funds can be disbursed under Section 3.3.

Section 3.3 Payment and Delivery of Documents for Loan Participation Upon receipt of a disbursement letter request and a copy of the Participation Certificate executed by the Lender and CDFI/RLF, stating among other things that the Note and other necessary Loan Documents have been fully executed by the Borrower and recorded by the Lender and a complete set of the Loan Documents as required by Schedule A of the Commitment Letter have been received, the MT SSBCI 2.0 LPP shall authorize the CDFI/RLF to disburse the MT SSBCI 2.0 LPP funds to the Lender, in an amount equal to 100 percent of the CDFI/RLF's Participation Interest as first set forth in the Commitment Letter. The review of all loan documents or documents required under the Commitment Letter by the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented as required by the Commitment Letter.

Section 3.4 Determination of Interest Rate to be Charged for Participation Loans The interest rate charged by the Lender on a loan participated in by the CDFI/RLF shall be specified in the MT SSBCI 2.0 LPP's Commitment Letter.

Section 3.5 Interest of MT SSBCI 2.0 LPP in Participation Loan Each Participation held by the CDFI/RLF will include an interest in all amounts of principal and interest on the Participation Loan to which it relates received by the Lender in payment thereof from whatsoever source said payments are derived and in all Collateral, said interest subject to the provisions of Section 5.3 hereof, to be based upon the CDFI/RLF's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by the CDFI/RLF shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

Section 3.6 Assignability The Lender shall not assign its interest in a Participation Loan or any rights with respect thereto or grant other participation interests therein without the prior written consent of the CDFI/RLF and the MT SSBCI 2.0 LPP. Such consent shall not be unreasonably or arbitrarily withheld. Should the MT SSBCI 2.0 LPP assign its Participation Interest, it will notify the Lender of such assignment and such notice shall include the name and address of assignee and instructions on payments to be made under this Agreement.

Section 4.0 Warranties The Lender represents and warrants with respect to each Participation Loan described in any Participation Certificate executed by the CDFI/RLF and Lender, that:

- 1) The Lender is the sole legal, equitable and beneficial owner of each of said Participation Loans and has the right to sell and transfer a Participation Interest therein to the CDFI/RLF and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without MT SSBCI 2.0 LPP concurrence in any

of such Participation Loans or the Collateral therefore. If the Lender wishes to sell a portion of its retained portion of the participation loan, the Lender must get prior written approval from the MT SSBCI 2.0 LPP and retain at least five percent (5.00%) of the original loan amount.

- 2) The property subject to each Security Agreement securing a Loan is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the lien of such Security Agreements, except: (1) the lien for future taxes and assessments not yet due and payable, and (2) subordinated liens agreed upon in the MT SSBCI 2.0 LPP's commitment.
- 3) If the property subject to the Security Agreement is subject to a superior or prior lien and the subject loan is in a secondary or subordinate security position, the MT SSBCI 2.0 LPP must give its approval to the secondary or subordinate security position.
- 4) No Loan Documents are in default and there does not exist an event which may result in default under the terms and covenants thereof. No portion of any real property subject to any Security Agreement securing a Participation Loan has been released from such Security Agreement after the date of the applicable mortgagee's title insurance policy.
- 5) All Loan Documents in connection with each Participation Loan are to the best of Lender's knowledge, valid and enforceable under existing law.
- 6) Each Participation Loan complies with all applicable provisions of the Act and the MT SSBCI 2.0 LPP Policy promulgated by the Department pursuant thereto.
- 7) The review and acceptance of all loan documents or documents required under the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented.

Section 4.1 Further Warranties CDFI/RLF further represents and warrants at all times relevant herein that:

- 1) The CDFI/RLF is and will be authorized to do business in the State of Montana and there are and will be no substantial or material violations on the part of the CDFI/RLF of any applicable state or federal law, regulation or rule.
- 2) Each person executing any documents under the MT SSBCI 2.0 LPP is or will be, at the time of execution and delivery thereof, fully authorized to do so on behalf of the CDFI/RLF.

Section 5.0 Custody of Notes and Loan Documents

(1) The Lender shall have custody and control of the Notes and the Loan Documents relating to each Participation Loan with full authority, subject to the provisions of this Agreement, to control in the name of the Lender the collection and enforcement thereof, and the utilization of the Collateral therefore, by suit, foreclosure, or otherwise. The Lender shall maintain customary records required by its supervisory authorities as to each loan in which the CDFI/RLF has acquired a participation interest.

(2) The CDFI/RLF agrees to make available to the MT SSBCI 2.0 LPP staff, Treasury, Treasury Inspector General, the Government Accountability Office, or any of their duly authorized representatives, all books and records related to the use of the MT SSBCI 2.0 LPP funds, subject to applicable privacy laws, including but not limited to 12 U.S.C. § 3401 *et seq.*, including detailed loan records, as applicable.

(3) The CDFI/RLF agrees to retain all MT SSBCI 2.0 LPP documents for the loans to which they are a party, directly or indirectly, for a period of three years after the MT SSBCI 2.0 LPP funds are transferred to the CDFI/RLF under Section 8.7 Final Settlement.

(4) Information included in an MT SSBCI 2.0 LPP application is subject to Montana's public records law.

Section 5.1 Remittance of Collections for Participation Loans

(1) The Lender shall receive all the loan repayments on Participation Loans in trust for the benefit of the CDFI/RLF without commingling. Lender will retain the CDFI/RLF's participated portion of the principal and interest payments due the CDFI/RLF in a separate, restricted account for the benefit of the CDFI/RLF. No disbursements will be made from this account without the expressed written consent of the MT SSBCI 2.0 LPP.

(2) The Lender or CDFI/RLF will prepare and forward to the MT SSBCI 2.0 LPP a copy of a completed Participation Report set forth on Exhibit B hereto, immediately after depositing the CDFI/RLF's participation share of principal and interest payment made to the Lender by the Borrower.

(3) The Lender shall deposit to the CDFI/RLF's restricted account, held by the Lender, the CDFI/RLF's proportionate share of all principal and interest payments received by the Lender within five (5) business days of its receipt thereof. The CDFI/RLF's share of interest to be remitted by the Lender shall be originally computed from the date of receipt by the Lender from the MT SSBCI 2.0 LPP of the purchase price for its Participation Interest in each Participation Loan, and interest on the Participation Loan shall thereafter be computed by Lender as provided for in the Note. Any payment received after the five (5) business days grace period may be subject to a late fee equal to the CDFI/RLF's interest rate, times the late payment amount, times the number of days after the grace period, divided by the method of calculation (365 days, 360 days or 366 days during leap year).

(4) The CDFI/RLF will segregate all MT SSBCI 2.0 LPP funds received from the Department in a separate restricted account. The CDFI/RLF will segregate all MT SSBCI 2.0 LPP principal loan payments in this same account. Interest earned on the MT SSBCI 2.0 LPP funds will be reported as income but need not be segregated into this account. No withdrawals or transfers can be made from this account without the written consent of the MT SSBCI 2.0 LPP.

Section 5.2 Sharing of Repayment Proceeds for Participation Loans The Lender shall not acquire any preferential security, surety or insurance to protect its participation interest in a Participation Loan. All repayments, security or guarantee of any nature, including without limitation rights of set-off and counterclaim which Lender or CDFI/RLF jointly or severally may at any time recover from any source whatsoever or have the right to recover on any Participation Loan, shall repay and secure the interest of the Lender and the CDFI/RLF in the same proportion as such interest bears respectively to the unpaid balance of the Participation Loan. The Lender shall notify the CDFI/RLF of any loan or advance by the Lender or of which the Lender has knowledge to the Borrower subsequent to a Participation Loan, and if, in the CDFI/RLF's opinion, circumstances require, and the Borrower's consent, if required, is first obtained, enter into a written agreement with the CDFI/RLF providing for the application of collateral or proceeds realized therefrom to the respective loans in a manner satisfactory to the parties hereto.

Section 5.3 Management of Participation Loans

(1) The Lender shall have the right to manage, perform and enforce the terms of each Note and the other Loan Documents pertaining to any Participation Loan and to exercise and enforce all privileges and rights exercisable or enforceable by it thereunder and to grant or withhold consents or approvals there under according to the Lender's discretion and in the exercise of its business judgment.

(2) All funds received from any Borrower or from any other source, or retained as part of the Participation Loan proceeds for the purpose of paying taxes, insurance premium to maintain the insurance coverage required hereby or by the Loan Documents, special assessments, or for the purpose of guaranteeing the repair or completion of improvements to the property subject to any Security Agreement shall be retained and disbursed by the Lender at such time, and from time to time, as the Lender in its discretion shall deem necessary.

(3) Each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or the directors, officers, agents or employees of such other party and instead in reliance upon information furnished by each Borrower and upon such other information as it deems appropriate, make its own independent credit analysis and decision to make, in the case of the Lender, and to participate, in the case of the CDFI/RLF, in each Participation Loan hereunder. Each party hereto agrees that it shall, independently and without reliance on the other party or the directors, officers, agents or employees of the other party continue to make its own independent credit analysis and decisions in taking or in refraining from taking any action under this Agreement. The MT SSBCI 2.0 LPP, however, shall be entitled to rely on the accuracy of any and all information provided to it by the Lender through the CDFI/RLF regarding each Participation Loan. Each party hereto may employ agents and attorneys-in-fact and shall not be answerable, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorney-in-fact selected by it with reasonable care after appropriate investigation. Each party hereto shall be entitled to rely upon any document, paper, or instrument reasonable believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and in respect to legal matters, upon the opinion of counsel selected by it.

(4) Lender shall defend, indemnify and hold harmless the State of Montana and the CDFI/RLF hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Lender's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or in part from (i) the services performed or products provided or (ii) other acts or omissions of Lender and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State.

Section 6.0 Taxes The Lender shall use its best effort to ensure that all taxes and assessments on the mortgaged property are promptly paid.

Section 6.1 Required Insurance Unless waived in writing by the MT SSBCI 2.0 LPP in its Commitment Letter, the Lender shall require that the property subject to any Security Agreement (excluding land) is, at all times relevant herein, insured as herein specified. Such insurance shall be evidenced by an insurance policy that is:

- 1) is issued by a reputable, nationally recognized insurance company authorized to do business in the state of Montana;

- 2) is in full force and effect;
- 3) contains a loss payable clause in favor of the Lender; and
- 4) is in an amount acceptable to the MT SSBCI 2.0 LPP

The MT SSBCI 2.0 LPP may require additional coverage on specific Loans as it deems necessary which may include, but not be limited to, earthquake, flood, breach of warranty, liability and loss of rents coverage.

Section 6.2 Insurance on Real Property If the property subject to a Security Agreement is or includes real property, insurance coverage on such property shall include loss or damage due to fire, vandalism and optional perils.

Section 6.3 Insurance on Personal Property If the Mortgaged Premises is or includes Tangible Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability.

Section 6.4 Errors and Omissions Insurance CDFI/RLF is not required to maintain an errors and omissions insurance policy but is requested to submit a copy of said policy to the MT SSBCI 2.0 LPP if one is maintained.

Section 7.0 Independent Contract The CDFI/RLF is not considered an agent or employee of the MT SSBCI 2.0 LPP. The Agreement shall not constitute nor be construed to create a partnership or joint venture between the CDFI/RLF and the MT SSBCI 2.0 LPP.

Section 7.1 Servicing Fees As compensation for the administration of Participation Loans under this Agreement, the Lender may retain a servicing fee, not to exceed 50 basis points from the interest collected on each Participation Loan in an amount equal to the amount by which interest is paid by the Borrower on such Participation Loan exceeds the interest payable to the MT SSBCI 2.0 LPP as specified in the Commitment Letter and the Participation Certificate applicable to such Participation Loan. The fees authorized to be charged for change in ownership, modification of loan or late charges may also be collected and retained by the Lender for its own account. Prepayment penalties, if any, shall be shared pro rata by the parties.

The MT SSBCI 2.0 LPP will charge the CDFI/RLFs a 25 basis point annualized fee on the cumulative outstanding principal balance of all MT SSBCI 2.0 LPP loans at the end of each calendar quarter. This fee will be electronically deducted, via ACH from the CDFI/RLF's operational bank account during the second half of the month following the calendar quarter. This fee will not be taken from the CDFI/RLF's MT SSBCI 2.0 LPP restricted bank account.

Section 8.0 Attorney's Fees In the event either party hereto shall institute any action or proceeding against the other party hereto relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its reasonable attorneys' fees as fixed by the Court.

Section 8.1 Notices All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the CDFI/RLF at the following address:

and to the MT SSBCI 2.0 LPP at the following address:

MT SSBCI 2.0 LPP
Montana Department of Commerce
301 S Park Ave (59601)
P.O. Box 200505 Helena, MT 59620-0505

Section 8.2 Provisions Binding The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 8.3 Waivers, etc No failure on the part of the MT SSBCI 2.0 LPP to exercise and no delay in exercising, any power or right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right. The remedies herein provided are cumulative and exclusive of any remedies provided by law.

Section 8.4 Amendments The MT SSBCI 2.0 LPP or the CDFI/RLF may change the terms and conditions of this Agreement upon notice to the other party for future or new loans or as to existing Participation Loans with respect to the affected party's undivided interest if such changes are necessitated because of changes or amendments to the Internal Revenue Code to regulations promulgated there under or rulings interpreting the same, to Montana law, or the federal regulations applicable to the CDFI/RLF. Should the MT SSBCI 2.0 LPP or the CDFI/RLF desire any other amendment, the party requesting the amendment shall notify the other party thereof in writing. If the other party will not agree to the proposed amendment, the party requesting the amendment may terminate this Agreement, but this Agreement shall continue to be operative as to the Participation(s) already purchased.

Section 8.5 Rights and Authority Irrevocable All rights and authority given to the MT SSBCI 2.0 LPP under this Agreement are irrevocable so long as MT SSBCI 2.0 LPP funded any CDFI/RLF participation in any Participation Loan.

Section 8.6 Reporting Under the Act, the MT SSBCI 2.0 LPP is required to prepare quarterly and annual reports for the U.S. Treasury Department. The CDFI/RLF agrees to provide the MT SSBCI 2.0 LPP with the information required to complete those quarterly and annual reports. The CDFI/RLF also agrees to provide any additional information the MT SSBCI 2.0 LPP deems necessary relating to the MT SSBCI 2.0 LPP funded participations.

Section 8.7 Final Settlement Upon the end of the MT SSBCI 2.0 Loan Participation Program a final determination will be made as to the participating CDFI/RLF's compliance with all program requirements. Upon determining satisfactory performance, fifty percent (50%) of the funds managed by the CDFI/RLF over the life of the MT SSBCI 2.0 LPP will become unrestricted Revolving Loan Funds of the CDFI/RLF, at which time the funds will no longer carry any federal identity or reporting requirements.

IN WITNESS WHEREOF, The CDFI/RLF and the Department have caused this agreement to be duly executed.

CDFI/RLF

_____, Executive Director Date

Montana Department of Commerce

Adam Schafer, Deputy Director Date

Reference Only

Exhibit A
LOAN PARTICIPATION CERTIFICATE

MT SSBCI 2.0 LPP Loan Number:

This certificate is issued by the undersigned institution (Approved Lender) to the **CDFI/RLF** for the loan to be participated in by the **CDFI/RLF** in accordance with its Commitment Letter dated _____ (Commitment Letter). It represents the original stated interest in the following loan:

Borrower: _____ Outstanding Principal Balance: \$ _____

Maturity Date: _____

Date of Note: _____ Effective Interest Rate to Borrower: _____%

Approved Lender's Share: Amount \$ _____ Interest Rate: lender share%

Percentage of Total: lender% of participation%

CDFI/RLF's Share: Amount \$ _____ Interest Rate: CDFI/RLF rate w/fee%

Percentage of Total: CDFI/RLF % of participation %

CDFI/RLF's Net Yield: CDFI/RLF__rate% + Approved Lender's Service Fee: service fee%

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the **CDFI/RLF's** share.

The Approved Lender and **CDFI/RLF**, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the Approved Lender Commercial Servicing Agreement of the Montana Board of Investments (Board) between the Approved Lender and the Board.
- 3) The **CDFI/RLF's** participation interest in the loan is transferable.

Dated: _____, _____.

Approved Lender: **Approved Lender/city**

ATTEST:

By: _____
Its: _____

By: _____
Its: _____

ACCEPTED:

CDFI/RLF

By: _____
Administrative Officer

Exhibit B

Please fill in all blanks to ensure proper reconciliation.

CDFI/RLF PARTICIPATION REPORT
 ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS
 PURSUANT TO THE TERMS OF PARTICIPATION AGREEMENT UNDER WHICH THIS LOAN WAS MADE

<p>FAX TO: CDFI/RLF</p> <p style="padding-left: 40px;">CDFI/RLF fax number _____</p>	<p>CDFI/RLF PARTICIPATION UNDER THE:</p> <p>Montana State Small Business Credit Initiative 2.0 Loan Participation Program</p>
<p>1. COMPLETE ON EACH REPORT:</p> <p>Amount of Note: \$ _____</p> <p>Date of Note: _____</p> <p>Maturity Date: _____</p> <p>Interest is calculated on: _____30/360_____Actual days/365_____Other (explain below)</p> <p>Next payment date: _____</p> <p>Total required payment amount: \$ _____</p>	<p>MT SSBCI 2.0 LPP LOAN NUMBER: loan # _____</p> <p>BORROWER (Name): borrower _____</p> <p>Lender (Name and Address): Approved Lender name & address _____</p>

Repayment*

2. Repayment received _____, _____ on installment due _____, _____ in the amount of	\$ _____
3. Interest period: From _____, _____ to _____, _____. Number of days	# _____
4. CDFI/RLF's share of interest (CDFI/RLF rate) % rate on 50% of gross principal balance).....	\$ _____
5. LENDER's share of interest:	
a) LENDER's rate (lender's share % rate on 50% of gross principal balance).....	\$ _____
b) LENDER's service fee % service fee on 50% of CDFI/RLF's share of gross principal balance	\$ _____
TOTAL LENDER's share (a + b)	\$ _____
6. Total interest (Item 4 + Item 5).....	\$ _____
7. Total principal (Item 2 - Item 6)	\$ _____
8. CDFI/RLF's share of principal: (50% of Item 7).....	\$ _____
9. LENDER's share of principal:(50% of Item 7).....	\$ _____
10. PAYMENT DUE TO CDFI/RLF**: (Item 4 + Item 8).....	\$ _____

Balance of Loan Account	Gross	CDFI/RLF's Share	LENDER's Share
11. Principal balance from previous report			
12. Less principal repayment, if any, reported above.....			
13. Current outstanding loan balance			

DEFAULTS (if any) AND COMMENTS:

Authorized Signature**:

Name/title (Please print or type)	Phone No.:	Fax No.:	Date of Report:
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*In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported. ** Authorization to initiate ACH transfer of Payment Due to CDFI/RLF in the amount indicated above.

**DEPARTMENT OF ADMINISTRATION
STATE ACCOUNTING BUREAU
PO BOX 200102
HELENA, MT 59620-0102**

**204 - ELECTRONIC
FUNDS TRANSFER
SIGN UP**

Questions please contact Warrant Writer. E-Mail: warrantwriter@mt.gov, Phone: 444-3092, Fax: 444-2812

Note: All incomplete/altered forms will not be processed.

1) Request Type: Initial Request (1-7,10) Change/Add Account (1-10) Remove Account (5-10)

2) I, _____, hereby certify that the account indicated on this form is under my direct control and access; therefore, I authorize the State Treasurer as fiscal agent for the State of Montana to initiate, change or cancel credit entries to that account as indicated on this form.

This authority is to remain in full force and effect until the State of Montana has received written notification from either me or an authorized officer of the organization of the account's termination in such time and in such a manner as to afford the State of Montana a reasonable opportunity to act upon it.

3) New Bank Information:

Bank Name: _____

Routing Number: _____

Account Number: _____

Account Type: Checking Savings

5) Supplier Name: _____

6) Tax ID Number: (must be 9 digits)

--	--	--	--	--	--	--	--	--	--

Type: SSN FEIN

7) Address: (limited to 45 characters per line)

Line 1 _____

Line 2 _____

Line 3 _____

City _____

State/Province _____

Postal Code _____

Country _____

Phone Number _____

E-mail _____

8) Confirmation of existing bank account information:

Bank Name: _____

Routing Number: _____

Account Number: _____

Account Type: Checking Savings

9) This authorization will remain in effect until either cancelled in writing or an updated form is submitted to the Agency you currently do business with.

10) Authorized Signature _____

Title (If Applicable) _____

Date _____

**MONTANA STATE SMALL BUSINESS CREDIT INITIATIVE 2.0
LOAN PARTICIPATION PROGRAM (MT SSBCI 2.0 LPP)
LENDER LOAN SERVICING AGREEMENT**

THIS AGREEMENT is made and entered into as of _____, 20____
_____, by and between _____
(the Lender) and the Montana Department of Commerce (MDOC).

WITNESSETH

WHEREAS, the MDOC is an agency of the State of Montana; and

WHEREAS, the MDOC, in fulfilling its responsibility to administer the Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP), has adopted a Policy to implement the MT SSBCI 2.0 LPP, through which the MDOC will participate with approved financial institutions and authorized CDFI/RLFs to make financing available to Montana businesses; and

WHEREAS, the Lender is an approved financial institution or authorized CDFI/RLF for the purposes of the MT SSBCI 2.0 LPP; and

WHEREAS, The Lender is a _____ duly organized and existing under the laws of _____; and with its principal office at _____
_____ ; and

WHEREAS, the Lender has offered the MT SSBCI 2.0 LPP an opportunity to participate in certain loans on real property and/or security interests in tangible personal property and the MT SSBCI 2.0 LPP has evidenced an interest in acquiring a participating interest in such loans and the collateral security for said loans; and

WHEREAS, the Lender and the MT SSBCI 2.0 LPP agree that if the MT SSBCI 2.0 LPP decides to participate in a Loan offered by the Lender such participation shall be upon the terms and conditions set forth herein; and

WHEREAS, the Lender and the MDOC are both authorized to enter into this Agreement for the purpose of defining each party's rights and obligations under the MT SSBCI 2.0 LPP;

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and conditions contained herein and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree and covenant as follows:

Section 1.0 Definitions The following words and terms have the following respective meanings:

- 1) "Act" means the American Rescue Plan Act of 2021 (ARPA) that reauthorized and amended the Small Business Jobs Act of 2010 (SBJA) to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic

effects of the COVID-19 pandemic. SSBCI provisions are codified at 12 U.S.C. § 5701 *et seq.*

- 2) "Borrower" means the person or entity to whom a Participation Loan is made by the Lender.
- 3) "CDFI/RLF" means the approved Community Development Financial Institutions (CDFI) and Economic Development Organizations (RLF) authorized to utilize the MT SSBCI 2.0 LPP loan funds to facilitate a participation in a Lender loan.
- 4) "Collateral" means the property, which is or at any time becomes subject to a Security Agreement.
- 5) "Commitment Letter" means that written document, originated by the MT SSBCI 2.0 LPP specifying the terms and conditions under which the MT SSBCI 2.0 LPP will participate in a specific loan with the Lender.
- 6) "Lender" means an institution issuing the loan in which the approved CDFI/RLF will facilitate the use of MT SSBCI 2.0 LPP loan funds through a participation in said loan.
- 7) "Loan Agreement" means the loan agreement between the Borrower and the Lender setting forth the terms and conditions applicable to a Participation Loan.
- 8) "Loan Documents" mean the Security Agreement, the Loan Agreement, the Note, UCC Financing Statements, ALTA Extended Mortgagee Title Insurance and other documents and instruments evidencing, securing, guaranteeing or otherwise pertaining to a Participation Loan.
- 9) "MT SSBCI 2.0 Loan Participation Program Policy" means that written document, approved by the MDOC, identifying the guidelines under which the MT SSBCI 2.0 LPP will consider issuing a Commitment Letter.
- 10) "Note" means the promissory note executed by a Borrower evidencing a Participation Loan, naming the Lender as payee and setting forth the terms of the obligation, in a form acceptable to the MT SSBCI 2.0 LPP.
- 11) "Participation Certificate" means the certificate, substantially in the form of Exhibit A hereto, executed by the Lender and accepted in writing by the MT SSBCI 2.0 LPP setting forth the amount of a Participation Loan, the Lender's and the MT SSBCI 2.0 LPP's respective shares thereof, the respective interest rates applicable thereto and the Lender's service fee.
- 12) "Participation Loan" means any loan in which a Participation Certificate has been issued by the Lender and the MT SSBCI 2.0 LPP has accepted the participation in writing, subject to conditions outlined in the Commitment Letter.
- 13) "Participation", "Participation Percentage", "Participation Interest" or words of like import mean the MT SSBCI 2.0 LPP's undivided interest in and ownership of a percentage of a Participation Loan as evidenced by the Participation Certificate issued by the Lender with respect to such Participation Loan.
- 14) "Project" means the land, building, equipment, fixtures, furnishings, and personal property or any one or more of the foregoing financed by a Participation Loan.
- 15) "Security Agreement" means an agreement granting a lien or security interest in real or personal property as security for a Participation Loan whether in the form of a mortgage, deed or trust, trust indenture, security agreement or other instrument.
- 16) "Tangible Personal Property" means all equipment, machinery and personal property that may or may not be a part of a Project.

Section 1.1 Exhibits Attached to and by reference made a part of the Agreement are: Exhibit A, the form of the Participation Certificate and Exhibit B, the form of the Participation Report.

Section 1.2 Rules of Interpretation This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana and venue therefore shall be in the First Judicial District in Lewis and Clark County.

Section 2.0 Purpose This Agreement shall govern the rights, interests and obligations of the Lender and the MT SSBCI 2.0 LPP with respect to all Participations purchased by the MT SSBCI 2.0 LPP from the Lender hereunder, except insofar as the terms hereof shall be modified, amplified, or amended by the terms of the Participation Certificate issued with respect to a particular Participation Loan. The Agreement shall also govern the servicing obligations of the Lender with respect to Participation Loans.

Section 2.1 Processing of Participation Loan The MT SSBCI 2.0 LPP shall not in any event take part in or be responsible for the negotiations with the Borrower leading to the consummation or Participation of a loan, unless requested by the Lender and in the presence of the Lender.

Section 3.0 Submission of Information The Lender shall provide the MT SSBCI 2.0 LPP with sufficient information to enable the MT SSBCI 2.0 LPP to determine whether the loans offered for participation conform to the policies, rules, and regulations of the MT SSBCI 2.0 LPP.

Section 3.1 Requirement of Loan

(1) Any loan to be participated in by the MT SSBCI 2.0 LPP shall be evidenced by a Note and a Loan Agreement (if required by the Lender or the MT SSBCI 2.0 LPP) executed by the Borrower and the Lender in the form approved by the MT SSBCI 2.0 LPP. To secure such Note, the Borrower shall execute and deliver to the Lender, and the Lender shall record appropriate Security Agreements, including but not limited to those specified hereafter in a form approved by the MT SSBCI 2.0 LPP:

- (a) If the Project includes real property or buildings, an appropriate Security Agreement granting a lien thereon and a mortgagee's title insurance policy in the current form of American Land Title Association (ALTA) Loan Policy, including mechanics' liens and (if available) zoning coverage, issued by a title company satisfactory to the MT SSBCI 2.0 LPP, insuring in the amount of such loan the Lender's interest under the Security Agreement as the holder of the mortgage lien of record on such real property, subject to only such exceptions as are acceptable to the MT SSBCI 2.0 LPP;
- (b) If the Project involves the Borrower having an interest as lessor or as lessee under one of more leases of real, personal or mixed property, an assignment of the Borrower's interest in such leases;
- (c) UCC financing statements are required to perfect a security interest in the Collateral; and
- (d) Such other appropriate instruments as required by the MT SSBCI 2.0 LPP.

(2) Any loan must contain a Due on Sale provision in the Loan Documents that all principal and interest payments due under such loan may be accelerated if the Borrower rents, sells

or otherwise transfers an interest in the property, including chattel property, or ceases to utilize any of the property for the purpose of which such loan was made.

(3) Any loan must not contain a Future Advance clause.

(4) Any loan must not contain a Cross Collateral clause associated with other Lender loans.

Section 3.2 Commitment to Participate Upon approval by the MT SSBCI 2.0 LPP of an application submitted in accordance with the MT SSBCI 2.0 LPP Policy, the MT SSBCI 2.0 LPP shall issue a Commitment Letter to the Lender setting forth the terms and conditions under which it will participate in a loan.

Section 3.3 Payment and Delivery of Documents for Loan Participation Upon receipt of a Participation Certificate executed by the Lender stating among other things that the Note and other necessary Loan Documents have been fully executed by the Borrower and recorded by the Lender, the MT SSBCI 2.0 LPP shall execute the Participation Certificate and pay to the Lender an amount equal to 100 percent of the MT SSBCI 2.0 LPP's Participation Interest as first set forth in the Commitment Letter and as shown in the Participation Certificate. The Lender shall deliver to the MT SSBCI 2.0 LPP a complete set of the Loan Documents as required by Schedule A of the Commitment Letter. The review of all loan documents or documents required under the Commitment Letter by the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented as required by the Commitment Letter.

Section 3.4 Determination of Interest Rate to be Charged for Participation Loans The interest rate charged by the Lender on a loan participated in by the MT SSBCI 2.0 LPP shall be specified in the MT SSBCI 2.0 LPP's Commitment Letter.

Section 3.5 Interest of MT SSBCI 2.0 LPP in Participation Loan Each Participation held by the MT SSBCI 2.0 LPP will include an interest in all amounts of principal and interest on the Participation Loan to which it relates received by the Lender in payment thereof from whatsoever source said payments are derived and in all Collateral, said interest subject to the provisions of Section 5.3 hereof, to be based upon the MT SSBCI 2.0 LPP's Participation Percentage in such Participation Loan. Each Participation in a Participation Loan held by the MT SSBCI 2.0 LPP shall be on parity with any other Participations therein and with the undivided interest therein retained by the Lender.

Section 3.6 Assignability The Lender shall not assign its interest in a Participation Loan or any rights with respect thereto or grant other participation interests therein without the prior written consent of the MT SSBCI 2.0 LPP. Such consent shall not be unreasonably or arbitrarily withheld. Should the MT SSBCI 2.0 LPP assign its Participation Interest, it will notify the Lender of such assignment and such notice shall include the name and address of assignee and instructions on payments to be made under this Agreement.

Section 4.0 Warranties The Lender represents and warrants with respect to each Participation Loan described in any Participation Certificate executed by the MT SSBCI 2.0 LPP and Lender, that:

- (1) The Lender is the sole legal, equitable and beneficial owner of each of said Participation Loans and has the right to sell and transfer a Participation Interest

therein to the MT SSBCI 2.0 LPP and has not heretofore sold or transferred or otherwise disposed of any portion of its interest without MT SSBCI 2.0 LPP concurrence in any of such Participation Loans or the Collateral therefore. If the Lender wishes to sell a portion of its retained portion of the participation loan, the Lender must get prior written approval from the MT SSBCI 2.0 LPP and retain at least five percent (5.00%) of the original loan amount.

- (2) The property subject to each Security Agreement securing a Loan is, to the best of Lender's knowledge, free and clear of all liens that are prior or superior to the lien of such Security Agreements, except: (1) the lien for future taxes and assessments not yet due and payable, and (2) subordinated liens agreed upon in the MT SSBCI 2.0 LPP's commitment.
- (3) If the property subject to the Security Agreement is subject to a superior or prior lien and the subject loan is in a secondary or subordinate security position, the MT SSBCI 2.0 LPP must give its approval to the secondary or subordinate security position.
- (4) No Loan Documents are in default and there does not exist an event which may result in default under the terms and covenants thereof. No portion of any real property subject to any Security Agreement securing a Participation Loan has been released from such Security Agreement after the date of the applicable mortgagee's title insurance policy.
- (5) All Loan Documents in connection with each Participation Loan are to the best of Lender's knowledge, valid and enforceable under existing law.
- (6) Each Participation Loan complies with all applicable provisions of the Act and Loan Policy promulgated by the MT SSBCI 2.0 LPP pursuant thereto.
- (7) The review and acceptance of all loan documents or documents required under the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented.

Section 4.1 Further Warranties Lender further represents and warrants at all times relevant herein that:

- (1) The Lender is and will be authorized to do business in the State of Montana and there are and will be no substantial or material violations on the part of the Lender of any applicable state or federal law, regulation, or rule.
- (2) Each person executing this Agreement and each Participation Certificate is or will be, at the time of execution and delivery thereof, fully authorized to do so on behalf of the Lender.
- (3) The Lender, if a financial institution, certifies that it is in compliance with the requirements of 31 C.F.R. § 1020.220, regarding customer identification programs.

Section 5.0 Custody of and Access to Notes and Loan Documents

(1) The Lender shall have custody and control of the Notes and the Loan Documents relating to each Participation Loan with full authority, subject to the provisions of this Agreement, to control in the name of the Lender the collection and enforcement thereof, and the utilization of the Collateral therefore, by suit, foreclosure, or otherwise. The Lender shall maintain customary records required by its supervisory authorities as to each loan in which the MT SSBCI 2.0 LPP has acquired a participation interest.

(2) The Lender agrees to make available, during ordinary business hours, to the MT SSBCI 2.0 LPP staff, Treasury, Treasury Inspector General, the Government Accountability Office, or any of their duly authorized representatives, all books and records related to the use of the MT SSBCI 2.0 LPP funds, subject to applicable privacy laws, including but not limited to 12 U.S.C. § 3401 *et seq.*, including detailed loan records, as applicable.

(3) Information included in an MT SSBCI 2.0 LPP application is subject to Montana's public records law.

Section 5.1 Remittance of Collections for Participation Loans

(1) The Lender shall receive all the loan repayments on Participation Loans in trust for the benefit of the MT SSBCI 2.0 LPP without commingling and shall promptly remit to the MT SSBCI 2.0 LPP its share of all amounts so received. Except as herein provided, the MT SSBCI 2.0 LPP shall not have recourse against the Lender, either for the principal or interest on the Participation Loans, except to enforce the obligation of the Lender to remit to the MT SSBCI 2.0 LPP its share of principal and interest when, as and if collected by the Lender.

(2) Each remittance to the MT SSBCI 2.0 LPP, shall be accompanied by a Participation Report set forth in Exhibit B hereto.

(3) The Lender shall remit to the MT SSBCI 2.0 LPP its proportionate share of all principal and interest payments received by the Lender within five (5) business days of its receipt thereof. The MT SSBCI 2.0 LPP's share of interest to be remitted by the Lender shall be originally computed from the date of receipt by the Lender from the MT SSBCI 2.0 LPP of the purchase price for its Participation Interest in each Participation Loan, and interest on the Participation Loan shall thereafter be computed by Lender as provided for in the Note. Any payment received after the five (5) business days grace period may be subject to a late fee equal to the MT SSBCI 2.0 LPP's interest rate, times the late payment amount, times the number of days after the grace period, divided by the method of calculation (365 days, 360 days, or 366 days during leap year).

Section 5.2 Sharing of Repayment Proceeds for Participation Loans The Lender shall not acquire any preferential security, surety or insurance to protect its participation interest in a Participation Loan. All repayments, security or guarantee of any nature, including without limitation rights of off-set and counterclaim which Lender or MT SSBCI 2.0 LPP jointly or severally may at any time recover from any source whatsoever or have the right to recover on any Participation Loan, shall repay and secure the interest of the Lender and the MT SSBCI 2.0 LPP in the same proportion as such interest bears respectively to the unpaid balance of the Participation Loan. The Lender shall notify the MT SSBCI 2.0 LPP of any loan or advance by the Lender or of which the Lender has knowledge to the Borrower subsequent to a Participation Loan, and if, in the MT SSBCI 2.0 LPP's opinion, circumstances require, and the Borrower's consent, if required, is first obtained, enter into a written agreement with the MT SSBCI 2.0 LPP providing for the application of collateral or proceeds realized therefrom to the respective loans in a manner satisfactory to the parties hereto.

Section 5.3 Management of Participation Loans

(1) The Lender shall have the right to manage, perform and enforce the terms of each Note and the other Loan Documents pertaining to any Participation Loan and to exercise and

enforce all privileges and rights exercisable or enforceable by it thereunder and to grant or withhold consents or approvals thereunder according to the Lender's discretion and in the exercise of its business judgement (subject to the provisions in clause (2) of this Section 5.3), provided that the Lender will not take any of the following described actions with respect to any Participation Loan without the prior written approval of the MT SSBCI 2.0 LPP:

- (a) amend or modify any terms of the relevant Note of the other Loan Documents;
 - (b) release any property subject to a Security Agreement (whether or not new collateral is substituted) which it is not obligated to release prior to payment in full of the indebtedness secured thereby or by terms of the Loan Documents;
 - (c) accelerate the maturity or grant any material extension of time for performance by the Borrower under the relevant Note or any other Loan Documents;
 - (d) make an additional voluntary advance to the Borrower under an open-end mortgage or deed of trust, secured by the same Collateral;
 - (e) waive any claim against the Borrower or any guarantor, standby creditor or other obligor of such Loan;
 - (f) release any Borrower or an guarantor, standby creditor or other obligor of such Loan;
 - (g) disburse any proceeds from fire or other insurance received as a result of fire or casualty damage or loss in excess of \$10,000 covering any Collateral or any award received as a result of any proceeding involving the condemnation of any Collateral, except as permitted by the applicable Security Agreement;
 - (h) consent to the sale, transfer, pledge or assignment of any of the Collateral or the grant of any other security interest in the Collateral by Borrower;
 - (i) subordinate the Lender's lien rights in any of the Collateral
- (2) With respect to each Participation Loan the Lender will:
- (a) exercise the same degree of care that it exercises in the servicing and administration of loans for its own account;
 - (b) service the Participated Loan in accordance with generally accepted banking practices;
 - (c) take all reasonable steps to collect promptly amounts due on each Participation Loan; and
 - (d) provide the MT SSBCI 2.0 LPP with accurate information regarding each Participation Loan

(3) All funds received from any Borrower or from any other source, or retained as part of the Participation Loan proceeds for the purpose of paying taxes, insurance premium to maintain the insurance coverage required hereby or by the Loan Documents, special assessments, or for the purpose of guaranteeing the repair or completion of improvements to the property subject to any Security Agreement shall be retained and disbursed by the Lender at such time, and from time to time, as the Lender in its discretion shall deem necessary.

(4) Each party hereto acknowledges and agrees that it will, independently and without reliance upon the other party hereto or the directors, officers, agents or employees of such other party and instead in reliance upon information furnished by each Borrower and upon such other information as it deems appropriate, make its own independent credit analysis and decision to make, in the case of the Lender, and to participate, in the case of the MT SSBCI 2.0 LPP, in each Participation Loan hereunder. Each party hereto agrees that it shall, independently and without reliance on the other party or the directors, officers, agents or employees of the other party continue to make its own independent credit analysis and decisions in taking or in refraining from taking any action under this Agreement. The MT

SSBCI 2.0 LPP, however, shall be entitled to rely on the accuracy of any and all information provided to it by the Lender regarding each Participation Loan. Each party hereto may employ agents and attorneys-in-fact and shall not be answerable, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorney-in-fact selected by it with reasonable care after appropriate investigation. Each party hereto shall be entitled to rely upon any document, paper, or instrument reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and in respect to legal matters, upon the opinion of counsel selected by it.

(5) Lender shall defend, indemnify and hold harmless the State of Montana and the CDFI/RLF hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Lender's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting in whole or in part from (i) the services performed or products provided or (ii) other acts or omissions of Lender and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State.

Section 6.0 Duty of Lender The Lender will promptly notify the MT SSBCI 2.0 LPP of the occurrence of any material default under any Participation Loan of which it has knowledge or has received notice. The Lender will not make any effort to exercise its remedies with respect to a default without first sending written notice to the MT SSBCI 2.0 LPP specifying the remedies which the Lender proposes to take with respect to such default. If the MT SSBCI 2.0 LPP does not give other written instructions to the Lender within 30 days after its receipt of such written proposals, the Lender may proceed with its proposed remedies.

Section 6.1 Cost of Remedying Default In the event of a default on any Participation Loan, the MT SSBCI 2.0 LPP shall share ratably on the basis of its Participation percentage in such Participation Loan in any expenditures necessary to maintain and preserve the position of the Lender with regard to such Participation Loan, including, without limitation, expenditures for taxes, insurance premiums, prevention of waste, repairs, maintenance and attorney's fees, to the extent not recoverable from Borrower. Prior notification, including the estimated costs, must be submitted for the MT SSBCI 2.0 LPP's approval prior to incurring any expenses related to any event of default or default proceedings, subject to the limitations contained in Section 6.0 herein. Reimbursement of such expenditures from the MT SSBCI 2.0 LPP will not be due until final liquidation of such Participation Loan, except where such liquidation takes more than 6 months, in which case the MT SSBCI 2.0 LPP will remit its pro rata share of costs to the Lender on a semiannual basis.

Section 6.2 Foreclosure In case of foreclosure, Lender shall protect the interest of the MT SSBCI 2.0 LPP upon a sale of the Collateral, and Lender shall be required to prosecute any claim for any deficiency judgment to the extent allowed by law for the benefit of the MT SSBCI 2.0 LPP unless otherwise instructed by the MT SSBCI 2.0 LPP. Lender shall manage and preserve the Collateral until and through final liquidation of the property. The Lender shall, after payment of all reasonable costs and expenses of foreclosure and collection, remit to the MT SSBCI 2.0 LPP its pro rata share of all net proceeds received by the Lender as a

consequence of such foreclosure proceeding, including, without limitation, the proceeds of the foreclosure sale and the income from the operation of the property pending liquidation. The Lender shall be permitted to enter a bid at a foreclosure sale for the amount due on the Participation Loan plus any fees, expenses or penalties charged by the Lender or the MT SSBCI 2.0 LPP for default. Any bid in excess of such amount shall be made only with the consent of the MT SSBCI 2.0 LPP. If Lender acquires the Collateral through foreclosure or deed in lieu of foreclosure, the MT SSBCI 2.0 LPP shall have an interest in the property equivalent to its Participation Interest in the Participation Loan and title will be in the name of Lender and the MT SSBCI 2.0 LPP.

Section 7.0 Taxes The Lender shall use its best effort to ensure that all taxes and assessments on the mortgaged property are promptly paid. In the event any mortgagor fails to make payment required to be made under the terms of said mortgage, Lender warrants that it will notify the MT SSBCI 2.0 LPP of such fact within sixty (60) days after the same shall have become due and payable.

Section 7.1 Required Insurance Unless waived in writing by the MT SSBCI 2.0 LPP in its Commitment Letter, the Lender shall require that the property subject to any Security Agreement (excluding land) is, at all times relevant herein, insured as herein specified. Such insurance shall be evidenced by an insurance policy that is:

- (1) is issued by a reputable, nationally recognized insurance company authorized to do business in the state of Montana;
- (2) is in full force and effect;
- (3) contains a loss payable clause in favor of the Lender; and
- (4) is in an amount acceptable to the MT SSBCI 2.0 LPP

The MT SSBCI 2.0 LPP may require additional coverage on specific Loans as it deems necessary which may include, but not be limited to, earthquake, flood, breach of warranty, liability and loss or rents coverage.

Section 7.2 Insurance on Real Property If the property subject to a Security Agreement is or includes real property, insurance coverage on such property shall include loss or damage due to fire, vandalism, and optional perils.

Section 7.3 Insurance on Personal Property If the Mortgaged Premises is or includes Tangible Personal Property, the insurance coverage on such property shall include fire, theft, comprehensive, collision and liability.

Section 7.4 Errors and Omissions Insurance Lender is not required to maintain an errors and omissions insurance policy but is requested to submit a copy of said policy to the MT SSBCI 2.0 LPP if one is maintained.

Section 8.0 Independent Contract The Lender shall be in the status of and act as an independent contractor and shall in no event be considered an agent or employee of the MT SSBCI 2.0 LPP. The Agreement shall not constitute nor be construed to create a partnership or joint venture between the Lender and the MT SSBCI 2.0 LPP.

Section 8.1 Servicing Fees As compensation for the administration of Participation Loans under this Agreement, the Lender may retain a servicing fee, not to exceed 50 basis points, from the interest collected on each Participation Loan in an amount equal to the amount by which interest paid by the Borrower on such Participation Loan exceeds the interest rate payable to the MTSSBCI 2.0 LPP as specified in the Commitment Letter and the Participation Certificate applicable to such Participation Loan. The fees authorized to be charged for change in ownership, modification of loan or late charges may also be collected and retained by the Lender for its own account. Pre-payment penalties, if any, shall be shared pro rata by the parties.

Section 9.0 Repurchase Upon Lender's Material Breach In the event of any material breach by the Lender of any agreement contained herein or the Loan Policy with respect to any Participation Loan not cured to the MT SSBCI 2.0 LPP's satisfaction within 30 days, the Lender shall, at the MT SSBCI 2.0 LPP's option, repurchase the MT SSBCI 2.0 LPP's Participation in such Participation Loan for the principal balance and accrued interest on the MT SSBCI 2.0 LPP's Participation therein and other monies advanced by the MT SSBCI 2.0 LPP with respect to such Participation.

Section 10.0 Attorney's Fees In the event either party hereto shall institute any action or proceeding against the other party hereto relating to this Agreement, the unsuccessful party in such action or proceeding shall reimburse the successful party for its reasonable attorneys' fees as fixed by the Court.

Section 10.1 Notices All notices which may be required herein shall be in writing and shall be considered to have been given as of the date and time when the same is deposited in a United States Post Office with postage prepaid and mailed by registered or certified United States Mail, return receipt requested, to the Lender at the following address:

Lender Address:

and to the MT SSBCI 2.0 LPP at the following address:

***MT SSBCI 2.0 LPP
Montana Department of Commerce
301 S Park Ave (59601)
P.O. Box 200505 Helena, MT 59620-0505***

Section 10.2 Provisions Binding The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 10.3 Waivers, etc. No failure on the part of the MT SSBCI 2.0 LPP to exercise and no delay in exercising, any power or right hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any power or right. The remedies herein provided are cumulative and exclusive of any remedies provided by law.

Section 10.4 Amendments The MT SSBCI 2.0 LPP or the Lender may change the terms and conditions of this Agreement upon notice to the other party for future or new loans or as to existing Participation Loans with respect to the affected party's undivided interest if such changes are necessitated because of changes or amendments to the Internal Revenue Code to regulations promulgated there under or rulings interpreting the same, to Montana law, or the federal regulations applicable to the Lender. Should the MT SSBCI 2.0 LPP or the Lender desire any other amendment, the party requesting the amendment shall notify the other party thereof in writing. If the other party will not agree to the proposed amendment, the party requesting the amendment may terminate this Agreement, but this Agreement shall continue to be operative as to the Participation(s) already purchased.

Section 10.5 Rights and Authority Irrevocable All rights and authority given to the MT SSBCI 2.0 LPP under this Agreement are irrevocable so long as the MT SSBCI 2.0 LPP owns any Participation in any Participation Loan.

Section 10.6 Reporting Under the Act, the MT SSBCI 2.0 LPP is required to prepare quarterly and annual reports for the U.S. Treasury Department. The Lender agrees to provide the MT SSBCI 2.0 LPP with the information required to complete those quarterly and annual reports. The Lender also agrees to provide any additional information the MT SSBCI 2.0 LPP deems necessary relating to the MT SSBCI 2.0 LPP funded participations.

IN WITNESS WHEREOF, the Lender and the MDOC have caused this agreement to be duly executed on the date first above written.

Lender

Name, Title

Date

Montana Department of Commerce

Adam Schafer, Deputy Director

Date

Exhibit A
LOAN PARTICIPATION CERTIFICATE

MT SSBCI 2.0 LPP Loan Number:

This certificate is issued by the undersigned institution (Approved Lender) to the **CDFI/RLF** for the loan to be participated in by the **CDFI/RLF** in accordance with its Commitment Letter dated _____ (Commitment Letter). It represents the original stated interest in the following loan:

Borrower: _____ Outstanding Principal Balance: \$ _____

Maturity Date: _____

Date of Note: _____ Effective Interest Rate to Borrower: _____%

Approved Lender's Share: Amount \$ _____ Interest Rate: lender share%

Percentage of Total: lender% of participation%

CDFI/RLF's Share: Amount \$ _____ Interest Rate: CDFI/RLF rate w/fee%

Percentage of Total: CDFI/RLF % of participation %

CDFI/RLF's Net Yield: CDFI/RLF __ rate% + Approved Lender's Service Fee: service fee%

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the **CDFI/RLF's** share.

The Approved Lender and **CDFI/RLF**, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the Approved Lender Commercial Servicing Agreement of the Montana Board of Investments (Board) between the Approved Lender and the Board.
- 3) The **CDFI/RLF's** participation interest in the loan is transferable.

Dated: _____, _____.

Approved Lender: **Approved Lender/city**

ATTEST:

By: _____

By: _____

Its: _____

Its: _____

ACCEPTED:

CDFI/RLF

By: _____

Administrative Officer

Exhibit B

Please fill in all blanks to ensure proper reconciliation.

CDFI/RLF PARTICIPATION REPORT

ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS

PURSUANT TO THE TERMS OF PARTICIPATION AGREEMENT UNDER WHICH THIS LOAN WAS MADE

<p>FAX TO: CDFI/RLF</p> <p style="text-align: center;">CDFI/RLF fax number</p>	<p>CDFI/RLF PARTICIPATION UNDER THE:</p> <p>Montana State Small Business Credit Initiative 2.0 Loan Participation Program</p>
<p>1. COMPLETE ON EACH REPORT:</p> <p>Amount of Note: \$ _____</p> <p>Date of Note: _____</p> <p>Maturity Date: _____</p> <p>Interest is calculated on: _____30/360_____Actual days/365_____Other (explain below)</p> <p>Next payment date: _____</p> <p>Total required payment amount: \$ _____</p>	<p>MT SSBCI 2.0 LPP LOAN NUMBER: loan #</p> <p>BORROWER (Name): borrower</p> <p>Lender (Name and Address): Approved Lender name & address</p>

Repayment*

2. Repayment received _____, _____ on installment due _____, _____ in the amount of.....	\$ _____
3. Interest period: From _____, _____ to _____, _____. Number of days	# _____
4. CDFI/RLF's share of interest (CDFI/RLF rate) % rate on 50% of gross principal balance)	\$ _____
5. LENDER's share of interest:	
a) LENDER's rate (lender's share % rate on 50% of gross principal balance)	\$ _____
b) LENDER's service fee % service fee on 50% of CDFI/RLF's share of gross principal balance.....	\$ _____
TOTAL LENDER's share (a + b).....	\$ _____
6. Total interest (Item 4 + Item 5)	\$ _____
7. Total principal (Item 2 - Item 6).....	\$ _____
8. CDFI/RLF's share of principal: (50% of Item 7)	\$ _____
9. LENDER's share of principal:(50% of Item 7).....	\$ _____
10. PAYMENT DUE TO CDFI/RLF**: (Item 4 + Item 8)	\$ _____

Balance of Loan Account	Gross	CDFI/RLF's Share	LENDER's Share
11. Principal balance from previous report			
12. Less principal repayment, if any, reported above.....			
13. Current outstanding loan balance			

DEFAULTS (if any) AND COMMENTS:

Authorized Signature**:

Name/title (Please print or type)	Phone No.:	Fax No.:	Date of Report:
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*In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported. ** Authorization to initiate ACH transfer of Payment Due to CDFI/RLF in the amount indicated above.

Search



Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP)

MT SSBCI 2.0



Purpose: The American Rescue Plan Act of 2021 reauthorized and amended the Small Business Jobs Act of 2010 to provide \$10 billion to fund the State Small Business Credit Initiative (SSBCI) as a response to the economic effects of the COVID-19 pandemic. SSBCI is a federal program administered by the Department of the Treasury that was created to strengthen state programs that support private financing to small businesses. SSBCI is expected to, in conjunction with new small business financing, create billions of dollars in lending and investments to small businesses that are not getting the support they need to expand and create jobs.

The MT SSBCI 2.0 Loan Participation Program (MT SSBCI 2.0) will be used to assist existing Montana businesses that need additional borrowings to stabilize, pivot, expand, or restart their business and to assist new Montana businesses entering the market. The MT SSBCI 2.0 will partner with CDFI/RLFs throughout the state to identify small business in their regions that could benefit from the program.

Application is to be completed and submitted by the Participating CDFI/RLF.

Incomplete applications or applications that fail to include the necessary attachments may be rejected.

Are you a Participating CDFI/RLF?

Yes

No

Is the borrower registered and in good standing with the Montana Secretary of State?

Yes

No

Does the business have less than 750 FTE jobs?

Yes

No

Part I - CDFI & Lender Information

CDFI / RLF Information

CDFI/RLF Name

CDFI/RLF Representative

CDFI/RLF Email

CDFI/RLF Phone Number

CDFI/RLF Address Line 1

CDFI/RLF Address Line 2

CDFI/RLF City

CDFI/RLF State

CDFI/RLF Zip

Lender Information

Lender Organization Name

Lender EIN

Lender Phone Number

Loan Officer

Loan Officer Email

Loan Officer Phone Number

Lender Address Line 1

Lender Address Line 2

Lender City

Lender State

Lender Zip

Lender and CDFI/RLF Loan Analysis

Credit presentation must cover the following:

1. Financial Statements with balance sheet and ratio analysis - comment on trends and relevant ratios
2. Analysis of borrower repayment ability (i.e. profitability)
3. Management skills of the borrower
4. Collateral offered and lien position and analysis of collateral adequacy
5. Lender's credit experience with the borrower
6. Terms, conditions, collateral, financial spreads

Upload Lender Credit Presentation

Upload Lender Credit Approval

Upload CDFI/RLF Credit Presentation

Upload CDFI/RLF Credit Approval

Part II - Business Information

Borrower Information

Legal Business Name

Business Street Address Line 1

Business Street Address Line 2

Business Street Address City

Business Street Address State

Business Street Address Zip

County

Business Representative

Business Representative Title

Business Phone Number

Business Email Address

Business NAICS Code

Business EIN Number

Year Business Opened

Description of Business (history, products, services, current business plans)

Business Revenue

Borrower's annual gross revenues for the fiscal or calendar year prior to the closing of the loan. This
may be the most recent year for which taxes were filed.

Business Net Income

Borrower's net income for the fiscal or calendar year prior to the closing of the loan. This may be the most recent year for which taxes were filed.

Number of Current Full-Time Equivalent Employees

Borrower's full-time equivalent employees (FTEs), rounded to the nearest whole number, at the time of the closing of the SSBCI-supported loan. This is determined by adding the number of full-time employees and number of part-time and seasonal employees as a fraction of a full-time employee.

For example, if a business has 100 employees working full-time (assume a full-time week of 40 hours) and 50 employees working 20 hours per week, the total number of FTEs would be 125. For seasonal employees, the FTE count is based on a 2,080-hour year, so that an employee who works 520 hours per year counts as 0.25 FTEs.

Number of Expected Jobs Created

Number of full-time, part-time, and temporary jobs expected to be created as a direct result of the SSBCI-supported loan within two years from the date of the loan closing.

Number of Expected Jobs Retained

Number of full-time, part-time, and temporary job losses averted as a direct result of the SSBCI-supported loan (not including jobs that were not at risk of being lost).

Business is

- Any organizational form that is a nonprofit entity
- Sole proprietor/independent contractor
- Partnership
- Limited liability company
- Corporation
- Worker cooperative or employee-owned entity
- Tribal enterprise
- Tribal member-owned business

Other

Business Ownership

List names and physical addresses of those persons with ownership interest in the business.

Name

Title

% of Ownership

Physical Address Line 1

Physical Address Line 2

Physical Address City

Physical Address State

Physical Address Zip

Add another ownership interest

Loan Purpose

Primary Purpose of the Loan

- Marketing, market research, and commercialization expenses
- Research and development
- Technology integration in physical production, e.g., manufacturing or supply chain

- Technology integration of nonphysical production, e.g., accounting, customers
- Acquire land
- Purchase existing building
- Convert, expand, or renovate buildings – energy efficiency
- Convert, expand, or renovate buildings – other
- Construct new buildings
- Acquire and install fixed assets
- Acquire inventory
- Purchase supplies and raw materials
- Leasehold improvements
- Working capital – wages, salaries, and benefits of employees
- Working capital – other
- Refinance outstanding debt
- Support employee stock ownership plan (ESOP) transactions
- Other

Secondary Purpose of the Loan

- Marketing, market research, and commercialization expenses
- Research and development
- Technology integration in physical production, e.g., manufacturing or supply chain
- Technology integration of nonphysical production, e.g., accounting, customers
- Acquire land
- Purchase existing building
- Convert, expand, or renovate buildings – energy efficiency
- Convert, expand, or renovate buildings – other
- Construct new buildings
- Acquire and install fixed assets
- Acquire inventory
- Purchase supplies and raw materials
- Leasehold improvements
- Working capital – wages, salaries, and benefits of employees
- Working capital – other
- Refinance outstanding debt
- Support employee stock ownership plan (ESOP) transactions
- Other

Part III- Loan Information

Please explain why MT SSBCI 2.0 LPP funds are needed for this loan.

Lender Loan Amount

Do not include any amounts reported under “Concurrent Private Financing” that are associated with,
but separate from, the SSBCI- supported loan or investment.

CDFI/RLFs Loan Amount (SSBCI Portion)

Do not include any amounts reported under “Concurrent Private Financing” that are associated with,
but separate from, the SSBCI- supported loan or investment.

Total Loan Amount

Do not include any amounts reported under “Concurrent Private Financing” that are associated with,
but separate from, the SSBCI- supported loan or investment.

Loan Type

- Term with a specified repayment schedule and fixed or adjustable interest rate
- Other

Loan Term

- Up to 3-year term with monthly payments
- 3-year up to 5-year term with monthly payments
- 5-year up to 7-year term with monthly payments
- 7-year up to 10-year term with monthly payments
- 10-year up to 15-year term with monthly payments
- 15-year to 20-year term with monthly payments
- Other

Lender's Interest Rate

Annual percentage rate (APR) charged to the borrower. The APR is the yearly interest calculated
from a sum that's charged to borrowers, including fees.

Interest Rate Variability

- Fixed interest rate
- Adjustable interest rate
- Both a fixed interest rate and an adjustable interest rate

Maximum Interest Rate

Maximum interest rate permitted under the loan (not including fees, penalty interest, or other charges).

CDFI/RLFs Interest Rate (SSBCI portion)

Annual percentage rate (APR) charged to the borrower. The APR is the yearly interest calculated from a sum that's charged to borrowers, including fees.

Lender Service Fee

Annual percentage rate (APR) charged to the borrower. The APR is the yearly interest calculated from a sum that's charged to borrowers, including fees. Lender Service Fee cannot exceed 50 basis points.

CDFI/RLFs Rate With Lender Service Fee

Annual percentage rate (APR) charged to the borrower. The APR is the yearly interest calculated from a sum that's charged to borrowers, including fees.

Total Origination Charges

SSBCI-supported transactions may not include upfront fees or charges paid by the small business, excluding fees to the state program, that exceed 2 percent for loans greater than \$25,000 or \$500 for loans under \$25,000. Total dollar amount of charges imposed directly or indirectly by the provider at or before origination as an incident to or a condition of the extension of credit, including charges paid by the borrower at or before origination or that are financed. Charges that are imposed indirectly by the provider include charges by a third party that may pass through the provider to the borrower or that are billed separately.

Concurrent Private Financing

Dollar amount of any private financing that was caused by or resulted from the SSBCI-supported loan or investment and that occurred at or around the same time as the SSBCI-supported loan or investment.

Concurrent Public Financing

Dollar amount of other funding from other public or government sources invested at the same time as the SSBCI-supported loan or investment.

Climate-Aligned Investment

Indicate whether the SSBCI-supported loan supports a business that makes climate-aligned investments. Climate-aligned investments may reduce greenhouse gas emissions or promote adaptation to climate change or energy transitions. This could be either in the business's activities (including its production processes and use of energy, inputs, supply chain services, and/or actions to increase resiliency) or by supplying products and services that contribute to lower emissions. Climate-aligned investments can include investment supporting weatherization; energy-efficient prefabrication or manufacturing; supply chain use, processes or production resulting in lower emissions; energy site transitions; sustainable and/or climate-smart agriculture and forestry; renewable energy development or implementation (including wind, solar, hydroelectric, biomass, geothermal, and other low-carbon technologies); electric vehicle innovation or use; and other investments that aim to build climate resilience, support adaptation to extreme weather and climate events, and/or mitigate climate change.

Yes

No

Energy- or Climate-Impacted Communities

Indicate whether the SSBCI-supported loan supports a small business in a community facing local job losses or business revenue declines due to physical or transition impacts from climate change, including shifts in energy production. Examples of such local job loss or revenue declines include declines due to changes in the economics of producing certain agriculture or foods, other natural resource goods, chemical inputs, manufactured products, or service sector outputs due to acute or chronic climate impacts, costs, regulations, or shifts in demand. Examples of shifts in energy production include any transition away from fossil fuel extraction, refining, or fossil-based energy generation in the oil, gas, and/or coal sector.

Yes

No

Part IV- Certification

Upon application submission, MT SSBCI 2.0 LPP program staff will forward a pdf version of the complete application form to the Primary Lender and the Borrower along with required Application Certifications to be signed by the appropriate parties and returned to the program. The application will then be reviewed and if approved, a Commitment Letter will be issued and sent to the CDFI/RLF outlining the loan's terms and conditions. The CDFI/RLF will then collect all required signatures and submit the signed Commitment Letter to the program for the loan funding process to continue.

By checking this box you agree to conduct this transaction by electronic means.

Name of Authorized CDFI/RLF Representative

Add attachments

Submit

MONTANA.GOV
OFFICIAL STATE WEBSITE

Privacy & Security
Accessibility

MT SSBCI 2.0 LPP Application – Borrower Certification

Application #: _____

Borrower understands any information provided including but not limited to, business name, location, amount received, and use of funds shall be considered public information. Sensitive or confidential personally identifiable information such as social security number and tax ID number will be protected from public disclosure. It is the Borrower’s responsibility to become familiar with the Montana Code Annotated regarding what is a public record and what is exempt from public record.

Borrower certifies any and all information provided to Lender, CDFI/RLF, MT SSBCI 2.0 LPP, its directors, officers, and employees from any director, officer, employees, or representative of Borrower is truthful and accurate.

Borrower certifies that the loan proceeds shall be used solely for the purposes stated herein.

Borrower agrees to pay for or reimburse CDFI/RLF for the cost of any surveys, title or mortgage examinations, appraisals, etc. performed by non-State personnel whether this loan is actually disbursed, provided Borrower has given consent.

If the loan is approved, the Borrower grants the CDFI/RLF and the MT SSBCI 2.0 LPP the right to inspect the project funded by the loan and the MT SSBCI 2.0 LPP may use project photographs in its reporting or other publications.

Borrower agrees to comply with Section 4, Article II of the Montana Constitution that prohibits discrimination based on race, color, sex, culture, social origin or condition or political or religious ideas.

If Borrower is a sole-proprietor or general partner, sign below:

Party One

Party Two

Date

Date

If Borrower is a corporation, sign below:

Corporate Name

By

Title

Attested By

Date

MT SSBCI 2.0 LPP Application – Lender Certification

Application #: _____

Lender: _____

Address: _____ City/State/Zip: _____

The lender has executed a Lender Loan Servicing Agreement with the MT SSBCI 2.0 Loan Participation Program and agrees the terms, conditions, and requirements therein will apply to this loan.

The lender has reviewed the entire application and has determined that the application is complete and accurate.

The lender certifies that this loan has not been classified by the most recent examination report of this financial institution and that no other loans outstanding for this borrower, signatories, or guarantor(s) have been classified.

Lender Representative: _____

Lender Signature: _____

Title: _____ Date: _____

Email: _____ Phone: _____

Commitment Letter

Today's Date

CDFI/RLF Contact name and title
CDFI/RLF Name
Address

Lender contact name and title
Lender name
Address

RE: Borrower name
MT SSBCI 2.0 LPP Loan #: *****

Dear CDFI/RLF contact name:

The Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP) is pleased to advise you that based on the statements contained in the application and supporting documents, CDFI/RLF is authorized to participate in the proposed loan originated by Lender to Borrower under the MT SSBCI 2.0 LPP. This request to participate in the proposed loan was approved by the MT SSBCI 2.0 LPP on insert "approval date". This commitment is contingent upon agreement by Lender, Borrower, and CDFI/RLF to the terms and conditions set forth herein, and on any exhibits attached hereto which are hereby incorporated by reference and upon the timely performance of such terms and conditions. Funding disbursement is contingent upon availability of MT SSBCI 2.0 LPP funds. *If the terms of this letter are acceptable, please sign, have the lender sign, and have the borrowers sign, and return the original signed letter to the MT SSBCI 2.0 LPP.* Retain one copy for yourself, one for the lender, and one for the borrower.

1. Borrower: borrower
2. Amount of Loan: \$ total loan amount
3. Amount of CDFI/RLF's Participation: \$ CDFI/RLF loan amount
4. Percentage of CDFI/RLF's Participation: 50%
5. Final Maturity Date of Loan: term of loan in years
6. Interest Rate:
On CDFI/RLF's Share: CDFI/RLF rate % (MT SSBCI 2.0 LPP rate) + Lender service fee %
(Lender service fee) = note rate on CDFI/RLF amount %
On Lender's Share: lender's share %
7. Repayment Schedule: Monthly
8. Frequency of Interest Payments: Monthly
9. Guarantors: List all guarantors
10. Purpose of the Loan: What is the purpose of the loan?

11. Real Estate Security: First or subordinate lien upon land and improvements as defined in Number 2, Schedule A. (if real estate is not part of the collateral enter “none”)
12. Other Security: See Attached Schedule A. (if there is no other collateral other than real estate, enter “none”)
13. Lender may deliver to CDFI/RLF one or more opinions of counsel addressed to CDFI/RLF covering the following matters:
 - (i) If the Borrower is other than a natural person, the Borrower is duly organized, validly existing and in good standing under the laws of its state of organization, is in good standing in the State of Montana and qualified to do business therein and has full power and authority to execute and deliver this Commitment and the loan documents to which it is a party and to carry out the terms hereof and thereof.
 - (ii) The Commitment and the Loan Documents to which it is a party have been duly and validly authorized, executed and delivered by the Borrower, are in full force and effect and are valid and legally binding instruments of the Borrower enforceable in accordance with their terms, except to the extent to which the enforceability thereof may be limited by bankruptcy, reorganization or other laws of general application affecting the enforcement of creditors' rights.
 - (iii) The Trust Indenture or Mortgage and, if indicated, Uniform Commercial Code financing statements with respect to the Security Agreement have been filed and recorded in such manner and at such places as required by law to protect against any bona fide purchaser for value as to the items described therein. The opinion shall state the place or places of filing, the filing date and time, and the document number or filing information as to all documents so filed.
 - (iv) The Security Documents constitute the only valid liens on, and a first security interest in, the real and personal property described therein, and in the rents, income, and profits there from, unless otherwise permitted by this Commitment. The lien and security interest of the Security Documents will extend to all improvements constructed on the real property that is described therein.
14. Prior to disbursement, Borrower and Lender shall perform or satisfy each of the additional conditions to the satisfaction of CDFI/RLF, and provide each of the additional items, shown on Schedule A hereto.
15. It is a condition of this Commitment that Lender and Borrower accept the terms and conditions of this Commitment in writing and return a signed copy of this Commitment to CDFI/RLF prior to the close of business on 30 days from the date of this Commitment Letter.
16. This commitment expires exp date (one year from the date of receipt of the application by the MT SSBIC 2.0 LPP) unless extended by CDFI/RLF for a period not to exceed six months from the original expiration date. The loan must be closed within the commitment period. Copies of each of the items required by this Commitment Letter and Schedule A attached hereto must be received by CDFI/RLF prior to the expiration date of this Commitment Letter
17. The loan shall be closed, serviced, and governed by the terms of the MT SSBIC 2.0 LPP Lender Loan Servicing Agreement, unless otherwise herein specified.

18. At least thirty (30) days notice must be provided to be eligible for funding
19. Payments are to be made via ACH transfer utilizing the enclosed **Participation Report** form.
20. The following enclosed documents shall be utilized by **Lender** and **CDFI/RLF** in connection with the loan:
 - a. Loan Participation Certificate;
 - b. Participation Report - **Please use the enclosed Participation Report as an original and make additional copies for your monthly reports to the CDFI/RLF.**
21. The review and acceptance of all loan documents or documents required under this Commitment Letter by the MT SSBCI 2.0 LPP does not constitute the concurrence by the MT SSBCI 2.0 LPP of the accuracy, validity or legality of the documents presented.

Sincerely,

Montana State Small Business Credit Initiative 2.0 Loan Participation Program

 By: MT SSBCI 2.0 LPP Representative

Accepted:

 Authorized Signature(s) Date: _____

CDFI/RLF

Accepted:

 Authorized Signature(s) Date: _____

Lender

Accepted:

 Borrower(s) Date: _____

 Borrower(s) Date: _____

Exhibit A
LOAN PARTICIPATION CERTIFICATE

MT SSBCI 2.0 LPP Loan Number: #####

This certificate is issued by the undersigned institution (Approved Lender) to the CDFI/RLF for the loan to be participated in by the CDFI/RLF in accordance with its Commitment Letter dated _____ (same date as Commitment Letter is dated). It represents the original stated interest in the following loan:

Borrower: **Name of Borrower(s)** Outstanding Principal Balance: \$ _____

Maturity Date: _____

Date of Note: _____

Approved Lender's Share: Amount \$ _____ Interest Rate: **lender share%** Percentage of Total: 50%

CDFI/RLF's Share: Amount \$ _____ Interest Rate: **lender share%** Percentage of Total: 50%

_____ CDFI/RLF _____'s Net Yield: **_____ CDFI/RLF _____ rate%** + Approved Lender's Service Fee: **service fee%**

With regard to this loan, the Approved Lender certifies as follows:

- 1) That all Loan Documents described in the Commitment Letter have been executed by the Borrower and Approved Lender and conform to the Commitment Letter;
- 2) That all Security Documents described in the Commitment Letter have been filed and recorded by the Borrower or the Approved Lender with the appropriate county and state officials; and
- 3) That the loan has been fully disbursed or, in the case of a Participation Loan, will be fully disbursed upon receipt of the CDFI/RLF's share.

The Approved Lender and CDFI/RLF, by acceptance hereof, agree to the following:

- 1) This certificate is effective as of its date and is issued subject to the provisions hereinafter contained.
- 2) The Approved Lender will diligently service the loan in accordance with the MT SSBCI 2.0 LPP Lender Loan Servicing Agreement.
- 3) The CDFI/RLF's participation interest in the loan is transferable.

Dated: _____, _____.

Approved Lender: **Approved Lender/city**

ATTEST:

By: _____

By: _____

Its: _____

Its: _____

ACCEPTED:

CDFI/RLF

By: _____

Administrative Officer

CDFI/RLF PARTICIPATION REPORT

ON LOANS SERVICED BY APPROVED FINANCIAL INSTITUTIONS
PURSUANT TO THE TERMS OF PARTICIPATION AGREEMENT UNDER WHICH THIS LOAN WAS MADE

<p>FAX TO: CDFI/RLF</p> <p style="text-align: center;">CDFI/RLF fax number</p>	<p>CDFI/RLF PARTICIPATION UNDER THE:</p> <p>Montana State Small Business Credit Initiative 2.0 Loan Participation Program</p>
<p>1. COMPLETE ON EACH REPORT:</p> <p>Amount of Note: \$ _____</p> <p>Date of Note: _____</p> <p>Maturity Date: _____</p> <p>Interest is calculated on: _____30/360_____Actual days/365_____Other (explain below)</p> <p>Next payment date: _____</p> <p>Total required payment amount: \$ _____</p>	<p>MT SSBCI 2.0 LPP LOAN NUMBER: loan #</p> <p>BORROWER (Name): Borrower</p> <p>Lender (Name and Address): Approved Lender name & address</p>

Repayment*

2. Repayment received _____, _____ on installment due _____, _____ in the amount of..... \$ _____

3. Interest period: From _____, _____ to _____, _____. Number of days# _____

4. CDFI/RLF's share of interest (CDFI/RLF rate) % rate on 50% of gross principal balance)..... \$ _____

5. LENDER's share of interest:

a) LENDER's rate (**lender's share%** rate on 50% of gross principal balance)..... \$ _____

b) LENDER's **service fee%** service fee on 50% of CDFI/RLF's share of gross principal balance \$ _____

TOTAL LENDER's share (a + b) \$ _____

6. Total interest (Item 4 + Item 5)..... \$ _____

7. Total principal (Item 2 - Item 6) \$ _____

8. CDFI/RLF's share of principal: (50% of Item 7)..... \$ _____

9. LENDER's share of principal:(50% of Item 7) \$ _____

10. **PAYMENT DUE TO CDFI/RLF****: (Item 4 + Item 8)..... \$ _____

Balance of Loan Account	Gross	CDFI/RLF's Share	LENDER's Share
11. Principal balance from previous report.....			
12. Less principal repayment, if any, reported above			
13. Current outstanding loan balance.....			

DEFAULTS (if any) AND COMMENTS:

Authorized Signature**:

Name/title (Please print or type)	Phone No.:	Fax No.:	Date of Report:
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* In the event the borrower's remittance includes amounts for taxes, etc., only that portion of the remittance applicable to principal and interest should be reported. ** Authorization to initiate ACH transfer of Payment Due to CDFI/RLF in the amount indicated above.

Schedule A

Copies of the following documents MUST be sent to the Montana State Small Business Credit Initiative 2.0 Loan Participation Program (MT SSBCI 2.0 LPP) for funding.

1. Copy of the Note. The following statement must appear in either the Lender's Note or the Loan Agreement:

“The Borrower agrees as a result of using MT SSBCI 2.0 LPP funds that it will provide the Lender and/or the MT SSBCI 2.0 LPP with tracking data as required by the U.S. Treasury Department. This reporting requirement expires December 31, 2030.”

2. Recorded (first) or (subordinate) (Mortgage) (Deed of Trust) with due-on-sale clause on approximately _____ (square feet/acres) together with _____ and all related improvements located at _____ and legally described as _____.

The Deed of Trust must not include a “cross-collateralization” provision. If the Deed of Trust does include a “cross-collateralization” provision the following paragraph must be included in the Deed of Trust:

“Notwithstanding any provision of this security instrument or any related security agreement, the Note specifically identified herein (the “Note”) shall have first priority, without reduction, pro-rating or other sharing, over any other indebtedness of the Grantor to Lender, for payment from any proceeds of foreclosure, sale, liquidation, collection or disposition of any collateral, including but not limited to the Property, the Personal Property, Rents and insurance payments. In the event of foreclosure, sale, liquidation, collection or disposition, whether by judicial or non-judicial sale or proceeding, or where this security instrument or any related security agreement permits or requires Lender or any Trustee to apply any such proceeds or other amounts to any indebtedness of Grantor to Lender, all such proceeds and amounts shall be applied first to all indebtedness owing under the Note and then, after full payment and satisfaction of the Grantor's obligations, debts and liabilities under the Note, to other indebtedness of Grantor to Lender.”

3. (First) or (subordinate) perfected lien on all machinery, equipment, furniture, fixtures, inventory, accounts receivable, contract rights, and general intangibles, now owned or hereafter acquired. The perfected lien to be taken by Financing Statement, UCC filing and Security Agreement. A lien search is required AFTER FILING, together with informational copies of all previous filings to verify first lien position.

The Security Agreement, Financing Statement or UCC filing must not include a “cross-collateralization” provision. If the Security Agreement, Financing Statement or UCC filing includes a “cross-collateralization” provision, the following paragraph must be included in the Security Agreement, Financing Statement or UCC filing:

“Where this Agreement permits or requires Secured Party to apply the proceeds of collection or disposition of the Property to the Secured Debts, any such proceeds shall be applied first to all indebtedness owing under the note specifically identified herein above (the “Note”) and then, after full payment and satisfaction of the Debtor's obligations, debts, and liabilities under the

Note, to other Secured Debts. If this Agreement does not specifically identify a particular note by date and amount, then for purposes of this paragraph “Note” shall mean the following note: *[describe note, including name of debtor, date, amount and other identifying information].*”

4. Final ALTA extended coverage title policy is required.
5. Term Loan Agreement with terms, conditions, representations, warranties, conditions, covenants, and events of default acceptable to the MT SSBCI 2.0 LPP. The following statement must appear in either the Lender’s Note or the Loan Agreement:

“The Borrower agrees as a result of using MT SSBCI 2.0 LPP funds that it will provide the Lender and/or the MT SSBCI 2.0 LPP with tracking data as required by the U.S. Treasury Department. This reporting requirement expires December 31, 2030.”

6. Appraiser’s verification that the subject property has been completed per plans and specifications and recertification of value.
7. Phase I Environmental Assessment OR Environmental Questionnaire, acceptable to MT SSBCI 2.0 LPP.
8. Lender will certify all costs, including land.

Lender will also certify all “hard” construction costs, including land. (Lender should include a detailed list of “hard” costs with the “hard” cost certification. Lender may include as hard costs: paid construction loan interest and architectural fees. Do NOT include as hard costs: loan fees, permit costs, appraisal fees, insurance, title insurance, consulting fees, etc.)

9. MT SSBCI 2.0 LPP participation is restricted to the lower of \$_____ (the MT SSBCI 2.0 LPP committed participation amount as it appears on the commitment letter) or _____% of certified hard costs (this percentage was derived by dividing the MT SSBCI 2.0 LPP participation amount by the lenders/borrowers “projected” construction costs).
10. Attorney(s) opinion as required on Page 2, Paragraph 13 of the Commitment letter, if required by lender.
11. Use of Proceeds and Conflict of Interest Certification: **Borrower**
12. Sex Offender Certification: **Borrower**
13. Certification Related to SEDI-Owned Businesses: **Borrower**
14. Demographic Related Data Collection Form: **Borrower’s Principal Owner(s)**
Note: Form Template is titled “Privacy Act and Notice and Demographic-Related Data Collection Form” on the MTSSBCI.mt.gov website.
Page 1 – SSBCI Privacy Notice and Privacy Act Statement is to be given to the Borrower.
Pages 2-4 are to be completed by the Borrower and submitted with the rest of the Schedule A required documents.
15. Use of Proceeds and Conflict of Interest Certification: **Lender**

16. Sex Offender Certification: **Lender**
17. Sex Offender Certification: **CDFI/RLF**
18. Loan Participation Certificates – 2 original signed Loan Participation Certificates, as outlined in the Commitment Letter.
19. Schedule B, with original signature certifying all Schedule B documents are current and in the Borrower’s file at the Lender’s office.

Schedule B Certification by Lender

I, [name of officer], [title] of the [name of approved lender], DO HEREBY CERTIFY as follows:

[name of approved lender] maintains the following documents related to [Name of borrower and MT SSBCI 2.0 LPP loan number #####] at [address location of documents]:

No documents listed on this page are to be sent to the MT SSBCI 2.0 Loan Participation Program (MT SSBCI 2.0 LPP).

Original documents will be retained in the approved lender's loan file.

1. **(Select one) Corporate/LLC/LLP** borrowing resolution identifying those individuals authorized to sign and/or obligate the company to this indebtedness.
2. Any contract to construct a project financed by loan proceeds must require Montana residents to be given priority. Recipients of MT SSBCI 2.0 LPP funds must demonstrate efforts to obtain Montana labor. **Approved Lender to provide information to certify to the MT SSBCI 2.0 LPP's satisfaction that the borrower has complied with this law.**
3. Provide evidence that the following State of Montana, Department of Public Health and Human Services (DPHHS) licenses are current and will be maintained for the life of this loan:
 - Accommodation License
 - Food Purveyor License
 - Swimming Pool and Public Bathing Place License

Loan Agreement should contain affirmative loan covenants requiring notice from borrowers if above licenses expire or are discontinued by DPHHS.

4. This commitment is subject to no adverse material change in the financial condition of the borrower and of the guarantor. **(signed statement by lender should be in file)**
5. Reserve account to be established and maintained with Approved Lender in the amount of _____ percent of gross (sales) (rents) to be used for repairs and replacements. A Repair and Replacement Agreement governing the escrow established for repairs and replacements must provide for all the following:
 - Right of the Approved Lender if the repairs/replacements are not completed, to complete them using the escrowed funds or apply the escrowed funds to reduce the principal balance of the mortgage;
 - Right of the Approved Lender, upon any default under the Note or Security Instrument, to apply some or all the escrowed funds to pay amounts owing under the Note and/or Security Instruments or otherwise owing to the Note holder; and

- Grant by the Borrower to the Approved Lender of a security interest in the escrowed funds under the Uniform Commercial Code.

The Repair and Replacement Agreement must further provide that any default under the Agreement constitutes a default under the Note and Security Instrument.

6. Escrow account to be established and maintained by Approved Lender for payment of taxes and insurance **-OR-** the lender will verify on a semi-annual basis that the real estate taxes are paid current. If the lender fails to verify the payment of real estate taxes during the term of the loan, then the lender will be held responsible for any unpaid real estate taxes as the MT SSBCI 2.0 LPP will not pay its share of this expense as required under Section 6.0 of the Loan Servicing Agreement.
7. This commitment is subject to an SBA-504 commitment for \$ _____. All terms and conditions of the SBA-504 commitment must be satisfactory to the Approved Lender and the MT SSBCI 2.0 LPP and consistent with this commitment.
8. Borrower shall furnish lender (annual) (semi-annual) (quarterly) (monthly) financial statements satisfactory to Approved Lender and the MT SSBCI 2.0 LPP within _____(30) (60) (90) days after the end of the period covered. If annual financial statements are not audited or reviewed by an independent CPA, copy of the corresponding federal tax return will also be required.
9. Annual fixed asset limitation in the amount of \$ _____
10. Salary withdrawal limitation in the amount of \$ _____ on annual salary of (name)
11. Assignment of lessor's interest in lease(s) and rent(s) which lease shall be for a term of not less than _____ years and shall cover subject property.
12. Assignment of lease with right of reassignment and lessor's consent thereof, which lease shall be for a term of not less than _____ years and shall cover subject property.
13. Assignment of life insurance with home office acknowledgement in the amount of \$ _____ on the life (lives) of _____. Life insurance questionnaire must be provided to confirm collateral value if the insurance is whole live. The questionnaire is not necessary for term insurance.
14. Prior to disbursement, Borrower must furnish a certificate from the County Treasurer showing that all real and personal property taxes are paid to date (if applicable).
15. Evidence of the following insurance satisfactory to Approved Lender and the MT SSBCI 2.0 LPP:
 - All-risk perils
 - Liability
 - Flood plain determination
 - Workers' Compensation
 - Approved Lender to be named Mortgagee/Loss Payee

16. Personal guarantee(s) of _____. Annual personal financial statements are required on all personal guarantors.
17. Corporate guarantee(s) of _____ together with all appropriate resolutions authorizing guarantee and corporate signor. Annual financial statements in a format satisfactory to Approved Lender and the MT SSBCI 2.0 LPP to be provided within _____ days after the end of the period covered. If annual financial statements are not audited or reviewed by an independent CPA, copy of the corresponding federal tax return will also be required.
18. Appraisal report under USPAP Standard Rule _____.
19. (Standby) (Subordination) agreement executed by _____ for _____ in the approximate amount of \$ _____ together with all present and future accrued interest.
20. Certified Survey of _____.
21. Architect's Certificate of Completion.
22. Certificate of Occupancy, or equivalent from State of Montana.
23. Building must comply with Americans with Disabilities Act standards.
24. (FOR PARTNERSHIP) Note, loan agreement, and security documents must be executed by all general partners as individuals and as general partners.
25. If the loan in which MT SSBCI 2.0 LPP is participating becomes delinquent and the Lender applies a higher default interest rate for the period of time the loan is delinquent, MT SSBCI 2.0 LPP's participation interest rate will also increase to the Lender default interest rate for the period of time the loan is delinquent. When the participated loan becomes current or when the lender discontinues the default interest rate, MT SSBCI 2.0 LPP's interest rate will return to where it was prior to application of the default interest rate by the Lender.
26. Any change in ownership percentage must be reported in writing to the lender and MT SSBCI 2.0 LPP within 30 days of the change. MT SSBCI 2.0 LPP may require its participation portion of all loans to the borrower to be paid in full.

Each of the above referenced documents is correct as to form and contains the terms and conditions expected in like documents for similar transactions and are customary in the state of Montana.

Each of the above referenced documents have been duly authorized, made and executed by the [name of approved lender] and [name of borrower]; they are in full force and effect, and they are a valid and binding obligation of [name of borrower], enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency, reorganization, or similar laws affecting the enforcement of creditor's rights generally.

Approved lender certifies that they have a perfected collateral position in the asset(s) being used to secure the loan.

If any of the documents herein certified are not in the loan file at the time of a MT SSBCI 2.0 LPP audit of the file, lender will have 30 days to correct the deficiency. If the deficiency is not corrected to MT SSBCI 2.0 LPP's satisfaction within 30 days, MT SSBCI 2.0 LPP may request the Lender repurchase the loan.

This document must be signed and returned to the MT SSBCI 2.0 LPP as part of the funding package.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this ____ day of _____, 20__.

[name of approved lender]

By: _____

Its _____

MT SSBCI 2.0 LPP
Borrower Use of Proceeds and Conflict of Interest Certification

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of borrower: _____

The borrower hereby certifies the following to the lender:

1. The loan proceeds will be used solely for a business purpose. A business purpose includes, but is not limited to, start-up costs; working capital; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or in the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. MT SSBCI 2.0 LPP funds may be used to purchase any tangible or intangible assets except goodwill. The term "business purpose" excludes acquiring or holding passive investments in real estate; the purchase of securities except as permitted in certification 2.d below; and lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended (2 U.S.C. § 1602(7))).
2. The loan proceeds will not be used to:
 - a. repay delinquent federal or jurisdiction income taxes unless the borrower has a payment plan in place with the relevant taxing authority;
 - b. repay taxes held in trust or escrow (e.g., payroll or sales taxes);
 - c. reimburse funds owed to any owner, including any equity investment or investment of capital for the business's continuance; or
 - d. purchase any portion of the ownership interest of any owner of the business, except for the purchase of an interest in an employee stock ownership plan qualifying under section 401 of Internal Revenue Code, worker cooperative, or related vehicle, provided that the transaction results in the employee stock ownership plan or other employee-owned entity holding a majority interest (on a fully diluted basis) in the business.
3. The borrower is not:
 - a. a business engaged in speculative activities that profit from fluctuations in price, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business or through the normal course of trade;¹
 - b. a business that earns more than half of its annual net revenue from lending activities, unless the business is (1) a CDFI that is not a depository institution or a bank holding company, or (2) a Tribal enterprise lender that is not a depository institution or a bank holding company;
 - c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

- d. a business engaged in activities that are prohibited by federal law or, if permitted by federal law, applicable law in the jurisdiction where the business is located or conducted (this includes businesses that make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the business’s intended market); this category of businesses includes direct and indirect marijuana businesses, as defined in Small Business Administration (SBA) Standard Operating Procedure (SOP) 50 10 6;² or
- e. a business deriving more than one-third of gross annual revenue from legal gambling activities, unless the business is a Tribal SSBCI participant, in which case the Tribal SSBCI participant is prohibited from using SSBCI funds for gaming activities, but is not restricted from using SSBCI funds for non-gaming activities merely due to an organizational tie to a gaming business;³ For purposes of Tribal SSBCI programs, “gaming activities” includes only “class II gaming” and “class III gaming” as these terms are defined under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703.

4. The borrower is not:

- a. an executive officer, director, or principal shareholder of either the primary lender or the participating CDFI/RLF;
- b. a member of the immediate family of an executive officer, director, or principal shareholder of either the primary lender or the participating CDFI/RLF; or
- c. a related interest or immediate family member of such an executive officer, director, or principal shareholder of either the primary lender or the participating CDFI/RLF.

For the purposes of the above conflict of interest certification, the terms “executive officer,” “director,” “principal shareholder,” “immediate family,” and “related interest” refer to the same relationship to the lender as the relationships described in 12 C.F.R. part 215.

The undersigned is an authorized representative of the borrower.

Signature: _____

Name: _____

Title: _____

Date: _____

¹ A construction loan permitted under the guidance on passive real estate investment in the SSBCI Capital Program Policy Guidelines will not be considered a speculative business for purposes of SSBCI.

² See chapter 3.A.8.b of SBA SOP 50 10 6 (effective October 1, 2020), which specifies the following with respect to marijuana-related businesses: “Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, businesses that derive revenue from marijuana-related activities or that support the end-use of marijuana may be ineligible for SBA financial assistance.”

³ Under this standard, a gaming Tribal enterprise could apply for SSBCI funds for a new gas station, for example, even if the Tribal enterprise’s revenues from gaming were greater than 33 percent.

**MT SSBCI 2.0 LPP
Borrower Sex Offender Certification**

Under the State Small Business Credit Initiative (SSBCI), borrowers must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of borrower: _____

The borrower hereby certifies the following to the participating jurisdiction:

No principal of the entity listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, "principal" means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

The undersigned is an authorized representative of the borrower.

Signature: _____

Name: _____

Title: _____

Date: _____

MT SSBCI 2.0 LPP

Borrower Certification Related to Business Enterprises Owned and Controlled by Socially and Economically Disadvantaged Individuals (SEDI-Owned Businesses)

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively known as participating jurisdictions). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity. SSBCI provides funding for participating jurisdictions to support businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses).¹ This certification provides documentation that an SSBCI loan supported a SEDI-owned business. The information collected from this certification can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the laws specified in Section IX.b of the Capital Program Policy Guidelines (Compliance with Civil Rights Requirements).

The borrower is not required to provide this certification. The borrower may identify all categories in groups (1) through (3) below that apply, including all subcategories in group (1) that apply.

Legal name of borrower: _____

The borrower hereby certifies to the lender that it is a:

1. Business enterprise that is owned and controlled² by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:
 - membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;
 - gender;
 - veteran status;
 - limited English proficiency;
 - disability;
 - long-term residence in an environment isolated from the mainstream of American society;
 - membership of a federally or state-recognized Indian Tribe;
 - long-term residence in a rural community;
 - residence in a U.S. territory;
 - residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or
 - membership of another underserved community.³

2. Business enterprise that is owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).⁴

Individual(s)' Address(es) in CDFI Investment Areas:

3. Business enterprise that will build, open, or operate a location in a CDFI Investment Area, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

Business Address in CDFI Investment Area:

The undersigned is an authorized representative of the borrower.

Signature: _____

Name: _____

Title: _____

Date: _____

¹ SSBCI funds count toward fulfilling the “expended for” requirement for the \$1.5 billion SEDI allocation and toward qualifying for initial eligible amounts under the \$1.0 billion SEDI incentive allocation if the SSBCI funds have been expended for loans, investments, or other credit or equity support to any of the four groups of businesses set forth in Section IV.a of the SSBCI Capital Program Policy Guidelines. While a participating jurisdiction may reasonably identify group (4) businesses (i.e., those located in Community Development Financial Institution (CDFI) Investment Areas) based on businesses’ addresses from the relevant loan, investment, and credit or equity support applications, certification is required with regard to groups (1) through (3).

² The term “owned and controlled” means, if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community of which the institution services is predominantly comprised of such individuals.

³ “Underserved communities” are populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of equity. Equity is consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

⁴ Treasury has provided a mapping tool for the borrower or investee to use to identify whether the relevant address is in a CDFI Investment Area at <https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci/2021-ssbci/cdfi-fund-investment-areas>. For each calendar year, Treasury will use the list of CDFI Investment Areas identified by the CDFI Fund as of January 1 of the calendar year. If the CDFI Fund’s list is updated during that calendar year, the new list will not be adopted for purposes of SSBCI until the next calendar year, thus providing advance notice to jurisdictions. Further, Treasury has determined that American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands in their entirety constitute CDFI Investment Areas for purposes of the SSBCI, because each of these territories has a poverty rate of at least 20 percent.

MT SSBCI 2.0 LPP
SSBCI Privacy Notice and Privacy Act Statement

Privacy Notice:

Information from this collection will be shared with the U.S. Department of the Treasury (Treasury). Treasury has published a Privacy and Civil Liberties Impact Assessment that describes what Treasury will do with the information your business provides in this application. It can be found on the Treasury [website](#). If you have any questions about this document, please email Privacy@Treasury.gov.

Privacy Act Statement for Sole Proprietorships:

The Privacy Act of 1974 (Privacy Act) protects certain information that the federal government has about “individuals” (United States citizens and lawfully admitted permanent residents). The Privacy Act does not generally apply to businesses, but some federal courts have found that this law applies to sole proprietors (they are deemed “individuals” under the Privacy Act). If you, as the applicant, are a sole proprietor, you may have rights under the Privacy Act.

Authority: Small Business Jobs Act of 2010 (SBJA), Title III, 12 U.S.C. § 5701 et seq., as amended by the American Rescue Plan Act of 2021 (ARPA), section 3301; Executive Order No. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 Fed. Reg. 7009 (January 25, 2021); and Interim Final Rule, State Small Business Credit Initiative; Demographics-Related Reporting Requirements, 87 Fed. Reg. 13628 (March 10, 2022).

Purpose: Information from this collection will be shared with Treasury. This information will be shared with Treasury so it can conduct oversight to ensure compliance with federal law, including requirements related to nondiscrimination and nondiscriminatory uses of federal funds. Treasury also receives this information (including any demographic information provided) to comply with reporting requirements under the authorities listed above and to advance fairness and opportunity in underserved communities in the allocation of federal resources.

Routine Uses: The information you furnish may be shared in accordance with the routine uses outlined in Treasury .013, Department of the Treasury Civil Rights Complaints and Compliance Review Files; Treasury .015, General Information Technology Access Account Records; and Treasury .017, Correspondence and Contact Information. For example, one routine use under Treasury .013 is to disclose pertinent information to appropriate agencies when Treasury becomes aware of a potential violation of civil or criminal law. Under this routine use, Treasury may disclose demographic information to the appropriate agencies if Treasury becomes aware of a violation of applicable antidiscrimination laws. More information about this and other routine uses can be found in the System of Records Notices (SORNs) listed above, which are posted on Treasury’s [website](#).

Disclosure: Providing this information is voluntary. However, failure to furnish the requested information (except for the demographic information) may result in the denial of your application. Providing demographic information is optional. If you decline to provide this information, it will not adversely affect your application.

MT SSBCI 2.0 LPP
SSBCI Demographics-Related Data

Legal name of borrower: _____

This transaction is supported with funding provided through the State Small Business Credit Initiative (SSBCI), a federal program that supports small business lending and investment programs in states, the District of Columbia, territories, and Tribal governments (collectively, “participating jurisdictions”). SSBCI programs are designed to expand access to capital, promote economic resiliency, and create new jobs and economic opportunity.

Filling out this form and providing demographic information is optional; applicants are not required to provide the requested information but are encouraged to do so. The entity collecting this information cannot discriminate on the basis of whether an applicant provides this information, or based on any information provided on this form. If you decline to provide this information, it will not adversely affect your application.

The demographics-related information collected can only be used for purposes of the SSBCI program and must not be used for any other purposes (e.g., marketing, sale to third parties). The information collected must also not be used in a manner that violates any applicable anti-discrimination laws, including, but not limited to, the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d-1 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and Treasury’s implementing regulations, 31 C.F.R. part 28; the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and Treasury’s implementing regulations at 31 C.F.R. part 23.

If you believe you were discriminated against in connection with the provision of the information provided on this form, contact: Director, Office of Civil Rights and Diversity, U.S. Department of the Treasury, 1500 Pennsylvania Ave, N.W., Washington, DC 20220, or by email at crcomplaints@treasury.gov.

PAPERWORK REDUCTION ACT NOTICE - OMB Control Number 1505-0227

[An agency may not conduct](#) or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Applicants are encouraged to answer all of the questions below.

This information is being collected to help ensure that communities' small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

1. Minority-owned or controlled business status			
<p>For purposes of this form, <u>minority individual</u> means a natural person who identifies as American Indian or Alaska Native; Asian American; Black or African American; Native Hawaiian or Other Pacific Islander; Hispanic or Latino/a; or one or more than one of these groups.</p> <p>For purposes of this form, an applicant is a <u>minority-owned or controlled business</u> if the business meets one or more of the following:</p> <p>(1) if privately owned, 51 percent or more is owned by minority individuals;</p> <p>(2) if publicly owned, 51 percent or more of the stock is owned by minority individuals;</p> <p>(3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of minority individuals; or</p> <p>(4) one or more minority individuals have the power to exercise a controlling influence over the business.</p>			
Is the applicant a minority-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
2. Women-owned or controlled business status			
<p>For purposes of this form, an applicant is a <u>women-owned or controlled business</u> if the business meets one or more of the following:</p> <p>(1) if privately owned, 51 percent or more is owned by females;</p> <p>(2) if publicly owned, 51 percent or more of the stock is owned by females;</p> <p>(3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of females; or</p> <p>(4) one or more individuals who are females have the power to exercise a controlling influence over the business.</p>			
Is the applicant a women-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond
3. Veteran-owned or controlled business status			
<p>For purposes of this form, an applicant is a <u>veteran-owned or controlled business</u> if the business meets one or more of the following:</p> <p>(1) if privately owned, 51 percent or more is owned by veterans;</p> <p>(2) if publicly owned, 51 percent or more of the stock is owned by veterans;</p> <p>(3) in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of veterans; or</p> <p>(4) one or more individuals who are veterans have the power to exercise a controlling influence over the business.</p>			
Is the applicant a veteran-owned or controlled business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Prefer not to respond

Each principal owner of the applicant is encouraged to answer the questions below.

This information is being collected to help ensure that communities’ small business credit needs are being fulfilled and allow SSBCI to analyze the populations that SSBCI funding is benefiting.

For purposes of this form, a principal owner of the applicant is a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity of the business. If a trust owns, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of the business, the trustee is a principal owner.

For each principal owner of the applicant, indicate which of the following categories the principal owner identifies with. Submit a separate copy of this table for each principal owner of the applicant (up to four).

1. Ethnicity <input type="checkbox"/> Hispanic or Latino/a <input type="checkbox"/> Not Hispanic or Latino/a <input type="checkbox"/> Prefer not to respond	
2. Race (select all that apply) <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Black or African American <input type="checkbox"/> Asian <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> Indian <input type="checkbox"/> Guamanian or Chamorro <input type="checkbox"/> Chinese <input type="checkbox"/> Native Hawaiian <input type="checkbox"/> Filipino <input type="checkbox"/> Samoan <input type="checkbox"/> Japanese <input type="checkbox"/> Pacific Islander (Other) <input type="checkbox"/> Korean <input type="checkbox"/> White <input type="checkbox"/> Vietnamese <input type="checkbox"/> Prefer not to respond <input type="checkbox"/> Asian (Other)	
3. Middle Eastern or North African Ancestry <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Not Middle Eastern or North African <input type="checkbox"/> Prefer not to respond	
4. Gender <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Nonbinary <input type="checkbox"/> Prefer to self-describe: _____ <input type="checkbox"/> Prefer not to respond	5. Sexual Orientation <input type="checkbox"/> Gay or lesbian <input type="checkbox"/> Bisexual <input type="checkbox"/> Straight, that is, not gay, lesbian, or bisexual <input type="checkbox"/> Something else <input type="checkbox"/> Prefer not to respond
6. Veteran Status <input type="checkbox"/> Veteran <input type="checkbox"/> Non-veteran <input type="checkbox"/> Prefer not to respond	

MT SSBCI 2.0 LPP
Lender Use of Proceeds and Conflict of Interest Certification

Funds from the State Small Business Credit Initiative (SSBCI) may only be used for certain purposes and in circumstances where the applicable conflict of interest standards are satisfied.

Legal name of lender: _____

The lender hereby certifies the following to the participating jurisdiction:

1. The SSBCI-supported loan is not being made in order to place under the protection of the approved program prior debt that is not covered under the approved program and that is or was owed by the borrower to the lender or to an affiliate of the lender.
2. If the SSBCI-supported loan is a refinancing, it complies with all applicable SSBCI restrictions and requirements in Sections VII.f and VIII.f of the SSBCI Capital Program Policy Guidelines regarding refinancing and new extensions of credit, including that the SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender.
3. The lender is not attempting to enroll any portion of an SBA-guaranteed loan.

The undersigned is an authorized representative of the lender.

Signature: _____

Name: _____

Title: _____

Date: _____

**MT SSBCI 2.0 LPP
Lender Sex Offender Certification**

Under the State Small Business Credit Initiative (SSBCI), lenders must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of lender: _____

The lender hereby certifies the following to the participating jurisdiction:

No principal of the entity listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, "principal" means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

The undersigned is an authorized representative of the lender.

Signature: _____

Name: _____

Title: _____

Date: _____

**MT SSBCI 2.0 LPP
CDFI/RLF Sex Offender Certification**

Under the State Small Business Credit Initiative (SSBCI), any participating private entity must certify that their principals have not been convicted of a sex offense against a minor.

Legal name of participating private entity:

The participating private entity hereby certifies the following to the participating jurisdiction:

No principal of the entity listed above has been convicted of a sex offense against a minor (as such terms are defined in 34 U.S.C. § 20911). For the purposes of this certification, “principal” means the following: if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association, development company, or other entity, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

The undersigned is an authorized representative of the participating private entity.

Signature: _____

Name: _____

Title: _____

Date: _____