MT SSBCI 2.0 LPP
Guarantor 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 guarantor: _____

The guarantor 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 guarantor 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 guarantor 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[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 guarantor 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 guarantor.

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.