

Analysis of Updated SSBCI Guidelines

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Council of Development Finance Agencies

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Overview

- ▶ The American Rescue Plan Act of 2021 **reauthorized and expanded** the State Small Business Credit Initiative (SSBCI) program.
- ▶ SSBCI will provide a combined **\$10 billion** to states, the District of Columbia, territories, and Tribal governments.
- ▶ **Funding** will be used to expand access to capital for small businesses emerging from the pandemic, build ecosystems of opportunity and entrepreneurship, and create high-quality jobs.
- ▶ **Uses of funding:**
 - ▶ Credit and investment programs for existing small businesses and start-ups.
 - ▶ Technical assistance to small businesses applying for SSBCI funding and other government small business programs.



New SSBCI Resources

- ▶ U.S. Department of the Treasury
 - ▶ Updated Preliminary Allocation Tables
 - ▶ 2021 Application Materials
 - ▶ SSBCI Fact Sheet
 - ▶ Updated Information for Tribal Governments
 - ▶ Capital Program Policy Guidelines
- ▶ CDFA
 - ▶ Summary analysis of the Capital Program Policy Guidelines



Speakers

Danielle
Christensen

James
Clark

Jeffrey
Stout

Ronald
Kelly



State Small Business Credit Initiative (SSBCI) Compliance

November 2021



Agenda

- Application
- Selected topics from the SSBCI guidance
- Q&A
- Upcoming events/deadlines

SSBCI Application

Eligible Jurisdictions (States, the District of Columbia, Tribal Governments, and Territories) must complete the required application sections by their respective deadlines to be eligible for SSBCI funding.

Applications shall be submitted through Treasury's online application portal (link forthcoming).

Key Application Dates and Components

- **December 11, 2021** – Deadline for jurisdictions to **initiate** their application online. The four following application sections must be complete:
 - Designation of Implementing Entity
 - Identification of one or more Key Contacts
 - List of Proposed Programs
 - Statement on Legal Actions
- **February 11, 2022*** – Deadline for jurisdictions to **complete** their application. A complete application includes the above sections, as well as additional sections including, but not limited to:
 - Program Eligibility
 - Signature of the Authorized Official

*Applications from eligible municipalities must be completed by March 11, 2022.

Letter of Designation

- The letter of designation from the governor of the state or a governing official of the territory, the District of Columbia, or Tribal government must expressly state that the governor or governing official has designated the Implementing Entity to accept the SSBCI allocation on behalf of the state, territory, the District of Columbia, or Tribal government.
- The designated Implementing Entity will implement and oversee the state, territory, the District of Columbia, or Tribal government's program(s), and has the legal authority to enter into an Allocation Agreement with Treasury.
- This letter must include the name, title, signature, telephone number, and email address for the Authorized Official of the Implementing Entity and each official who has been delegated authority to act on the Authorized Official's behalf.

Statement on Legal Actions

- A narrative will need to be uploaded describing the necessary legal actions (such as legislative authorization) that have been taken or that need to be taken to enable the designated Implementing Entity to implement the applicant's programs, as required under 12 U.S.C. 5703(b)(2).
- This narrative should confirm that (1) the entity is legally capable to bind the state, the District of Columbia, Tribal government or group of Tribal governments, or territory to obligations with the Federal Government; and (2) the legal mechanisms are in place for the state, the District of Columbia, Tribal government or group of Tribal governments, or territory to accept the transfer of SSBCI funds and Treasury to deliver funds to the Implementing Entity.
- If any actions are still necessary to enable the entity to implement the applicant's proposed program(s) (such as legislative approval, if applicable), indicate what the remaining actions are and when they will be complete. This application will not be approved until all legal actions necessary to enable the designated Implementing Entity to implement the proposed program(s) and participate in the SSBCI have been accomplished and the state, the District of Columbia, Tribal government, or territory has provided Treasury with a description of such action(s).

Selected topics from guidance

- 1:1 and 10:1 financing requirements
- Private Capital at Risk
- Allocations related to *business enterprises owned and controlled by socially and economically disadvantaged individuals* (SEDI-owned businesses)
- Lending safeguards
- Venture Capital Fund Program
- Use of funds
- Tribal government considerations

10:1 and 1:1 Financing Requirements

10:1 financing requirement – An Eligible Jurisdiction must demonstrate a “reasonable expectation” that their SSBCI programs, when considered together, have the ability to use the federal contribution to generate small business lending and investing of at least 10 times the federal contribution amount.

- Calculated based on a 10-year horizon for each annual group of transactions.
- If a state knows it will stop recycling funds after the allocation time period or within the 10-year horizon, it should adjust projections accordingly.

1:1 financing requirement (for OCSPs)– Eligible Jurisdictions must “demonstrate that, at a minimum, \$1 of public investment by the state program will cause and result in \$1 of new private credit.”

- Treasury will only approve OCSPs that demonstrate that the design of the program will meet the 1:1 financing requirement.



Reference: SSBCI – Capital Program
Policy Guidelines pp. 22-24

[Link to Document](#)



Private Capital at Risk (PCAR)

- Lenders and investors providing loans, investments, or other credit or equity support—must have “a meaningful amount of their own capital resources at risk.”
- “Meaningful amount” differs for various types of lenders and investors, as some will bear risk at the transaction level while others bear pooled risk.

PCAR for 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.
- 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.

Private Capital at Risk (PCAR)

PCAR for 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 loans have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital in the same risk layer 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.

Private Capital at Risk (PCAR)

PCAR for Equity Investors - Have a meaningful amount at risk if they establish terms whereby the private capital is pari passu with, or junior to, the SSBCI investment in cash flow rights.

Exception for Incubation Funding Model: Equity investors using an Incubation Funding Model or Early-Stage Investor Model have a meaningful amount at risk if they establish terms where private capital is pari passu with the SSBCI investment in cash flow rights **up to the repayment of the SSBCI investment.**

For All Equity Investors: If the equity investor is a fund or similar entity, the fund or entity manager must have exposure to the risk of its portfolio in a manner that is consistent with industry standards.

Allocation for SEDI-Owned Businesses

- The American Rescue Plan Act provided a \$1.5 billion allocation for *business enterprises owned and controlled by **socially and economically disadvantaged individuals (SEDI-owned businesses)***.
- Per statute, these funds must be “expended for” SEDI-owned businesses.
- This section addresses two key questions regarding this allocation:
 - Must Eligible Jurisdictions establish programs specific to SEDI-owned businesses?
 - What counts as “expended for” SEDI-owned businesses?

Allocation for SEDI-Owned Businesses

Must Eligible Jurisdictions establish programs specific to SEDI-owned businesses?

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

Allocation for SEDI-Owned Businesses

When are funds deemed to have been “expended for” SEDI-owned businesses?

When an Eligible Jurisdiction expends an amount of its SSBCI funds to “meet the needs of” SEDI-owned businesses.

What qualifies as “meeting the needs of SEDI-owned businesses”?

When SSBCI funds are expended for loans, investments, or other credit or equity support to:

- business enterprises that certify that they are owned and controlled by individuals who have had their access to credit diminished as compared to others in comparable economic circumstances, because of certain statuses or membership in groups that are listed in the Capital Program Policy Guidelines;
- business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas;
- business enterprises that certify that they will operate a location in a CDFI Investment Area; and
- business enterprises that are located in a CDFI Investment Area.

SEDI Incentive Allocation

What is the SEDI Incentive Allocation?

The American Rescue Plan Act provided a \$1.0 billion allocation for Eligible Jurisdictions that demonstrate “robust support” for SEDI-owned businesses in the deployment of prior amounts.

- SEDI Incentive Allocation funds are disbursed in the second and third tranche based on prior tranche performance.

How does an Eligible Jurisdiction qualify for SEDI Incentive Allocation funds?

Eligible Jurisdictions demonstrate “robust support” for SEDI-owned businesses, and thereby qualify for incentive funds by expending their previously disbursed SSBCI funds for meeting the needs of SEDI-owned businesses.

- The process for incentive fund disbursement is detailed on pp. 7-9 of the Capital Program Policy Guidelines.



Reference: SSBCI – Capital Program
Policy Guidelines pp. 7-9

[Link to Document](#)



Lending Protection Safeguards

SSBCI programs and their participants must conform to the below minimum national customer protection standards.*

Rate – The interest rate for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration’s interest rate ceiling as described in 12 U.S.C. § 1757(5)(A)(vi)(I).

Fees and Terms – SSBCI-supported transactions cannot require (a) a confession of judgment; (b) pre-payment or double-dipping fees; or (c) certain upfront fees exceeding program maximums.

Disclosure – SSBCI-supported transactions must include disclosure by the lender or investor 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.

*These requirements are in addition to any other federal or state law requirements.

Reference: SSBCI – Capital Program Policy Guidelines pp. 38-39 [Link to Document](#)



Venture Capital (VC) Services Cap

VC funds often offer a variety of services to their portfolio companies (e.g., financial management, IT consulting, customer outreach, etc.). As this is a form of equity support, SSBCI funds may be used to pay for these services up to an annual average of 1.71% of the federal contribution to a venture capital fund over the life of the program.

- Treasury derived the 1.71% cap based on industry studies.
- This equity support (VC services) is subject to both the 10:1 and 1:1 financing requirements.

Reference: SSBCI – Capital Program Policy Guidelines p. 33

[Link to Document](#)



Use of Funds

Lenders and investors must receive assurances (written attestation) from borrowers and investees that they will use loan and investment proceeds in a manner that is permissible under the SSBCI statute and Capital Program Policy Guidelines.

Prohibited Uses

Each lender/investor must obtain an assurance from the borrower/investee affirming that the loan/investment proceeds will not be used to:

- Repay delinquent federal or state income taxes unless the borrower/investee 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, 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.



Reference: SSBCI – Capital Program
Policy Guidelines p. 17, extended to
OCSPs pp. 26-27
[Link to Document](#)



Prohibited Use – Real Estate

SSBCI funds **may not be used for acquiring or holding passive investments in real estate**. Proceeds are used for passive real estate investment purposes (when real estate is acquired and held primarily for sale, lease, or investment).

- Not 'passive' if recipient occupies 60%+ of a building for new construction or 51%+ for acquisition or renovation of an existing building.
- Confirming that funds will not be used for this purpose is part of the borrower's/investee's required attestation to the lender/investor.
- There are two limited exceptions to this prohibited use that focus on investments where real-estate meets key criteria, including a near immediate business use of the acquired property.

Prohibited Use – Refinancing

SSBCI funds may only be used to refinance existing debt when:

- Amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance (**New and existing lender**);
- The transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt (**New Lender**);
- Not used to finance an extraordinary dividend or other distribution (**New and existing lender**);

To prevent SSBCI funds from being used by lenders to roll impaired credit, refinancing from **existing lenders** must:

- Be based on a new underwriting of the small business's ability to repay
- Not be used to refinance a loan that has been in default of any financial covenants for at least the previous 36 months or since origination.

Reference: SSBCI – Capital Program
Policy Guidelines pp. 20-21 ,
extended to OCSPs pp. 26-27

[Link to Document](#)

Prohibited Use – Geography

SSBCI funds for each Eligible Jurisdiction are intended to benefit that Eligible Jurisdiction , its businesses, and its residents. Treasury requires each Eligible Jurisdiction to use at least 90 percent of its capital allocation for loans, investments, and other credit or equity support for small businesses headquartered in the Eligible Jurisdiction . This means that, at most, 10 percent of a state’s SSBCI allocation may be used to support loans, investments, or other credit or equity support for out-of- Eligible Jurisdiction small businesses.

For each loan, investment, or other support for small businesses headquartered **outside** of the Eligible Jurisdiction , the Eligible Jurisdiction must provide a reasonable explanation of the benefits of that investment to businesses headquartered in the Eligible Jurisdiction .

Reference: SSBCI – Capital Program
Policy Guidelines pp. 36-37

[Link to Document](#)



Q&A

Q&A – Please submit questions in the chat



Reference: SSBCI – Capital
Program Policy Guidelines p. 37
[Link to Document](#)



Upcoming Events/Dates

State governments:

11-23 – Guidance review for State governments

11-30 – Guidance/application review for State governments

Log-in information shared in SSBCI Bulletin email

Upcoming Events/Dates

Tribal governments:

11-18 – Guidance review for Tribal governments

11-23 – Office hours for Tribal governments

11-30 – Office hours for Tribal governments

12-2 – Guidance/application review for Tribal governments

12-7 – Office hours for Tribal governments

Log-in information shared in SSBCI Bulletin email

Prohibited Use – Geography

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

- Transactions with businesses on Tribal lands.
- 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 the states of the United States in which Tribal members reside.

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

Tribal Government Considerations

Tribal Enterprises - A “Tribal enterprise” is an entity 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
- 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.

Reference: SSBCI – Capital Program Policy Guidelines p. 11

[Link to Document](#)



Tribal Government Considerations

Tribal Enterprises Roles

Implementing Entity

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.

Borrower

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.

Lender/Investor

Tribal enterprises may be lenders or investors in an OCSP, 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 OCSP.



Reference: SSBCI – Capital Program
Policy Guidelines p. 11, p. 18, and p. 22
[Link to Document](#)



Tribal Government Considerations

Conflict-of-Interest Standard for Tribal Enterprises: For OCSPs, if a Tribal enterprise lends or invests in another Tribal enterprise, relationships that would otherwise be prohibited related to conflicts of interest are permitted if such relationships occur by virtue of common Tribal ownership, provided that:

- Certification is received that the transaction is in accordance with Tribal COI policy;
- The Tribal COI 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.

1:1 Financing: Eligible Jurisdictions must “demonstrate that, at a minimum, \$1 of public investment by the state program will cause and result in \$1 of new private credit” (which Treasury refers to as “private financing”).

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.

Tribal Government Considerations

Business size – 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.

Gaming prohibitions and exemptions – Tribal governments are exempt from the prohibition on SSBCI business deriving more than 1/3 of gross annual revenue from legal gambling activities. However, the Tribal SSBCI participant is prohibited from using 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.

Jurisdiction – Transactions can be deemed to be in-state from Tribal governments if they have operations or Tribal relationships spanning multiple states of the United States.

Reference: SSBCI – Capital Program Policy Guidelines p. 14, p. 19, and pp. 36-37

[Link to Document](#)



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