EXHIBIT A-2

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

November 10, 2021

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.[1] 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, "states"[2]) 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.

In the coming weeks, Treasury will announce the availability of technical assistance funding and issue separate guidelines regarding technical assistance and instructions on how to apply. Technical assistance funding will be made available for states, the District of Columbia, territories, and Tribal governments that complete an application for a SSBCI capital program by February 11, 2022, and eligible municipalities that complete an application for a SSBCI capital program by March 11, 2022. Applications for technical assistance will be due on March 31, 2022. All applicants for technical assistance funding must provide a plan that addresses how they intend to provide legal, accounting, and financial advisory services to VSBs and SEDI-owned businesses applying for SSBCI capital programs or other state or federal small business programs. These services can be provided either directly or indirectly, by contracting with legal, accounting, and financial advisory firms. The applicant's plan should also address how, if at all, the technical assistance funding may meet the needs of VSBs and SEDI-owned businesses in

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

[2] Hereinafter, unless indicated otherwise, a "state" 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; (C) when designated by one of the fifty states of the United States, a political subdivision of that state that Treasury determines has the capacity to participate in the SSBCI; (D) under the circumstances described in 12 U.S.C. § 5703(d), a municipality of one of the fifty states of the United States to which Treasury has given a special permission under section 5703(d); and (E) a Tribal government, or a group of Tribal governments that jointly apply for an allocation. *See* 12 U.S.C. § 5701(10).

different communities, including rural communities; communities undergoing economic transitions, including communities impacted by the shift towards a net-zero economy and deindustrialization; communities surrounding Minority-Serving Institutions[3]; or other underserved communities.

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

Section II. Eligible Programs

SSBCI provides funding for state small business lending and investment programs. There are two state 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 state must make a matching insurance premium payment to the reserve fund. The state's matching payment to the reserve fund may be made with the state's allocated SSBCI funds.

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, state-sponsored venture capital programs, loan guarantee programs, and other similar programs.[4] OCSPs also include qualifying loan or swap funding facilities, which are contractual arrangements between a state and a private financial entity. Under such facilities, the state delivers funds to the private financial entity as collateral; that entity, in turn, provides funding to the state. 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 state 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 states, the District of Columbia, territories, Tribal governments, and

[3] 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)).

[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 state**.** State-sponsored venture capital programs typically entail joint public-private investment programs focused on "seeding" small businesses with high-growth-potential.

eligible municipalities.[5] 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 state's job losses in proportion to the aggregate job losses of all states. 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 (not including Tribal governments). 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.[6]

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

Pursuant to 12 U.S.C. § 5702(c)(1), each state 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.[7] As a precondition to receipt of the second and third disbursements, the state must, among other things, certify to Treasury that the state 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 state programs that have delivered loans or investments to eligible businesses (i.e., it has deployed such funds).[8] The certification must be signed by an official of the state with oversight responsibility for the approved state program(s). The following is a description of these requirements.

Funds Expended, Transferred, or Obligated

For purposes of determining whether a state 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 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

[5] For ease of reference, the SSBCI website includes information about allocation amounts and allocation methodology for each state, the District of Columbia, territory, Tribal government, and eligible municipality. Please visit http://www.treasury.gov/ssbci for more details.

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

[7] If the state 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.

[8] As part of this certification, the authorizing official for the participating state will be required to certify to Treasury that the participating state is in compliance with all terms of the Allocation Agreement, SSBCI Capital Program Policy Guidelines, and the representations and warranties made in both the Allocation Agreement and the SF-424B (Assurances Non-Construction). 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 state's certification.

pursuant to a venture capital investment; and SSBCI funds that have been spent for allowable administrative expenses.

For purposes of determining whether a state has "transferred" a prior disbursement of SSBCI funds, Treasury will generally consider funds 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. The implementing entity is the specific department, agency, or political subdivision of the state that has been designated to implement a state program under 12 U.S.C. § 5703(b)(1). The term "agency" includes state government corporations and other entities authorized or supervised by the state. The contracted entity is the entity (i.e., an entity of another state, for-profit third-party, or nonprofit third-party) that contracts with the state for the implementation and administration of the state SSBCI program under 12 U.S.C. § 5703(c).

For purposes of determining whether a state 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 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).

Delivered Loans or Investments to Eligible Businesses

As noted above, for a state 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 state 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 state 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 state's allocation that has not been transferred to the state under this section may be deemed to be no longer allocated to the state and no longer available to the state if:

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

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

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 states 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.[9] 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

[9] 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).

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.[10] 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 state'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 state is approved for participation in the SSBCI. The second and third disbursements will occur when the state 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.

"Expended For" Requirement

A state's SEDI allocation must be expended for SEDI-owned businesses. A state 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 state'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 state—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 states expend (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 (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;

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

(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);
(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).[11]

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 state 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.

States 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 state's SEDI allocation is not expended for SEDI-owned businesses, Treasury may find that the state 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 state or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

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 states can obtain, beyond states' allocated amounts for the second and third tranches of main capital, for states 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 states additional funds for each of the second and third tranches of main capital.

States 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

[11] See footnote 9.

amount of SSBCI funds that a state can obtain using a two-step process:

Step 1:

Each state should aspire to expend a certain percentage (the SEDI Objective) of its SSBCI funds that have been expended since the state's prior disbursement of main capital allocation, SEDI allocation, and VSB allocation funds for meeting the needs of the SEDI-owned businesses within its state. 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.[12] 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 state'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 state 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 state's SEDI Objective that the state has achieved. The state will receive an additional disbursement in an amount equal to such achieved percentage (subject to a limit of 100 percent) multiplied by the state'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 states 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 states 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 states' relative performance in Step 1. Treasury will provide additional details regarding the methodology and timing for allocating the second disbursements from these additional

[12] See footnote 9.

funds at a later date. The second disbursements within each tranche are not expected to occur before most states 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 states to be expended for VSBs. The allocations for VSBs will be determined according to the same formula as the state's main capital allocation, except without the minimums for the Tribal government portion. Each state'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 state is approved for participation in the SSBCI. The second and third tranches will be disbursed when the state certifies that it has deployed 80 percent of its prior tranche of disbursed SSBCI funds under Section III.b above.

A state'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 state 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 state'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 state—including the main capital allocation funds, VSB allocation funds, SEDI allocation funds, and SEDI incentive allocation funds—other than technical assistance funds.

States 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 state's VSB allocation is not expended for VSBs, Treasury may find that the state 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 state, or seek other available remedies specified in the Allocation Agreement, such as the recoupment of previously disbursed funds.

Section VI. Approving States for Participation

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

Before Treasury approves a state applicant's program for participation in the SSBCI, the applicant must demonstrate that all actions required under state law have been taken to delegate administrative responsibility for the program to a specific department, agency, or political subdivision of the state (i.e., the implementing entity). The term "agency" includes government corporations and other entities authorized or supervised by the state. The applicant will be required to submit a short narrative statement from the governor of the state of the United States or governing official of the District of Columbia, territory, or Tribal government describing the actions that have been taken to delegate responsibility for the program and attaching any relevant documentation in support of that statement. The narrative should describe the authority upon which the designated implementing entity is able to enter into binding agreements on behalf of the state with Treasury. This will typically involve discussion of the entity's charter and express authorizations from the state to act on its behalf through a state resolution or other instrument. The narrative should also discuss the state'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 a state program and participate in the program have been accomplished and the state has provided Treasury with a description of such actions.

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

Any state 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 by 11:59 PM ET on February 11, 2022. If any state of the United States does not submit a complete application by February 11, 2022, municipalities within that state may apply. Applications from eligible municipalities must be completed by 11:59 PM ET on March 11, 2022. Municipalities interested in applying should look for further information on the SSBCI website by early February.

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

The SSBCI application will ask states 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 state procurement and ethics policies and new measures the state chooses to implement specifically for the SSBCI program. Examples of such policies include limitations on or disclosure of political contributions to state 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. Municipalities in states that do not submit a timely application must submit their applications no later than 11:59 PM ET on March 11, 2022, pursuant to the statute. The approval criteria and program requirements applicable to states apply to eligible municipalities.

Section VII. Approving State CAPs

a. In General

CAPs provide portfolio insurance to lenders that are financial institutions as defined in 12 U.S.C. § 5701(5)[13] 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 state, individually.

States may work together and standardize several program characteristics, consistent with applicable SSBCI program requirements, which would increase uniformity across states. For example, states 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 states, 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 reserve fund. This amount is calculated on a loan-by-loan basis. A participating state 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 state may supplement the federal contribution with state 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 state CAPs may only be used to pay losses on loans originated and enrolled after the effective date of the state's Allocation Agreement. The state may allow lenders to use premiums from loans subsequently enrolled in

[13] 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.

the state'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 state 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 state 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 state CAP allows financial institution lenders to partner with third-party providers (e.g., non-depository CDFIs), the state 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, states 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. States may also consult with state regulatory or supervisory authorities regarding participating community development financial institutions, if applicable. The following table lists documents and certifications states 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)		• 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 supervisory enforcement action.

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 supervisory enforcement action.
CDFIs (excluding insured depositories and credit unions)	CARS rating	• 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 state 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 state CAP, the participating state 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).[14]

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, which 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 owner can deliver the assurance regarding passive real estate investment if the small business leases any portion of a building constructed, acquired, or improved with proceeds of an SSBCI-supported loan if such proceeds are used in the construction of a new building and the small business occupies and uses at least 60 percent of the total rentable property following issuance of an occupancy permit or other similar authorization. Alternatively, 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 state 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 a rentable property that is leased 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.,

[14] 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."

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 the following limited circumstances.

First, 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).

Second, a construction loan with an original principal amount of $500,000 or less may have an eligible business purpose if (1) the building will not serve as a residence for the owner, their relatives, or affiliates; (2) the building will be put into service immediately; (3) the loan is underwritten and made for the purpose of constructing or refurbishing a structure; and (4) the building has not been and will not be financed by another SSBCI-supported loan. Excluded from eligible business purpose are loans that automatically convert into permanent financing, except if 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 state 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,[15] 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.

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," "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 state-designated charitable, religious, or other non-

[15] 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.

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;[16]

- 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;[17]

- 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 Operating Procedure 50 10 6;[18] or

[16] 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.

[17] When a participating state 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 state may include private financing caused by and resulting from the re-lending transaction in the state'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.

[18] 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.").

- 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[19]; "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 state 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.

- The SSBCI-supported loan is not a refinancing of a loan previously made to the borrower by the financial institution lender or an affiliate of the financial institution lender and complies with all applicable SSBCI requirements related to refinancing, described forth below.

- 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 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.

[19] 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.

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;[20]
- 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.

- *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 matured[21] 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;

[20] 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.

[21] 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 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.

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, states 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 state may determine to disallow a lender from enrolling any additional CAP loans if the state determines the lender's practices do not meet program standards or is using the CAP to offset the costs of high default rate lending.[22] Treasury will monitor CAP annual claims rates annually.

Section VIII. Approving State 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, state-sponsored venture capital programs, loan guarantee programs, or other similar programs. Unlike CAP lenders, OCSP lenders and investors need not be financial institutions as defined above.

[22] At their discretion, states may conduct additional reviews of lenders and apply other limits to state programs and participating lenders.

In a SSBCI venture capital program, the "investor" can be an entity of the state; 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 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.

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

As required by 12 U.S.C. § 5705(c)(2), for OCSPs to be eligible for federal funding, a state must demonstrate a "reasonable expectation" that, when considered with all other approved state 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, states must describe how their OCSPs will in fact "cause and result in" private financing. For example, for OCSPs involving venture capital funds, states may specify such safeguards as limiting investments to anchor investments,[23] 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. States 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, states must fulfill ongoing *ex post* reporting requirements on actual leverage achieved.

For the *ex ante* requirement, states 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, venture capital, loan participation, loan guarantee, collateral support); turnover within programs (e.g., average loan tenor); and loss rates.[24] The SSBCI application materials will include a template that allows a state to input its estimates or projections of program parameters, and that calculates an estimate of the private financing ratio resulting from the state's inputs. Subject to Treasury's approval, the state may

[23] 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.

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

provide its own calculation of the private financing ratio, if the state 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 state knows that it will stop recycling funds after the allocation time period or anytime within the 10-year horizon for a particular program, the state 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. States 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 state 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.[25] 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.[26] A participating state 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 a venture capital investment. If the aggregate amount of these funds exceeds all of the participating state's allocated amounts from the main capital, VSB, SEDI, and SEDI incentive allocations (because some of the funds invested have generated program income

[25] When a participating state 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 state may include private financing caused by and resulting from the re-lending transaction in the state's private leverage ratio.

[26] 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.

that has been added to allocated funds), the "SSBCI funds used" means the participating state'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, states 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, states must describe how their OCSPs will "cause and result in" private financing. For example, for OCSPs involving venture capital funds, states may specify that (1) the program will limit investments to anchor investments[27] 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 state's 1:1 financing ratio when a state 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 state's private capital ratio if the state 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 investment.

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

[27] 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.

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. 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 loans[28] have a meaningful amount of capital resources at risk if these investors establish terms whereby the private capital in the same risk layer[29] 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.

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

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

[29] 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.

is *pari passu* with the SSBCI investment in cash flow rights up to the repayment of the SSBCI investment.

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.

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 support to borrowers that have more than 750 employees, (3) to target support towards loans or investments with an average principal 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, the $20 million restriction applies 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, the $20 million restriction applies 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 state or its contractors, as well as investments in small businesses made by privately managed funds in which the state invested SSBCI funds ("fund of funds" investments). 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 states should evaluate transactions that in the aggregate exceed the $20 million limit and that have substantially similar terms and conditions,[30] including documenting the justification for 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 OCSPs.

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 OCSPs. Accordingly, for each loan or investment resulting from an approved OCSP, the participating state must require the lenders or investors to obtain an assurance from each borrower or investee stating that the loan or investment proceeds

[30] 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.

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 OCSP loan programs; the sex offender certification for 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 OCSP lenders and investors. The "borrower" requirements shall apply to OCSP 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 OCSP loan programs. Conflict-of-interest provisions applicable to venture capital programs and Tribal SSBCI programs are set forth below.

Venture Capital Programs: Conflict-of-Interest Standards

Funds from an SSBCI venture capital program must not be used to make an investment in a business in which an SSBCI insider has a personal financial interest. States with venture capital 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 venture capital programs:

- An "SSBCI insider" of an SSBCI 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 state's SSBCI venture capital program;
        - a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;
        - a member of the board of directors or similar body for a state-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 venture capital program; or
        - an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

- Exercised a controlling influence on state decisions regarding:
  - The allocation of SSBCI funds among approved state venture capital programs;
  - Eligibility criteria for the state's SSBCI venture capital programs; or
  - The processes for approving investments of SSBCI funds under the state's SSBCI 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 state-sponsored.

- 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 "state-sponsored non-profit entity" is a non-profit entity created by state legislation to pursue policies of the state government and over which state 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 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 state-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 state laws and rules.

- An independent non-profit or for-profit entity managing or investing SSBCI funds for an SSBCI 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 state 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.

Venture Capital Programs: Certification Relating to Sex Offenses

If a business is to receive the benefit of SSBCI funds through a 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 venture capital fund 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 states in demonstrating that a proposed OCSP meets these standards.

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

Treasury will consider, when determining OCSP eligibility, the anticipated benefits to the state, 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. States should present as part of their SSBCI application the projected loan and investment volumes of their programs, and describe the expected benefits to the state, the state's businesses, and the state's residents. In describing expected benefits, states 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 state or local 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 state'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 state.

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 state 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 state 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.[31] However, state agencies and non-profit state-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 Venture Capital Programs

Multistate Funds

State-sponsored venture capital programs may participate in multistate fund structures. Multistate funds are funds that can receive SSBCI capital from multiple states or invest in ventures across multiple states. Multistate funds may set up opportunities to invest in small businesses for more than one SSBCI participating state and can then raise outside capital more easily because of the scale of entrepreneurs. In these arrangements, each state must have a separate agreement with the fund manager. States can require the fund manager to invest in small

[31] 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.

businesses within its state only. They can also give permission to allow investments in certain out-of-state small businesses (see Section IX.c below). States must report on all SSBCI investments to which the state's SSBCI capital has exposure, regardless of whether the investment occurs in state or out of state.

Services to Portfolio Companies

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 fund over the life of the state'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.[32] 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.[33] This equity support is subject to both the 10:1 and 1:1 financing requirements.

In the contractual agreement between a state 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 state 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 investments[34] (as defined below) in businesses, the state may offer these venture

[32] 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.
[33] Gompers, et al., 2016, "How do Venture Capitalists Make Decisions," (working paper, Harvard Business School).
[34] 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.

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,"[35] for states that use direct investment programs to provide capital directly to early-stage businesses, the state 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.

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 state 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 indirectly[36] 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 state provides SSBCI capital to private investment funds, a state's capital must be either (1) held in a separate fund and separately accounted for, or (2) held in a fund with other investors' funds, with each investor's investment accounted for separately. State-sponsored 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 state will be required to report to Treasury on investment performance and other transaction-specific details for each business that received SSBCI capital.

[35] 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.

[36] 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 state's application for a CAP must contain a report detailing how the state 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 states 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.[37] 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 state report regarding capital access to underserved communities should also be required in an application for an OCSP.

A state's report should contain information sufficient for Treasury to evaluate whether the state'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 state will provide access to capital for small businesses in underserved communities, and (2) how the state will monitor performance relative to the plans in the report.

When describing how the state will provide access to capital for small businesses in underserved communities, the state may have different strategies for different underserved groups referenced in the SSBCI statute. For example, some states 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 states 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 state 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 state. 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 or financial information about small businesses, or information that involves privacy, security, and proprietary business interests. Treasury will

[37] 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)).

work with the state to seek to protect the confidentiality of such information.

When describing how the state will monitor performance relative to the plans in its report, the state's report must include a way for the state 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 state 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 states 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 states' robust support for SEDI-owned businesses (see Section IV above). A state's plan for expanding access to capital for underserved communities may include the state'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 state. 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-State and Out-of-State Loans and Investments

SSBCI funds for each state are intended to benefit that state, its businesses, and its residents. Treasury requires each state 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 state. 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-state small businesses. For each loan, investment, or other support for small businesses headquartered outside of the state, the state must provide a reasonable explanation of the benefits of that investment to businesses headquartered in the state. For example, such loans, investments, and other support can aid states in expanding their economic ecosystem and benefit their residents by bolstering in-state economies through, for instance, the creation of, and increase in, demand for in-state business products and services.

For SSBCI funds allocated to Tribal governments, in-state 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-state" jurisdictions.

- 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-state 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.

d. Enrollment of Loans in Loan-Related SSBCI Programs

One loan cannot be enrolled in more than one approved state program at the same time. A lender may not divide one loan into multiple agreements or notes, each enrolled in an approved state program, for the same loan purpose. If, for example, a borrower receives two loans under separately approved state programs, each participating state 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 two different uses of the two loans.

e. Relationship to SBA Lending Programs and Other Federal Loans

Under the SSBCI Program, eligible state 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. States 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 state 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 state programs and potential state lending partners, states must ensure state programs meet these minimum standards to ensure SSBCI financing supports transactions that are economically beneficial to small businesses.[38] The following standards are minimum standards, and states should consider the credit environment and needs of small businesses in their state in determining whether to impose additional standards. For example, states may impose lower rates or limits on product types offered as appropriate to achieve the purposes of the state 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, 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.[39] 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.

[38] Lenders and borrowers may negotiate transaction terms as long as they are within the parameters established by these minimum standards and any additional state requirements.

[39] National Credit Union Administration, Letter to Federal Credit Unions, "Permissible Loan Interest Rate Ceiling Extended," August 2021.

- *Exclusion of certain features*. SSBCI-supported transactions may not include any of the following: (1) confessions of judgment;[40] (2) prepayment or "double-dipping" fees;[41] 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. 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 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 states, the District of Columbia, territories, Tribal governments, and eligible municipalities 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 will also issue reporting requirements related to the demographics of owners of small business that participate

[40] 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.
[41] "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.

in a SSBCI capital or technical assistance program.

Participating states 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 states to seek to protect the confidentiality of such information.

- *Quarterly reports.* Within 30 days after the end of each quarterly reporting period, the state will be required to deliver to Treasury a quarterly report describing the use of SSBCI funds for each approved state 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 state will identify the contracted entities and amounts of SSBCI funds transferred in the period; the aggregated amount of SSBCI funds deployed by the state 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 state 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 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.

- *SF-425 Federal Financial Reports.* SF-425 Federal Financial Reports are to be submitted on an annual basis.

- *Performance results.* A summary of the performance results of the participating state's allocation are to be submitted with the participating state'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 SSBCI funds, and for the second or third tranche, the administrative costs are not to exceed 3 percent 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 state may wish to un-enroll a particular transaction or use of administrative expenses from its SSBCI program account if (1) the state 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 state 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 state will be given at least 30 days to supply additional information.

The SSBCI statute also requires OIG to audit participating states' use of allocated federal funds and states that under the agreement between Treasury and a participating state, Treasury "shall recoup any allocated Federal funds transferred to the participating State if the results of the audit include a finding that there was an intentional or reckless misuse of transferred funds by the State."[42]

If Treasury determines that SSBCI funds have been used for an impermissible purpose, Treasury may also allow the state to replenish its SSBCI program account in the amount of the funds found to be misused. In such a case, Treasury may allow the state 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 state must provide Treasury with a written description of each transaction and the justification for a proposed replenishment and un-enrollment. Treasury may provide the state with written conditional approval. Once the state has replenished its SSBCI program account, the state must provide Treasury the following:

- A letter from the state 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

[42] 12 U.S.C. § 5702(c)(1)(C)(ii).

determined by Treasury, the state 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 state official that explains the reason for un-enrollment of each transaction and states that the state has undertaken all necessary actions and transactions to replenish the SSBCI program account.

Signature: _____
By: [Printed Name] _____
Its: [Title]/Authorized Signatory _____
Date: _____