Frequently Asked Questions (FAQs)

General Information

1. What is the State Small Business Credit Initiative (SSBCI)?

The SSBCI is a Federal program administered by the Department of the Treasury (Treasury) which was funded with $1.5 billion to strengthen state programs that support private financing to small businesses and small manufacturers. In conjunction with leveraged private financing, the SSBCI is expected to help spur up to $15 billion in lending to small businesses and manufacturers that are not getting the loans or investments they need to expand and create jobs. The SSBCI allows states, territories and eligible municipalities the opportunity to build upon or create successful models for state small business programs, including Capital Access Programs (CAPs), and Other Credit Support Programs (OCSPs) such as collateral support programs, loan participation programs, loan guarantee programs, and venture capital programs.

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2. How long will the SSBCI operate?

The SSBCI is a one-time program of limited duration. The authorities and duties of the Secretary of Treasury to implement and ad006Dinister the program terminate on September 27, 2017. The obligations of participating states and territories to perform and report on progress will expire as outlined in the terms of the Allocation Agreement. Allocation Agreements between the Treasury and the participating states, territories and municipalities will expire on March 31, 2017.

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3. How much SSBCI funding is available to my state, territory, or eligible municipality?

The enacting legislation for the SSBCI, the Small Business Jobs Act of 2010 (P.L. 111-240) (the Act) set out a formula that calculates the amount of funds available to each state, territory, and eligible municipality. For ease of reference, the SSBCI website includes the maximum amounts allocated by the Act to each state, territory, and eligible municipality. Please visit the website at http://www.treasury.gov/ssbci for more details.

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4. Can states, territories, and eligible municipalities work together to standardize their program rules for CAPs?

Yes. CAPs are established and administered by each jurisdiction, individually. Several financial institutions have commented to Treasury that standardizing CAP rules across states, territories, and eligible municipalities would increase the program's efficiency and usability. States have the discretion to standardize several program characteristics that would increase uniformity across jurisdictions. For example, the states, territories, or eligible municipalities could use similar enrollment forms for financial institutions to participate in the program; create similar enrollment forms for each loan; set the same

rules for eligible borrowers and use of loan proceeds, which are consistent with the SSBCI Policy Guidelines; standardize the amount of borrower and lender payments to the CAP reserve fund which are consistent with the SSBCI Policy Guidelines; agree on the form and frequency of reporting from lenders; and use similar forms to document the recovery of any loan losses from the CAP reserve fund. The result could be savings for financial institutions on staff training, loan operations, back office recordkeeping, and management expenses. In the end, lower CAP costs should motivate more lenders to participate in the CAP and originate more loans.

More uniformity in CAP program design would also help smaller financial institutions because customers would become more familiar with the CAP rules and the administration by the state, territory or eligible municipalities would become more streamlined. The end result should be that CAPs becomes easier to implement for financial institutions of all sizes.

A collateral benefit is that creating more uniformity across CAPs could encourage financial institutions to participate in CAPs in smaller states. When CAP loan demand is uncertain, financial institutions are less likely to make the effort to participate. However, if the programs are standardized across large and small jurisdictions, financial institutions can offer CAPs in all locations with little extra cost. Ultimately, the final design of CAPs is left to the discretion of states, territories, and eligible municipalities.

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5. May states, territories, or eligible municipalities contract for the administration of their CAP or OCSP?

Yes. The Act allows a participating state to enter contracts in which its SSBCI-supported program (CAP or OCSP) is administered by another state or by an authorized agent of, or entity supervised by, the state, territory or municipality. This option allows states, territories or eligible municipalities that are launching new programs to obtain the advantages of using an experienced public or private administrator. Using an experienced administrator may facilitate the launch of a new program and save expenses.

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6. Are funds transferred under SSBCI considered a grant or other type of federal assistance?

No. Section 3003(c)(5) of the Act specifically states that funds transferred to states, territories, and eligible municipalities under the SSBCI program are not considered federal assistance for the purposes of subtitle V of title 31 of the United States Code. Because SSBCI funds are not considered federal assistance or a grant, many federal assistance or federal grant reporting requirements do not apply.

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7. **How will Treasury exercise its discretionary authority to terminate the availability of funds that have not been disbursed to a Participating State within two years of the date of the Participating State's Allocation Agreement?**
Posted July 15, 2013

Section 3003(c)(4) of the Small Business Jobs Act of 2010 provides the Secretary of the Treasury with discretionary authority to terminate the availability of SSBCI funds not transferred to a Participating State by the two-year anniversary of the date of the Allocation Agreement. Section 7.1 of the Allocation Agreement also sets out this requirement.

Treasury will deem any Participating State that submits its second disbursement request by June 30, 2015 and qualifies to receive that disbursement to have made sufficient progress in implementing its Approved State Programs. For such a Participating State, Treasury will not terminate the availability of any Allocated Funds that remain un-transferred as of that date, and the Participating State will retain access to the full amount of its Allocated Funds for the duration of the Allocation Time Period, which is March 31, 2017. For any Participating State that Treasury determines has not qualified for its second disbursement of Allocated Funds through a submission made by June 30, 2015, Treasury expects to conduct an analysis of the Participating State's progress in implementing its SSBCI programs at that time to determine whether Treasury should exercise its authority to terminate the availability of un-transferred funds.

This policy does not affect Treasury's authority to determine that a general event of default has occurred under Section 6.1 of the Allocation Agreement and to exercise the remedies set forth in Section 6.2 of the Allocation Agreement.

Application Related Questions

1. Who is eligible to apply for funds?

Eligible applicants include all states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands; and under the circumstances described in the Act, a municipality of a State of the United States to which the Act has given a special permission under Section 3004(d) of the Act to apply.

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2. Under what conditions may a municipality apply for funding?

A municipality may apply for funding if the state in which the municipality is located failed to file a Notice of Intent by November 26, 2010, or if the state fails to submit an application for funding by June 27, 2011. Note that as of May 2010, only the states of Wyoming and North Dakota have not filed a Notice of Intent.

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3. What are the eligibility criteria for programs under the SSBCI?

States, territories, and eligible municipalities may use SSBCI funds for CAPs as well as other credit support programs (OCSPs).
To be eligible for funding**,** a CAP is required to:

i. Provide portfolio insurance for business loans based upon a separate loan-loss reserve fund for each financial institution;
ii. Require insurance premiums to be paid by the financial institution lenders and by the business borrowers to the reserve fund in order to have their loans enrolled in the reserve fund;
iii. Provide for contributions to be made by the state, territory , or municipality to the reserve fund in amounts at least equal to the sum of the amount of the insurance premium charges paid by the borrower and the financial institution to the reserve fund for any newly enrolled loan; and
iv. Provide portfolio insurance solely for loans not exceeding $5 million to borrowers with 500 or fewer employees.

To be eligible for funding, an OCSP must demonstrate:

i. $1 of public support will result in at least $1 of new private financing;
ii. Individual guarantees will be limited to loans of no greater than $20 million and to borrowers with 750 employees or fewer; and
iii. The program will target borrowers with 500 or fewer employees and seek to make loans with an average principal amount of $5 million or less.

In addition, states, territories, and eligible municipalities must demonstrate a reasonable expectation that, when considered together, its eligible CAP and eligible OCSPs will result in a minimum of $10 of new small business lending for each $1 in Federal funds. Please refer to the SSBCI Policy Guidelines for further information and examples.
The application for CAPs and OCSPs must also include a report stating how the state, territory, or eligible municipalities plan to use SSBCI funds to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities, including women- and minority-owned small businesses.

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4. What is the process for applying for funds?

Any state, territory, or eligible municipality that establishes a new, or has an existing, CAP or OCSP that meets the eligibility criteria may apply for SSBCI funds by accessing the application and its attachments on the SSBCI website at http://www.treasury.gov/ssbci. Completed applications from states and territories must be received by Treasury by 5:00 PM ET on June 27, 2011. Applications from eligible municipalities must be received by Treasury by 5:00 PM ET on September 27, 2011. Municipalities

interested in applying should look for further information on the SSBCI website, beginning in late-June.

Treasury will review the applications in the order in which they are received.

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5. Must an applicant have an existing SSBCI-eligible program in order to be eligible to apply?

No. If a state, territory, or eligible municipality does not have an existing CAP or OCSP, officials may establish one in order to obtain SSBCI funding. Treasury will provide technical assistance to applicants that are in the process of creating or starting programs.

The Act 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 program was established to provide.

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6. Can state, territory, municipal, and private funds be used in combination with SSBCI funds to fund CAP reserve funds?

Yes. CAP reserve funds are eligible to receive SSBCI funds in an amount equal to the sum of the amount of the insurance premium charges paid by the small business borrowers and by the financial institution lender. The state, territory, or municipality may use any other sources of funds to provide additional support to the reserve fund. However, the SSBCI funds cannot be used to match any amount in excess of the sum of the borrower and financial institution lender contributions.

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7. How can an Applicant use public funds in an OCSP?

OCSPs may use available public funds, subject to the SSBCI Policy Guidelines:

• Each of the OCSPs must meet the 1 to 1 private leverage eligibility requirement and, taken together, all the approved SSBCI programs must demonstrate the ability to meet the 10 to 1 leveraging expectation.

• Private lenders or investors must have a meaningful amount of capital resources at risk, which is consistent with the SSBCI Policy Guidelines.

• SBA-guaranteed loans and other federally guaranteed loans may not be credit- enhanced by OCSPs.

Due to the variety of program structures that are possible, Treasury reserves the right to evaluate applications on a case-by-case basis.

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8. Question 1E of the Application asks for documents showing that all legal actions pursuant to applicable law have been taken that are necessary to enable the designee to implement the Applicant's proposed program(s). What should we include in our response?

A recommended response to Question 1E includes a narrative statement that describes the authority upon which the designated agency is able to enter into binding agreements on behalf of the state, territory, or eligible municipality 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. Secondly, the narrative should discuss the unique aspects of the state, territory, or municipal budget process and how funds transferred from Treasury for the purposes of this program will be deployed for the uses in the approved application. In some states, this involves the passage of a budget resolution in the state legislative body. Responses to this question alert Treasury to potential concerns and unique aspects of state law that may need to be addressed during closing.

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9. The Application requires a designation letter. What should it say?

The designation letter should come from governor of the state or the chief executive of the territory or municipality. This letter must expressly state that: (1) the governor or chief executive has designated the department, agency or political subdivision named in the application to accept the SSBCI allocated funds; (2) the designated entity is responsible for the implementation of the programs included in the application; (3) the designated entity will be responsible for overseeing the programs and contractors (if the applicant expects to use contractors) and is responsible for all reporting requirements under the allocation agreement; (4) the designated entity has all necessary legal authority to enter into an allocation agreement with Treasury.

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10. The Application includes standard non-construction assurances in Form SF-424B. Who must make these assurances?

The assurances in Form SF-424B apply only to the applicant (as distinguishable from the contracting entity that may be identified in the application). The assurances in SF-424B do not apply to the financial institution lenders or investors in small businesses nor to the small businesses that receive loans and investments. It may be helpful to note that with respect to item 5 of the SF-424B, the Act is not one of the 19 specified statutes or regulations that would make the Intergovernmental Personnel Act applicable. With respect to item 9, the Act is not one of the Davis-Bacon Act related acts and therefore the prevailing wage requirements contained therein are not applicable to the use of SSBCI funds.

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11. How should an applicant document its plans to use SSBCI funds to provide access to capital for small businesses in low- and moderate-income, minority, and other underserved communities,

including women- and minority-owned small businesses?

Question 2D in the application requires that a state, territory, or eligible municipality applying for SSBCI funds provide a narrative describing its plan to provide access to capital to the above-referenced communities.

An applicant's plan should be sufficient to allow the Treasury to evaluate whether the plan is substantive and relevant to local market conditions. Plans will vary due to local circumstances and precisely which strategies a state decides to use in order to provide
access to capital for small businesses. The exact features of the plan are left to the applicant's discretion. An acceptable plan will:

• Describe how the applicant will provide access to capital for these small businesses.

The applicant may have different strategies for different groups referenced in the SSBBCI statute. By way of example, some applicants 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 targeted geographies or populations). Other applicants provide access to capital through a concerted campaign to disseminate information through organizations that have business relationships with target groups (e.g., seminars and one-on-one counseling; advertisements in specialized media; periodic e-mailed newsletters that reach target populations).

The plan is part of the application that is incorporated by reference in the Allocation Agreement between Treasury and the participating state, territory, or municipality.

• Describe how the applicant will monitor performance relative to the plan. An acceptable plan should include some way for the applicant to periodically assess if the plan is on-track over the course of the allocation time period. For example, some applicants track the actual outreach activities that have occurred (e.g., how many seminars were held and how many businesses attended). Some applicants monitor the actual loan volume to targeted 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. Treasury does not require participating states, territories or municipalities to subsequently report on their plan, but they should maintain the monitoring records with the other program documents.

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12. How can applicants demonstrate that they will achieve the 10:1 leverage ratio by the end of the allocation period?

As described in further detail in the SSBCI Policy Guidelines, in order for OCSPs to be eligible for SSBCI funding, the applicant must demonstrate a "reasonable expectation" that, when considered with all other CAPs and/or OCSPs proposed for SSBCI funding, such programs together have the ability to use federal contributions to generate small business lending at least 10 times the SSBCI contribution amount. Because private leverage ratios for CAP programs tend to be quite high, most applicants with both CAPs and OCSPs will meet the private leverage ratio expectation in the first year of the allocation

period (please see the SSBCI Policy Guidelines for more information about how to calculate a weighted average private leverage ratio when the applicant intends to operate both CAPs and OCSPs).

Treasury recognizes that some OCSPs, by design, may not meet the 10:1 leverage expectation during the first calendar year of the allocation period. Applicants should demonstrate in their application how the OCSP programs will recycle SSBCI funds, attract subsequent private financing, and generate program income, in order to achieve the 10:1 private leverage ratio expectation by the end of the allocation time period's reporting period, which is December 31, 2016. Please refer to the SSBCI Policy Guidelines for examples.

13. When calculating the 10:1 leverage expectation for private financing, may a participating state, territory or municipality count SBA-guaranteed loans or other financing that is credit-enhanced by federal, state or local incentives?

Yes. A participating state, territory or municipality may count SBA-guaranteed loans or other financing that is credit-enhanced by federal, state or local incentives provided that (a) the financing is caused by, or is the result of, an SSBCI-supported transaction, (b) the capital comes directly from a private entity, and (c) the lender or investor has at least some of its own capital at risk.

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Post-Application / Review Related Questions

1. What is the likelihood of an application being approved?

The application for SSBCI funding is not a competitive award process. Treasury will approve all applications that meet the criteria set forth in the Act and in the SSBCI Policy Guidelines. To expedite processing, applicants should make every effort to ensure that their applications are complete and include all supporting documentation, as applicable.

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2. Once a state, territory, or municipality receives an Allocation Agreement, how long does it take to receive the SSBCI funds?

The allocated funds are available in thirds. The transfer of the first third will occur immediately following the receipt of the fully signed Allocation Agreement. If the state, territory, or eligible municipality plans to use the 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.

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3. How does a Participating State make a request for its second or third disbursement of Allocated Funds?

A Participating State may make a request to receive its second or third disbursement of funds once the Participating State is able to certify to Treasury that the Participating State has expended, transferred, or obligated at least 80% of the prior disbursement to, or for the account of, an Approved State Program. As part of this certification, the Authorizing Official for the Participating State must also certify to Treasury that the Participating State is in compliance with all terms of the Allocation Agreement, SSBCI Policy Guidelines, and the representations and warranties made in both the Allocation Agreement and the SF-424B (Assurances Non-Construction). Exhibit 2-1 in Annex 2 of the Allocation Agreement has a sample certification form that Participating States may use to make this request. Participating States should transmit their certification and any other documents related to their request, via email to the SSBCIApplications@treasury.gov mailbox.

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.

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4. Does Treasury have any guidance on how a Participating State can determine whether it has expended, transferred or obligated SSBCI funds for the purposes of making a request for a subsequent disbursement of SSBCI funds?

Below is general guidance on how Treasury will review a Participating State's certification that it has expended, transferred or obligated SSBCI funds. As noted above, Treasury may request that a Participating State provided documentary evidence to substantiate its certification.

• Expended— SSBCI funds that have been used to pay charges that have been incurred either on a cash or accrual basis by or for an Approved State program.
Examples of expended funds include:
a) SSBCI funds that have been deposited with a lender to cover the federal contribution to a Capital Access Program reserve fund;
b) 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;
c) SSBCI funds that have been invested in specific small businesses, pursuant to a venture capital investment; or,
d) SSBCI funds that have been disbursed allowable administrative expenses.

• Obligated—SSBCI funds that 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:
a) 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;
b) SSBCI funds that have been committed, pledged, or otherwise promised, in writing as part of a venture capital investment transaction (e.g., a promissory note);

c) SSBCI funds that have been set aside to cover obligations arising from loan guarantees, loan participations, or collateral support agreements as part of an approved program; or,
d) SSBCI funds that have been committed, pledged, or promised in writing for allowable administrative expenses (e.g. an executed contract for services).

• Transferred—SSBCI funds that have been transferred by the state, territory, or municipality receiving SSBCI funds to the designated/implementing agency, or the contracting entity, that is charged with administering the day-to-day operations of the program, as a reimbursement for actual expenses incurred 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 any allowable administrative expenses

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5. Section 4.10(b) of the Allocation Agreement indicates that the Participating State must notify Treasury in writing of, "any material adverse change in the condition, financial or otherwise, or operations of the Participating State." What does this include?

For the purposes of the Allocation Agreement, the notice requirement of Section 4.10(b) of the Allocation Agreement is triggered by the following events:
1) The elimination or termination of an Approved State Program;
2) The addition of one or more new State programs;
3) A material change in the scope or purpose of an Approved State Program. Treasury maintains the discretion to determine materiality of any changes in scope or purposes that are proposed by a Participating State;
4) The reapportionment and transfer of a Participating State's allocated funds among Approved State Programs, when the cumulative amounts transferred exceeds 10 percent of the Participating State's total allocation;
5) A change in the identity of the State agency or contracting entity proposed to implement the Approved State Programs from the State agency that is identified in Section 5.1 or Annex 1 of the Allocation Agreement or a merger of State agencies or contracting entities is proposed that substantially alters the organizational structure of the implementing Participating State agency or contracting entity; or
6) Extenuating circumstances requiring extensions to the reporting schedule established in Annex 5 of the Allocation Agreement.

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6. Our State agency designated for implementing the approved State program would like to use a contractor or an independent State authority to administer all or part of the approved State program. Do we need to inform Treasury?

Yes. If your designated implementing agency plans to use a contractor or an independent State authority (i.e., a "third-party entity") to administer all or part of the approved State program, then the

terms of Article IV and Article VI of the Allocation Agreement must be extended to and applied to the third-party entity.

For the purposes of satisfying this requirement, Annex 1 of the Allocation Agreement will include (or will be amended to include) a provision that requires the participating State to enter into a written agreement with the third-party entity that will be administering all or part of the approved State program. That agreement must extend and apply the provisions of Article IV and Article VI of the Allocation Agreement to the third-party entity, and require the third-party entity to comply with the provisions of those articles of the Allocation Agreement. It is sufficient that the participating State maintain a record of its written agreement that extends and applies the provisions of Article IV and Article VI of the Allocation Agreement to the third-party entity.

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7. What kind of administration of all or part of an approved State program requires an amendment to our Allocation Agreement?

Administration of all or part of the approved State program that is performed by third-party entity will generally require the inclusion in Annex 1 of the Allocation Agreement a provision extending and applying the provisions of Article IV and VI of the Allocation Agreement to the third-party entity (see above). By "administration of all or part of the approved State program", Treasury means performing such fundamental program functions as one or more of the following: program marketing; transaction underwriting and analysis; making loan or investment recommendations; selecting recipients of funds; generating and holding loan or investment documentation; disbursing funds; servicing loans; financial accounting;
collecting reports from fund recipients; and/or preparing reports to be submitted to the implementing agency. Not all third party entities that a State may engage to assist in the Approved State program are administering entities that require an amendment to a State's Allocation Agreement. For example, for purposes of this requirement, "administration of all or part of the approved State program" is not intended to include services under contracts for back-office support, such as IT support, HR support, or a property leasing. Treasury will make the final determination, in its sole discretion, but based on the representation of the Participating State as to the nature and function of the third-party entity, if this provision shall be included in Annex 1 of the Allocation Agreement.

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8. What are the consequences of an event of default under the Allocation Agreement?
Updated July 15, 2013 to reflect SSBCI's procedure for disclosing compliance issues that could not be resolved by a Quarterly Report due date.

Article VI of the Allocation Agreement should be reviewed carefully to understand the specific details and potential consequences of the events of defaults.

Generally, Section 6.1 of the Allocation Agreement identifies **any** materially inaccurate, false, incomplete, or misleading statement of fact made by a Participating State in its Application, the Allocation Agreement, or any report or instrument delivered under the Allocation Agreement to be an event of default.

Section 6.1 also identifies **any** failure to comply with any term of the Allocation Agreement to be an event of default. A failure to comply with a term of the Allocation Agreement includes, but is not limited to, a misuse of funds, failure to obtain necessary certifications, or failure to submit a required report in a timely fashion. As explained in Post-Award / Compliance FAQ # 10, Treasury may provide a Participating State with a revised "Certification on Use-of-Allocated Funds" (Exhibit 4-1 to Annex 4 of the Allocation Agreement) to allow the Participating State to disclose non-compliance issues that the State could not successfully resolve by a Quarterly Report due date. The Participating State remains responsible for resolving any non-compliance issue in conformance with SSBCI program requirements and bringing its Approved State Program or Programs into full compliance with SSBCI requirements as soon as possible.

Section 6.2 of the Allocation Agreement provides that if Treasury finds that any of these events of default has occurred, Treasury **may** withhold any future disbursements of Allocated Funds to the Participating State pending correction, and/or reduce, suspend, or terminate Treasury's commitment to make disbursements of Allocated Funds to the Participating State.

Section 6.3 of the Allocation Agreement provides that if the Treasury Inspector General finds, through an audit, any intentional or reckless misuse of Allocated Funds by the Participating State, then Treasury **shall** find the Participating State to be in default of the Allocation Agreement. Section 6.4 of the Allocation Agreement provides, in that case, Treasury **shall** recoup the misused funds that have been disbursed to the Participating State. In addition, based on the Inspector General's findings, Treasury **may** also impose additional the default remedies under Section 6.2 of the Allocation Agreement, which include the option to withhold any further disbursements and/or reduce, suspend or terminate Treasury's commitment to make disbursements of Allocated Funds to the Participating State.

Section 6.3 of the Allocation Agreement also provides that if the Treasury Inspector General finds, through an audit, any intentional misstatement by a Participating State in a report issued to Treasury under the Act, then Treasury **shall** find the Participating State to be in default of the Allocation Agreement. Section 6.4 of the Allocation Agreement also provides that, in that case, Treasury **shall** terminate Treasury's commitment to make disbursements of Allocated Funds to the Participating State and find the State ineligible to receive any additional funds under the Act.

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9. Section 6.3(a) of the Allocation Agreement specifies that there are additional remedies imposed upon a Participating State, "In the event of a Treasury Inspector General audit finding of either: intentional or reckless misuse of Allocated Funds by the Participating State . . . ." What does "intentional or reckless misuse" mean?

Section 6.3(a) of the Allocation Agreement implements Section 3003(b)(1)(C)(ii) of the Small Business Job Act of 2010 (Pub. L. 111-240) (Act). [1] This section of the Act effectively authorizes the Treasury

Inspector General to determine, through an audit of the Participating State, not only if funds were misused, but also if the misuse was reckless or intentional.

If the Treasury Inspector General makes such a finding of intentional or reckless misuse, then Treasury shall declare the Participating State to be in default of the Allocation Agreement. At that time, Treasury will recoup the funds that were intentionally or recklessly misused. Additionally, the Participating State is subject to the contractual remedies of Section 6.2 of the Allocation Agreement for any misuse of funds (regardless of intentionality or recklessness). These remedies include the option to withhold any further disbursements and/or reduce, suspend or terminate Treasury's commitment to make future disbursements of Allocated Funds to the Participating State.

In consultation with the Treasury Inspector General, and applying standards used in analogous situations, Treasury has developed the following definitions of which Participating States should be mindful.

"**Misuse" shall mean**: (1) any use of Allocated Funds under the control of the Participating State or its administering entities identified in Annex 1 of the Allocation Agreement that is not an authorized use or is a prohibited use under the Act, the Allocation Agreement, or the SSBCI Policy Guidelines; (2) or any act or omission that enables other parties, including administering entities identified in Annex 1 of the Allocation Agreement, to misuse Allocated Funds, as described in clause 1.

To determine the authorized and prohibited uses of Allocated Funds, please see Section 4.2, Section 4.3, and Section 4.4 of the Allocation Agreement.

Please note that Section 4.2 of the Allocation Agreement states that the Participating State shall only use the Allocated Funds for the purposes and activities specified in the Allocation Agreement. Please also note that Section 8.2 states that the Allocation Agreement includes: the Application and the attachments, exhibits, appendices and supplements to the Application; the Allocation notice letter, between the Participating State and Treasury with respect to the obligation of funds necessary to provide transfers to the Participating State; and any attachments, schedules, annexes, appendices and supplements to the Allocation Agreement. In addition, Section 4.6 of the Allocation Agreement includes the Participating State's covenant to comply with SSBCI Policy Guidelines published by Treasury on its website at www.treasury.gov/ssbci, including any SSBCI Policy Guidelines and national standards that are established by Treasury after the date of the Allocation Agreement; and the standards for financial management systems, including internal control requirements, specified in the grants management common rule at § __.20.

Please also note that Section 4.1 of the Allocation Agreement includes the Participating State's covenant to comply with the Act and applicable Federal, State, and local laws, regulations, ordinances, and OMB Circulars, including, but not limited to, the regulations at 31 C.F.R. Part 21, related to lobbying.

For the purposes of illustration, the following are non-exclusive examples of misuse of funds:

- Using Allocated Funds for a State program that is not an Approved State Program;

- Expending Allocated Funds for an Approved State Program in excess of the levels permitted by Annex 1 of the Allocation Agreement;
- Expending Allocated Funds for the purposes of administrative expenses in excess of the amounts specified in Annex 3 of the Allocation Agreement;
- Permitting the enrollment of a loan to a small business in excess of the maximum loan sizes specified in the Act and the SSBCI Program Guidelines;
- Permitting the enrollment of a loan that is not for a business purpose or that is used to finance activities prohibited by the Act, the Allocation Agreement, or the SSBCI Policy Guidelines;
- Permitting the enrollment of a loan that has been made to a prohibited party, such as an executive officer, director, or principal shareholder of the financial institution lender; and
- Expending Allocated Funds for a purpose or to an entity after being advised by Treasury that such expenditure is not an authorized use of funds or is prohibited by the Act, the Allocation Agreement, or the SSBCI Guidelines.

"**Intentional misuse of funds" shall mean**: a use of Allocated Funds that the Participating State and/or its administering entity/ies knew was unauthorized or prohibited. An intentional misuse of funds may be a single instance or a series of instances.

"Reckless misuse of funds" shall mean: a use of Allocated Funds that the Participating State or its administering entity/ies should have known was unauthorized or prohibited. A "reckless misuse of funds" is a highly unreasonable departure or willful disregard from the standards of ordinary care, and may be a single instance or a series of instances.

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[1]The relevant section reads, "The allocation agreement between the Secretary and the participating State shall provide that the Secretary 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.

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10. If a Participating State has a known, but unresolved non-compliance issue, must the State submit a Certification on Use-of-Allocated Funds with its Quarterly Report, which requires the Authorized State Official to certify that the Participating State is fully compliant with all SSBCI requirements?
Posted July 15, 2013

Treasury recognizes that a non-compliance issue may be discovered through a Participating State or Treasury compliance review or through an OIG audit and that the Participating State may not be able to fully resolve the issue before a Quarterly Report due date.

In these cases, a Participating State should contact Treasury as soon as practicable to discuss the issue. Treasury will provide a revised Certification on Use-of-Allocated Funds (Exhibit 4-1 to Annex 4 of the Allocation Agreement) for disclosure of non-compliance issues to be submitted with the Quarterly Report. The Participating State also must include its strategy for preventing and monitoring for issues of a similar kind going forward in the revised Certification on Use-of-Allocated Funds and after submission must provide updates on its efforts to resolve each issue as well as written confirmation that specifies the date and method of resolution. Please note that a Participating State's disclosure of a non-compliance issue does not relieve the State of responsibility for resolving the issue. The Participating State remains responsible for resolving any non-compliance issue in conformance with SSBCI program requirements and bringing its Approved State Program or Programs into full compliance with SSBCI requirements as soon as possible. Please contact your Relationship Manager with any questions.

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Program Income and Administrative Expense Questions

1. What is program income and how is it calculated?

Program income is gross income received by the participating state, territory or municipality, including any returns on capital that is directly generated by an SSBCI- supported activity or as a result of the SSBCI funds.
Interest, fees, refunds or other types of gross income earned by financial institutions, private venture capital funds, or private angel investor networks on loans or investments made using SSBCI funds are not considered program income.

When income is generated by an approved CAP or OCSP that includes non-SSBCI funds, only the pro-rata share of program income directly attributable to SSBCI funds is considered program income. For example, in programs in which 60% of program funds came from private, non-SSBCI dollars, only 40% of the gross income (the SSBCI generated amount) of the gross income shall be considered program income.

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2. How can program income be used?

Program income must be employed for any allowable purposes for which the allocated and transferred SSBCI funds may be used, including use for administrative expenses. Program income is not subject to the 3% and 5% limitations of use for administrative purposes that the transferred SSBCI funds are subject to under Section 3003(d)(3)(c) of the Act. Further, program income is not restricted for use by the same SSBCI funds-supported activity that generated the program income. Instead, the program income from one approved CAP or OCSP but may be used for any approved CAP or OCSP.

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3. How may I pay for my administrative expenses?

There are two ways to fund administrative expenses: (1) out of allocated funds, and (2) out of program income, including any administrative fees paid to the participating state, territory or municipality.
The Act establishes strict limitations on the use of allocated funds for administrative expenses. In the case of the first 1/3 transferred, an amount not exceeding five (5) percent of the transferred amount may be employed for allowable administrative expenses. Administrative charges to subsequent transfers are not to exceed three (3) percent of the transferred amount.
To supplement these amounts, states, territories and municipalities may charge fees for program administration. Proceeds from these fees, as well as any interest income or other program income, may be used for allowable administrative expenses.

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Post-Award / Compliance Questions

1. Are there any recoupment provisions in the Allocation Agreement for the allocated funds?

Yes. Section 6.4 of the Allocation Agreement mandates that if the participating state, territory or municipality is found in default of the Allocation Agreement, Treasury may recoup misused funds.

Other sections of the Allocation Agreement disclose other circumstances that will limit access by a state, territory, or municipality' access to the allotted funds. Section 6.2 of the Allocation Agreement explains the discretionary remedies available to Treasury if the state, territory or municipality is found in default of the agreement. These remedies include the authority to withhold any future disbursements pending resolution of the event of default and the authority to reduce or suspend future disbursements. Events of default are listed in Section 6.1 of the Allocation Agreement and include making inaccurate, false or misleading information in the application or Allocation Agreement and failure to comply with any part of the Allocation Agreement, including failure to submit timely and accurate reports.
Lastly, Section 7.1 of the Allocation Agreement covers termination of availability of SSBCI funds.

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2. Under what circumstances may a financial institution lender use SSBCI funds to support a new extension of credit for the purpose of satisfying a prior obligation to the same financial institution or an affiliate?
Updated November 27, 2013 to reflect SSBCI position on loan purchases.

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 an SSBCI-supported CAP or OCSP. However, a financial institution lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or line of credit when all the following conditions are met:

- the new loan or line of credit includes the advancement of new monies to a small business borrower (excluding closing costs);
- the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay and a new approval by the lender/investor;
- proceeds from the new credit may only be used to satisfy the outstanding balance of a loan or line of credit that has already matured or otherwise termed and the prior debt was used for an eligible business purpose, as defined by the SSBCI Policy Guidelines; and,
- the new credit has not been extended for the sole purpose of refinancing existing debt owed to that same financial institution lender.

SSBCI recommends that when a Participating State enrolls a loan that repays principal due under a loan previously made by the same financial institution or its affiliate, the Participating State or the financial institution lender should maintain documented substantiation that these four criteria were met.

The limitation on refinancing does not prohibit a financial institution lender from originating a new loan under an approved program and subsequently refinancing the same loan under any approved program. Additionally, the limitation also does not prohibit a financial institution lender from enrolling or refinancing previously made loans from another, non-affiliated financial institution into an approved program. When a Participating State uses SSBCI funds to purchase a loan from another, non-affiliated financial institution, the state must make a determination that the transaction is beneficial to the small business borrower.

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3. What are the restrictions on borrowers' use of loan proceeds?
Updated August 5, 2013 to reflect SSBCI's position on using SSBCI funds to purchase goodwill.

Financial institution lenders must obtain an assurance from eligible borrowers or eligible investees that loan or investment proceeds from an approved program will only be used for business purposes including start-up costs, working capital, business procurement, franchise fees, equipment, inventory, and the purchase, construction, renovation or improvements of an eligible place of business. SSBCI funds may be used to purchase any tangible or intangible assets except for goodwill. Purchases of real estate (commercial or otherwise), securities or the acquisition or holding of any other real property for passive investment purposes, and lobbying activities are not considered eligible business purposes under an SSBCI-approved program. Furthermore, loan or investment proceeds may not be used to pay delinquent federal or state tax debts unless a repayment plan is in place and in no circumstances may be used to repay taxes held in trust or escrow (e.g., payroll or sales taxes). Loan or investment proceeds may not be used to reimburse funds owed to or purchase any portion of the ownership interest of any owner of the business. The prohibition on purchasing any portion of the ownership interest of an owner proscribes the acquisition of the shares of a company or the partnership interests of a partner when the proceeds of the loan or investment directly supported by SSBCI funds will go to any existing owner or partner.

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4. The SSBCI Policy Guidelines require that at the closing of a loan or investment, that each small business borrower furnish an assurance that includes, among other things, that loan or investment

proceeds will not be used for passive real estate investment. What is SSBCI's definition of "passive real estate investment"?

SSBCI has developed a definition of "passive real estate investment" in consultation with the Small Business Administration (SBA). SSBCI considers loan or investment proceeds to be used for "passive real estate investment" purposes when the proceeds from the loan or investment are used by an eligible small business to invest in real or personal property acquired and held primarily for sale, lease, or investment.

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5. Can a small business borrower still deliver the assurance regarding passive real estate investment if the small business leases any portion of a building constructed, acquired or renovated with proceeds from an SSBCI-supported loan or investment?

If proceeds from an SSBCI supported loan or investment are used in the construction of a new building, the eligible small business must occupy and use no less than 60% of the total rentable property following construction. If proceeds are used in the acquisition, renovation or reconstruction of an existing building, the borrower may permanently lease up to 49% of the rentable property to one of more tenants, if the eligible small business also occupies and uses no less than 51% of the total rentable property within 12 months following the real property acquisition. For example, Smith Bakery may use the proceeds of an SSBCI-supported loan to purchase an existing building with 4,000 square feet of rentable property that is currently leased to three businesses if at least 2,040 (51%) square feet will be occupied by the bakery itself within 12 months of acquiring the building.

Under either scenario, if an eligible small business chooses to lease an allowable portion of the rentable square footage to a tenant, the Participating State has the responsibility to ensure that the occupancy requirements of the eligible small business are met and supported by substantiating documentation, which may include lease agreements, blueprints, or similar documentation. Additionally, SSBCI-supported loan or investment proceeds may not be used to improve or renovate any of the rentable property that is leased to a third party.

SSBCI considers "rentable property" to be the total square footage of all buildings or facilities used for business operations excluding vertical penetrations (stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors), and including common areas (lobbies, passageways, vestibules, and bathrooms). Rentable property excludes all outside areas.

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6. Are there any exceptions to the use of proceeds prohibition on passive real estate investment? What about an entity or trust that does not directly engage in business operations, such as a real estate holding company, receiving an SSBCI-supported loan or investment for the purposes of acquiring real property?

In consultation with the SBA, SSBCI does permit an exception to the prohibition on passive real estate investment if an eligible passive company acquires and holds real property using SSBCI-supported loan or investment proceeds where 100% of the rentable property is subsequently leased to one or more

operating companies. An eligible passive company can take any legal form or ownership, but it is typically a small entity or trust which does not engage in regular and continuous business activity, and which leases real or personal property to an operating company for use in the operating company's business. An operating company is generally actively involved in conducting business operations that is currently or about to be located on real property owned by an eligible passive company, or using, or about to use in its business operations, personal property owned by an eligible passive company. To meet the exception identified above, the following criteria must also be met:

- Both the eligible passive company and the operating company are eligible small businesses that meet all borrower or investor criteria established by the SSBCI Policy Guidelines; While 100% of the rentable property acquired and held using proceeds from the SSBCI-supported loan or transaction to the eligible passive company must be leased to one or more operating companies, an operating company may subsequently sublease no more than 49% of the total rentable square footage (in the case of an existing building, or no more than 40% in the case of new construction) to one or more unaffiliated tenants;
- The operating company is a guarantor or co-borrower on the SSBCI-supported loan or investment to the eligible passive company;
- Both the eligible passive company and the operating company must execute the borrower use of proceeds certification and sex offender certifications covering all principals, as co-borrower or guarantor;
- Each natural person holding an ownership interest constituting at least 20 percent of either the eligible passive company or the operating company provides a personal guarantee for the SSBCI-supported loan or investment; and,
- The eligible passive company and the operating company have a written lease with a term at least equal to the term of the SSBCI-supported loan or investment, including options to renew exercisable solely by the operating company.

It is the responsibility of the Participating State to ensure that all of the above requirements are met. SSBCI-supported loans or investments that do not provide documentary substantiation to all of the requirements related to the eligible passive company exception to the passive real estate investment prohibition on use of proceeds will be determined ineligible.

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7. How can participating states, territories and municipalities comply with Section 4.4 of the Allocation Agreement regarding restrictions on the use of allocated funds with respect to prohibited loan purposes?

Section 4.4(e) of the Allocation Agreement specifies, "The participating state, territory or municipality shall not use any allocated funds for loans used to finance, in whole or in part, business activities prohibited by the SSBCI Policy Guidelines, Treasury regulations, including Treasury regulations promulgated after the date of this Allocation Agreement." As such, the SSBCI Policy Guidelines are the controlling document.

Treasury has created sample self-certifications that a participating state, territory or municipality may

use in order to obtain certifications from the financial institution lenders and the small business borrowers. These certifications are not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, these certifications are provided for illustrative purposes and are available for use by the participating state, territory, or municipality according to their discretion. These sample certifications are attached as Annex 1 and 2 to this document.

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8. May SBA-guaranteed loans or other federally guaranteed or insured loans be enrolled in approved state programs receiving SSBCI funds?

No. The SSBCI Policy Guidelines prohibit enrolling the unguaranteed portion of SBA- guaranteed loans in either a CAP or OCSP. This prohibition also applies to the unguaranteed portion of other federally guaranteed loans.

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9. How do participating states, territories and municipalities comply with the Sex Offender certifications in Section 4.9 of the Allocation Agreement?

Section 4.9 of the Allocation Agreement specifies that "[Participating states, territories and municipalities must obtain]…(c) a certification from the private entity, including any financial institution, that the Principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911))."

Meaning of "private entity": Section 4.9(c) of the Allocation Agreement requires that both the financial institution lender and each borrowing entity certify to the participating state, territory or municipality that none of the Principals have been convicted to referenced sex offense.

Meaning of "Principals": For the limited purposes of Section 4.9 of the Allocation Agreement, 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 a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, 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 20% or more of the ownership stock or stock equivalent of the entity."

Treasury has created sample self-certifications that a participating state, territory or municipality may use in order to obtain certifications from the financial institution lenders and the small business borrowers. These certifications are not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, these certifications are provided for illustrative purposes and are available for use by the participating state, territory, or municipality according to their discretion. These sample certifications are attached as Annex 3 to this document.

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10. What restrictions and reporting requirements apply to use of SSBCI funds after the termination of the Allocation Agreement on March 31, 2017?
Updated October 29, 2014.

The authorities and duties of Treasury to implement and administer the Program terminate on September 27, 2017. Further, Treasury expects that the expiration date of all Allocation Agreements will be March 31, 2017. Between January 1, 2017, and March 31, 2017, each participating state, territory or municipality must submit (1) its final annual report, (2) its final Federal Financial Report (SF-425), and (3) a summary of the performance results of the allocation, including a narrative of how or the extent to which the purpose of the allocation was accomplished using allocated funds.

In addition, each participating state, territory, or municipality must submit its final quarterly report by January 31, 2017. Participating states, territories, and municipalities will not, under any circumstances, be released from these reporting requirements early, even if a participating state, territory, municipality draws down or uses allocated funds prior to the expiration of the allocation time period.

Although the reporting requirements in Sections 4.7 and 4.8 of the Allocation Agreement terminate when the Allocation Agreement expires, the restrictions set forth in the Act, the Policy Guidelines, National Standards and SSBCI's Frequently Asked Questions will remain in effect and govern the original deployment of funds disbursed by the SSBCI program.

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11. Will I be required to calculate my private leverage ratio for each annual report?

No. Treasury intends to automatically calculate each participating state's, territory's, or municipality's annual and cumulative private leverage ratio from the data provided by each participant's required Annual Report, as detailed in section 4.8 of the Allocation Agreement.

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12. How much capital must participating lenders or investors have at risk under a CAP or OCSP?
Updated November 27, 2013 to reflect SSBCI's policy on calculating the private leverage ratio expectation over five years for modifications.

Financial institution lenders or other private investors must have at least 20% of their own capital at risk in any approved CAP or OCSP, in order to fulfill the requirement of the Act to have a "meaningful amount of their own capital at risk". This means that in the case of default of a loan or investment made to an eligible small business under an approved SSBCI program, a private lender or investor will be at risk for at least 20% of such loss. In the case of an OCSP venture capital or angel investment network, this capital-at-risk requirement applies at the level of the fund that makes the investment in eligible small businesses, not at the "fund of funds" level. For Allocation Agreement modifications, Participating States may calculate the private leverage ratio expectation of their proposed Approved State Programs over a maximum five-year time period from Treasury's approval of the proposed modification. Please also see SSBCI's revised Modification Procedures, revised November 22, 2013.

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13. Are there prohibitions on combining a transaction supported with SSBCI funds with a loan guaranteed under the U.S. Small Business Administration (SBA) 7(a) or 504 loan programs or the U.S. Department of Agriculture (USDA) Business & Industrial (B&I) loan program?
Posted December 17, 2013. Effective February 17, 2014.

Yes. If a borrower receives a loan guaranteed by the SBA's 7(a) or 504 loan programs or the USDA's 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 programs 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.

Participating States 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 or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

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14. Are there prohibitions on enrolling the same loan or investment in more than one Approved State Program or using more than one Approved State Program to support multiple loans or investments for the same loan purpose?
Posted December 17, 2013. Effective February 17, 2014.

Yes. One loan cannot be enrolled in more than one Approved State Program at the same time. In addition, 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 separate Approved State Programs, the 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 or promissory notes, copies of checks from the lender payable to different vendors from the proceeds from the two loans or investments, or a statement signed by the lender/investor or borrower/investee prior to closing the SSBCI-supported transaction indicating the two different uses of the two loans or investments.

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15. Are there prohibitions on using SSBCI funds in combination with a transaction that generated tax credits, including a New Markets Tax Credit (NMTC) or Historic Preservation Tax Credit transaction?
Posted December 17, 2013. Effective February 17, 2014.

Yes. An SSBCI-supported transaction cannot be used to increase the pool of funds that generates tax credits. An SSBCI-supported transaction can only be used outside the structure designed to leverage tax credits. For example, assume SSBCI funds support a loan to a community development entity (CDE). The CDE cannot then use the SSBCI-supported loan to make a qualified low community investment that generates tax credits for purposes of a NMTC transaction. If a given transaction supported with SSBCI funds meets program requirements, SSBCI funds may be used alongside a transaction that generates tax credits.

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16. How does the $20 million restriction on credit support under OCSPs apply in general and when SSBCI may be providing support to one or more transactions within a larger financing?
Posted January 23, 2014.

In accordance with section 3006(c)(4)(C) and (D) of the Small Business Jobs Act and section II of the *SSBCI Policy Guidelines*, an OCSP must target loans or investments with an average principal amount of $5 million or less and cannot provide credit or investment support if a given transaction exceeds $20 million. For approved State lending programs, the $20 million restriction applies to the principal amount of the loan directly supported by or funded with SSBCI funds, 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.

In addition, Participating States should be wary about participating in transactions that involve multiple loans or investments to affiliated entities that should be structured as a single loan or investment. One indicator that multiple loans or investments to affiliated entities should constitute a single transaction is common ownership and control between the entities, regardless of whether the owner's or owners' ownership percentages vary between the affiliated entities. Other indicators include cross-collateralization and substantially the same terms between the transactions. The examples and indicators are not exhaustive, and Participating States should use their judgment in assessing whether transactions exceed the $20 million restriction.

Treasury recognizes that each transaction is fact-specific and reminds the Participating State to assess each transaction carefully and to document the justification for participating in any transaction that could reasonably be viewed as exceeding the $20 million restriction.

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17. Can a participating State cure a noncompliant use of SSBI funds?
Effective September 25, 2014.

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

For situation (1), SSBCI will perform an analysis to determine whether the state's use of funds in question is noncompliant. SSBCI staff will consider the nature of the use of funds and the extent to which it was in accordance with the Small Business Jobs Act and with established policy guidance, including the *SSBCI Policy Guidelines*, the SSBCI Allocation Agreement, and the *National Standards for Compliance and Oversight.* Additional sources could include applicable frequently asked questions (FAQs) published by SSBCI, guidance distributed at a conference or on a conference call, and any other written guidance provided by Treasury to the Participating State, including via email. If SSBCI determines the instance of noncompliance constitutes potential misuse that may meet the level of "reckless" or "intentional", SSBCI will refer the case to the OIG to perform an audit. If the OIG finds that the misuse is reckless or intentional, it will issue a formal recommendation to SSBCI, recommending that the funds be recouped, as required by Section 3003(c)(1)(C)(ii) of the Small Business Jobs Act. For situation (2), the OIG already has conducted a misuse analysis, and SSBCI need not conduct one.

For both situations (1) and (2), the Participating State will be afforded an opportunity to provide SSBCI or the OIG additional information that will be used to determine whether a general event of default under the Allocation Agreement has occurred. The Participating State will be given 30 calendar days to supply information for SSBCI's analysis that was not considered at the time the instance of noncompliance or misuse was identified. In the case of disallowed or impermissible administrative expenses, the Participating State will be given 30 calendar days to demonstrate that the administrative expenses satisfy program requirements. If an instance of potential misuse is referred to the OIG for an audit, the OIG will determine the response time for its data requests.

Treasury may also allow a Participating State to replenish its SSBCI program account in the amount of funds found to be noncompliant or misused. If Treasury approves a proposed replenishment, Treasury will allow the Participating State to un-enroll the loan or investment or remove the disallowed administrative expenses from the SSBCI account once sufficient documentation is received and reviewed by SSBCI Compliance staff. Treasury recognizes that some Participating States may not have funds available to replenish the SSBCI program account, in which case Treasury may exercise other remedies, including reducing the amount of future disbursements.

[1] SSBCI recognizes that Participating States may wish to un-enroll instances of misuse found by the OIG to be reckless or intentional. SSBCI will consider such requests on a case-by-case basis; however, the OIG's findings and determinations remain in place. If the OIG finds that the misuse is reckless or intentional, SSBCI will recoup the funds, as required by Section 3003(c)(1)(C)(ii) of the Small Business Jobs Act.

Written approval is needed for replenishment and un-enrollment. Documentation requirements and an example certification to request Treasury's approval are provided below. *Please note that Treasury's approval of any replenishment and un-enrollment does not preclude the OIG from conducting its own review of non-compliance issues to determine misuse. If the OIG determines there has been reckless or intentional misuse, recoupment in the amount of such misused funds is required under the statute regardless of whether the Participating State has replenished the SSBCI program account.*

Treasury may determine that the opportunity to rebut or cure is not appropriate if a Participating State's noncompliance meets any of the following criteria: (a) it was not self-reported; (b) it was widespread; or (c) it occurred after relevant guidance was provided. If any of these criteria is present, Treasury may recommend a determination of a general event of default.

If an instance of noncompliance cannot be cured in a manner satisfactory to Treasury, Treasury may issue a written notice of a general event of default to the Participating State, pursuant to Section 6.1 of the SSBCI Allocation Agreement. The written notice will give the Participating State 10 calendar days from the date of the notice to respond, in accordance with Section 6.6 of the SSBCI Allocation Agreement, and inform the Participating State that it may include any mitigating facts or circumstances, with accompanying documentation, in the response.

Process for Requesting Treasury's Approval to Replenish and Un-enroll

<u>Documentation for the Replenishment of Loans and Investments</u>

A Participating State must provide Treasury with a written description of each transaction and the justification for the proposed replenishment and un-enrollment. If Treasury determines the request is justified, Treasury will provide the Participating State with written conditional approval. Once the Participating State has replenished the SSBCI Program Account, the Participating State must provide the following:

1. A letter from the Participating State to the lender, investor, or third party involved in administration that informs the lender that the transaction is no longer enrolled in the SSBCI program, and that SSBCI funds no longer support the transaction. For certain transactions, as determined by Treasury, the Participating State must provide evidence that the relevant contract is no longer valid or will not be honored using SSBCI funds.

2. Accounting documentation evidencing that the Approved State Program account has been replenished.

3. A certification from the Authorized State Official that explains the reason for un-enrollment of each transaction and that the Participating State has undertaken all necessary actions and transactions, in accord with Participating State laws and requirements, to replenish the Approved State Program account.

Documentation for the Replenishment of Administrative Expenses

A Participating State must provide Treasury with written description of the administrative expenses and the justification for the proposed replenishment and un-enrollment. If Treasury determines that the request is justified, Treasury will provide the Participating State with written conditional approval. Once the Participating State has replenished the administrative expenses, the Participating State must provide the following:

1. Accounting documentation evidencing that the SSBCI program account has been replenished.

2. A certification from the Authorized State Official that explains the reason for the un-enrollment of the administrative expenses and that the Participating State has undertaken all necessary actions and transactions, in accord with Participating State laws and requirements, to replenish the SSBCI program account.

Treasury's Approval to Un-Enroll Loans, Investments, and Administrative Expenses

Treasury will review the documentation submitted following replenishment and, if Treasury determines that it is sufficient, will provide the Participating State with written approval to un-enroll the relevant transactions or administrative expenses.

Example Authorized State Official's Certification for Seeking Treasury's Approval for Un-Enrollment and Replenishment

Reference is made to the State Small Business Credit Initiative (SSBCI) Allocation Agreement dated as of [_____] (Allocation Agreement), between the United States Department of the Treasury (Treasury) and [the Participating State].

I, the undersigned as the Authorized State Official of [the Participating State], hereby certify that as of the date of this certification, [the Participating State] requests un-enrollment of the following transactions and/or administrative expenses from the Participating State's SSBCI account:

[Insert list of transactions and/or administrative expenses to be un-enrolled]

The reasons for the un-enrollment are [specify for each transaction and/or administrative expense to be un-enrolled].

I further certify that the [the Participating State] has undertaken and completed all necessary actions and transactions, in accord with [the Participating State] laws and requirements, to deposit [$___] of non-SSBCI funds into [the Program identified under Annex 1 of the Allocation Agreement] OR [the account containing SSBCI funds allocated for Administrative Funds under Annex 3 of the Allocation Agreement]. The deposited funds will be used in accordance with the terms and conditions of the Allocation Agreement.

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18. May SSBCI funds support a loan or investment to a religious establishment?

Yes, a religious establishment may receive SSBCI funds provided that the proceeds of the loan or investment are used only for a "business purpose." A "business purpose" does not include an explicitly religious purpose. SSBCI funds may not support a loan or investment used by the religious establishment for the purposes of directly supporting, assisting, or furthering an explicitly religious purpose, including, but not limited to, worship, religious instruction, or proselytization.

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19. How should a state trace SSBCI funds that are allocated to a privately managed venture capital fund (VC fund) into an eligible business?

When a state allocates SSBCI funds to a VC fund, and the VC fund then combines (commingles) the SSBCI funds with private capital in a single account, it becomes important for the state to be able to trace the amount of SSBCI funds expended to each small business to confirm that SSBCI program rules and guidelines regarding private capital are being followed. There are a variety of ways to do this (the below list is not exhaustive):

- A VC fund may designate a subset of its overall portfolio as its "SSBCI portfolio." For example, the SSBCI portfolio could consist of the investments closed after the state has allocated SSBCI funds to the VC fund. The SSBCI portfolio investments must comply with all program rules.
- A VC fund may invest SSBCI funds pro rata in all of its investments, i.e., proportionately with funds obtained from other limited partners. All investments must comply with all program rules.
- A VC fund may allocate a larger portion of SSBCI funds to certain investments. All investments must comply with all program rules.

In their written records, states should be explicit about the overall allocation method used and should record the exact amount of SSBCI funds invested in each small business investment at the time the investment is made. The state should also record the amount of any VC fund management fees charged to its SSBCI allocation. VC fund management fees charged to SSBCI funds are considered administrative expenses and are subject to program rules (please refer to FAQ on Program Income and Administrative Expense).

Additionally, private lenders or investors must bear 20 percent or more of the risk of loss in any transaction that uses SSBCI funds. If a VC fund is using SSBCI funds as part of staged funding of a single investment, when SSBCI funds are invested, 20 percent of the capital-at-risk must be from private sources.

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NEW!

20. When can private capital be counted towards a state's private leverage ratio?

Private capital invested in a small business must have been the "cause and result" of the SSBCI investment in the VC fund to be included in the transaction-level private leverage ratio.

Generally, small business investments closed by the VC fund manager before the state's SSBCI funds were received by the VC fund should not be included in the SSBCI portfolio. A pre-SSBCI-closing private capital investment may be counted towards the state's private leverage ratio in special circumstances when a state can demonstrate through documentation that the private capital investment was the "cause and result" of the forthcoming SSBCI funds. For example, SSBCI has previously allowed a pre-SSBCI-closing private capital investment to count towards the state's private capital ratio when the state supplied board minutes evidencing the causal connection.

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Municipalities

1. **What is a municipality for purposes of the SSBCI?**

   For the purposes of administering the SSBCI program, Treasury defines a "municipality" as any incorporated city, town, borough, village, or township; or a federally-recognized Indian tribe. "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

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2. **How can my municipality receive special permission from the Secretary to apply for SSBCI funds?**

   Municipalities in Wyoming and North Dakota currently have permission to apply for SSBCI funds because those two States did not file a notice of intent by November 27, 2010, as required in order for a State to be eligible for SSBCI funding. By July 8, 2011, Treasury will post a notice on SSBCI's website listing those States that had filed a notice of intent by November 27 but did not file a complete application by June 27, 2011, so that municipalities in those States will have the earliest possible notice that they may consider whether to apply directly. In August, Treasury will post a notice on SSBCI's website listing additional States in which municipalities have permission to apply for SSBCI assistance.

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3. **If my municipality has permission to apply for SSBCI funding, what must I do in order for my municipality to be considered?**

   In order to be considered for funding, eligible municipalities must file an application meeting both of the following requirements no later than 5 p.m. Eastern Daylight Time on September 27, 2011:

   1. The application is from an eligible applicant (i.e. a municipal department or agency expressly designated by the municipality's chief executive to implement the program pursuant to the designation letter attached to question 1B in the application) that can bind the municipality to obligations with the federal government as well as have the legal mechanisms in place to accept the transfer of SSBCI funds; and
   2. The application contains a substantive response to all required fields and narratives. A substantive response is one which reflects a good faith effort to answer the question.

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4. **Is my municipality required to file a notice of intent to apply?**

   Treasury encourages eligible municipalities to file by August 15, 2011, a notice of intent to apply. This will enable Treasury to offer technical assistance to those municipalities that have indicated their intent to apply.

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5. **If my municipality satisfies the eligibility criteria and submits a completed application by the established deadline, will we automatically receive funding?**

   No. Section 3004(d)(5) of the Act states that if more than three municipalities, or a combination of municipalities, of a State apply for approval, and meet the applicable approval criteria, the Secretary shall allocate funds to the 3 municipalities (or combinations of municipalities) with the largest populations. In addition, Section 3004(d)(7) of the Act requires the Secretary to also consider the additional eligibility considerations set forth in Section 3006(d) of the Act, which include the anticipated benefits to the State, its residents, and its businesses; operational capacity; management skill and experience; internal controls; and program design.

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6. **How much should my municipality apply for?**

   Eligible municipalities should request the amount of SSBCI funds they believe their proposed programs can use for program purposes through December 31, 2016, but not to exceed the

amount of the SSBCI allocation for your State as a whole (for the amount of each State's allocation, please refer to the SSBCI website at http://www.treasury.gov/ssbci). This amount should be consistent with the applicant's narrative attachments to Section 3D and 4E of the application, which require detailed forecasts regarding the projected number of loans and loan amounts through December 31, 2016. If these narratives are not consistent with the amount requested, the applicant will be asked to file a revised application.

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7. **If my municipality is approved for funding, what will the size of our allocation be?**

The size of your municipality's allocation is dependent upon several factors. First, the amount requested in the application, as supported by the narrative attachments to Sections 3D and 4E, provide the ceiling for the amount of SSBCI funds that may be transferred to the eligible municipality upon approval and execution of the SSBCI Allocation Agreement. For instance, if the total amounts requested by the municipalities selected for funding in a given State exceed that State's total allocation, or if more than three municipalities or combinations of municipalities apply, then Treasury will apportion the State's allocation among approved municipalities in amounts proportionate to the population of those municipalities (or combinations of municipalities) approved for SSBCI funding, in accordance with Section 3004(d)(6) of the Act. Treasury will use population data from the most recent decennial census when making these calculations.

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8. **Are there any additional requirements for applications from combinations of municipalities?**

All of the SSBCI application requirements that apply to States also apply to municipalities and municipalities submitting joint applications. Eligible municipalities or other municipal entities applying in a joint application for SSBCI funds are required to submit a signed SF-424B and a completed application signature page from each municipality or municipal entity in the combination application. The chief executive of each municipality or municipal entity that is a party to the joint application must submit a letter of designation. These letters of designation must contain the names of all municipalities that are party to the joint application and which municipality (as defined by SSBCI) is the "lead applicant." The "lead applicant" will serve as the point of contact for all matters involving the application and that will be responsible for ensuring that all parties to the joint application comply with program requirements. The "lead applicant" will be responsible for compiling and submitting the quarterly reports, annual reports, and Form SF-425 (Federal Financial Report), and for responding to any requests for information from Treasury staff.

In addition, as a condition of closing, the municipalities in a joint application will submit for Treasury review a cooperative agreement outlining their internal allocation of funds and their

respective roles and responsibilities. This cooperative agreement is a private contract among the municipalities involved. Treasury will therefore not be responsible for approving or enforcing this private contract; however, Treasury will review the cooperative agreement for sufficiency as a condition of closing.

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9. **May Participating Municipalities use SSBCI funds to support loans or investments to eligible small businesses that are located outside the geographic borders of the Participating Municipality?**

   Yes, provided that the mayor or chief executive of a Participating Municipality warrants, in writing, that the loan or investment will result in significant economic benefit to the Participating Municipality. When evaluating criteria to determine if a loan or investment made outside of its geographic borders yields significant economic benefit, Participating Municipalities should consider the impacts that the transaction will have on a) jobs created or maintained within the Participating municipality; b) increasing the amount of sales, income, or other tax revenue to the Participating Municipality; or c) the benefit of the goods or services provided by the small business to the Participating Municipality or businesses within the Participating Municipality.

   These examples are illustrative of significant economic benefit, but not exhaustive. Participating Municipalities may work with their SSBCI Relationship Manager to seek advice on other ways to substantiate the significant economic benefit that may result from a loan or investment of this type.

   A written warranty of the anticipated economic benefit, signed by the mayor or chief executive of the Participating Municipality, must be retained with the transactions records for each loan or investment made outside of the borders of a Participating Municipality and must be made available to Treasury upon request, pursuant to Sections 4.13 and 4.14 of the Allocation Agreement.

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Appendix 1

Treasury has created this sample self-certification that a participating state, territory or municipality may use in order to obtain certification from small business borrowers or investees. This certification is not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, this certification is provided for illustrative purposes and is available for use by the participating state, territory, or municipality according to their discretion

Sample Small Business Borrower/Investee Certification for Use of Proceeds

These assurances reference Section 3005(e)(7) and Section 3011(c)(2) of the Small Business Jobs Act of 2010.
Legal name of borrower or investee:
_____
The borrower or investee hereby certifies the following to the lender or investor:

1. The loan or investment proceeds will be used for a "business purpose." Business purpose includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes: activities that relate to acquiring or holding passive investments, such as commercial real estate ownership and 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.
2. The loan or investment proceeds will not be used to:
    1. repay a delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority; or
    2. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
    3. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
    4. to purchase any portion of the ownership interest of any owner of the business.
3. The borrower or investee is not:
    1. an executive officer, director, or principal shareholder of the lender; or
    2. a member of the immediate family of an executive officer, director, or principal shareholder of the lenders; or
    3. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

For the purposes of these three restrictions, the terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" refer to the same relationship to a lender as

the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

1. The borrower or investee is not:
    1. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, 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
        1. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institutions; or
        2. 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; or
        3. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
        4. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

Legal Name:
_____

By:_____
Authorized Signatory

Name: _____

Title: _____

Date: _____

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Appendix 2

Treasury has created this sample self-certification that a participating state, territory or municipality may use in order to obtain certification from lenders or investors. This certification is not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, this certifications is provided for illustrative purposes and is available for use by the participating state, territory, or municipality according to their discretion.

Example Lender/Investor Certification for Use of Proceeds

This Assurance is referenced by Section 3005(e)(7) of the Small Business Jobs Act of 2010.
Legal name of lender or investor:
_____
The Lender/Investor hereby certifies to the Participating State the following:

1. The loan or investment has not been made in order to place under the protection of the approved state program prior debt that is not covered under the approved state program and that is or was owed by the borrower to the lender or to an affiliate of the lender.
2. The loan or investment is not a refinancing of a loan or investment previously made to that borrower by the lender or an affiliate of the lender.
3. The lender is not attempting to enroll the unguaranteed portions of SBA-guaranteed loans.
4. NEW! [For investment under SSBCI Venture Capital Programs] The investment complies with the conflict of interest rules set forth in the National Standards for Compliance and Oversight.

Legal Name:
_____

By:_____
Authorized Signatory

Name: _____

Title: _____

Date: _____

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This Appendix 2 is effective on July 1, 2014.

Appendix 3

Treasury has created this sample self-certification that a participating state, territory or municipality may use in order to obtain certification from lenders, investors, and small business borrowers or investees. This certification is not intended to replace or supersede any internal controls the participating state, territory, or municipality has in place. Rather, this certification is provided for illustrative purposes and is available for use by the participating state, territory, or municipality according to their discretion.

Example Sex Offender Certification

(May be Used for Both Borrowers/Investees and Lenders/Investors)

This certification is required by Section 3011(c)(2) of the Small Business Jobs Act of 2010 from any private entity that receives a loan, a loan guarantee, or other financial assistance using funds received by a participating State under the State Small Business Credit Initiative.
Legal name of entity:
_____
As required by Section 3011(c)(2) of the Small Business Jobs Act of 2010, the private entity hereby certifies to the participating State that the Principals of the private entity have not been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this Certification, Principal means the following: if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20% or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, 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 20% or more of the ownership stock or stock equivalent of the entity.
Legal Name:
_____

By:_____
Authorized Signatory

Name: _____

Title: _____

Date: _____

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